



October 15, 2013

Via web and email: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Mr. Richard Bode ([rbode@arb.ca.gov](mailto:rbode@arb.ca.gov))  
Chief, Mandatory Reporting Regulation  
California Air Resources Board  
1001 I Street  
Sacramento, CA 95814

Subject: Valero Comments on Proposed Amendments to the Regulation for Mandatory Reporting of Greenhouse Gas Emissions; 45-day Draft Comment

Dear Mr. Bode:

In response to the ARB's release of Proposed Amendments to the Regulation for Mandatory Reporting of Greenhouse Gas Emissions (MRR Rule), Valero is submitting the following comments well in advance of the 45-day comment deadline. We do so to allow Staff time to study these comments and prepare any necessary amendments in subsequent actions.

Valero, as a member of the Western States Petroleum Association (WSPA), incorporates by reference the comments made separately by WSPA; a copy of that letter is attached. Below are several issues that were not addressed by the WSPA letter but are concerns for Valero.

Determination of Position Holder (pg. 67)

In section 95121(a)(2) of the Proposed Order, there are no revisions to the definition of 'position holder' or 'title holder' that reflect the guidance released in April 2013 clarifying the reporting requirements for position holders of transportation fuels that are subject to the Cap & Trade provisions. The regulation and the guidance hinge upon the determination of 'position holder' or 'title holder,' both of which are key for determining the entity responsible for reporting the emissions from the combustion of transportation fuels starting in the second compliance period.

Earlier in 2013, Valero had several discussions with CARB by telephone and in person to confirm that Valero's interpretation of the MRR Rule is commensurate with CARB's reporting requirements. Valero also submitted a letter to CARB explaining its understanding of Section 95121(d) and CARB's explanation of that provision. CARB in person (MRR Dept.) and by its guidance document confirmed Valero's interpretation, and Valero submitted its transportation fuels data for 2012 using Board of Equalization data, which is based on excise tax rules. While CARB's acceptance of that report further confirms Valero's interpretation, Valero would like to be on record as requesting that the regulation explicitly clarify the basis of determining the responsible party for reporting transportation fuels under the cap.

Valero requests that the rule include the Board of Equalization (IRS Excise Tax rules) definitions for the determination of position holder. CARB could also use language from its guidance document from April 2013. Valero suggests the following addition (underlined) to the current definition:

(346) "Position holder" means an entity that holds an inventory position in motor vehicle fuel, ethanol, distillate fuel, biodiesel, or renewable diesel as reflected in the records of the terminal operator or a

terminal operator that owns motor vehicle fuel or diesel fuel in its terminal. "Position holder" does not include inventory held outside of a terminal, fuel jobbers (unless directly holding inventory at the terminal), retail establishments, or other fuel suppliers not holding inventory at a fuel terminal. The status of 'position holder' can be determined by running a Board of Equalization report for excise tax purposes.

#### Comment Period

The notice of public hearing for both the MRR and Cap & Trade proposed orders state that comments are due on October 23<sup>rd</sup> at noon (Pacific) and that the public hearing is scheduled for October 24<sup>th</sup> at 9 am. As a procedural issue, Valero does not feel that industry has sufficient time to comment on the proposed amendments in such a way that CARB can fully address the comments and incorporate appropriate changes to its regulatory language before the public hearing with the CARB Board. Further, the notice states "ARB requests that written and email statements on this item be filed at least 10 days prior to the hearing so that ARB staff and Board members have additional time to consider each comment." While this language is a request and not a requirement, the fact that the Board hearing is scheduled to occur the morning after the deadline for comments makes October 13<sup>th</sup> (Sunday) the *de facto* deadline for submitting comments. This, in effect, shortens the comment period to 35 days and also short circuits discussions within trade association and between trade associations and CARB, especially pertaining to entirely new sections of the regulation (i.e., pertaining to reporting of Toxic Air Pollutants and Criteria Pollutants under provisions of the Adaptive Management Plan). Valero suggests that CARB incorporate all appropriate comments into the regulatory language for the Board hearing, as long as the comments are submitted by the 23<sup>rd</sup>.

#### Petroleum Refinery Operators vs. Refiners (pg. 52 of the Proposed Order)

Indirectly related to the reporting of transportation fuels is the language in section 95113, which in the Proposed Order, has this new sentence: "Petroleum refinery operators and refiners are considered separate reporting entities for the purposes of this article." While it appears that the purpose of this statement is to account for corporate structures so that an entity cannot avoid reporting due to definitional variance, this new sentence does imply that operators and refiners are mutually exclusive in all cases. The definition should clarify the need for itself, particularly with regard to the corporate function of the two types of entity. The new language should be struck or clarified to assure that an entity does not have to double report the same emissions.

Thank you for taking the time to review these comments and recommendations. Should you have any questions, feel free to contact me or Robert Ehlers (210-345-2227; [robert.ehlers@valero.com](mailto:robert.ehlers@valero.com)).

Regards,



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