VALERO

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

Mr. Richard Bode (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; **CARB Criteria for "Atypical" Refinery Designation**

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 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 submitted a comment letter on October 17th that incorporated by reference the Western States Petroleum Association comment letter and also addressed several other issues. This letter addresses one additional issue, a benchmarking methodology for "atypical refineries" that ARB proposed in a recent workshop. Succinctly, Valero recommends that ARB employ the accepted and recommended definition of "atypical" in determining which facilities should be treated outside of the CWB benchmark process.

In the Refinery Workshop presentation hosted by ARB on October 7, 2012, staff provided details on the refinery allocation methodology for free allowances in the second and third compliance periods. Valero supports the transition to CWB as an equitable means for allowance allocation that recognizes energy efficiency without burdening facilities with excessive data validation requirements. As a product of Solomon Associates, the CWB methodology is a recognized industry tool for accurately benchmarking refinery GHG emissions and has demonstrated a high level of accuracy in gauging emissions based on configuration and processing complexity. However, in the Solomon presentation to ARB (August 13, 2013), Solomon acknowledged that there are limitations to the application of CWB and that "atypical" refineries would likely require a different benchmarking approach. While ARB staff has acknowledged this qualification in the October 7 presentation, the criteria ARB set forth to define "atypical" refineries are inappropriate and stray from the accepted understanding and criteria for identifying these facilities. Given the limited population of refineries in California, the proposed ARB approach can potentially skew the allocations provided to industry and create competitive disadvantages.

Both Solomon Associates (CWB presentation to ARB, August 13, 2013) and Ecofys (presentation to ARB discussing refinery benchmarking in the second compliance period, August 28, 2012) specifically discuss the term "atypical" as that term may describe a refinery whose emissions cannot be accurately estimated using the CWB or CWT methodology.

The Ecofys presentation states, "The CWT approach is not suitable for atypical smaller refineries," and cites the definition applied in the EU as follows:

"EU definition: atypical refineries do not produce a...
'Mix of refinery products with more than 40% light products (motor spirit (gasoline) including aviation spirit, spirit type (gasoline type) jet fuel, other light petroleum oils/ light preparations, kerosene including kerosene type jet fuel, gas oils).'"

The combination of these statements on the same slide (#27) imply that being a smaller refiner does not preclude the application of the CWT factor but that a smaller refiner may meet the definition of "atypical" by nature of its product slate.

The Solomon presentation states the following:

"Atypical" refineries may be handled separately

- Extremely small sizes
- Performing predominantly specialized functions (such as bitumen production or lube oil manufacture)
- Atypical product slate (such as <40% light products including motor gasoline, aviation gasoline, kerosene, and diesel/heating oil).

Solomon further clarified that "small size" is not the defining characteristic of "atypical." While there was some acknowledgement that the CWB/CWT correlation begins to lose its high level of accuracy for facilities below 40,000 BPD crude charge, there was no mention or discussion of equating "small" in the context of crude charge capacity to the number of process units. Both Ecofys and Solomon are largely in agreement as to the general criteria that should be applied when determining if a refinery is "atypical" and in their support for the definition used in the EU.

In the October 7th presentation, ARB proposed very different criteria for determining "atypical" than those listed above:

- Defined as having < 12 process units and < 20 million barrels crude (~55,000 BPD) through the atmospheric distiller / year (during allocation year)
- If jointly operated with another refinery, must meet those criteria for the combined facilities.

ARB has not provided a substantive basis for these criteria, nor has it provided any basis for concluding that the CWB methodology is not appropriate for refineries that meet this description. Both of the proposed criteria focus on the size of the facility (rather than on the nature of the product slate)—criteria which deviate significantly from the common understanding of "atypical." Further, the size cut-off employed by ARB is much larger than that used by the EU. This approach inappropriately broadens the definition of "atypical" such that otherwise typical refineries may receive the benefit of a larger benchmark value, which equates to disproportionately greater free allowances. When comparing the CWB charts on pages 17 and 27 of the October 7th presentation, it is clear that the proposed criteria have broadened the number of atypical facilities such that sources clearly falling on the CWB curve will be treated differently. This creates competitive issues within the sector that could be avoided if the accepted definition of "atypical" were used.

The ARB criteria for determining "atypical" also lack consideration of the magnitude of GHG emissions. The Ecofys report, "Development of GHG efficiency benchmarks for the distribution of free emissions allowances in the California Cap-and-Trade Program" (August 20, 2012), states that "in Europe, emissions from atypical refineries represent a very small share of the total emissions of the refinery sector." Table 11 of the Ecofys report lists five refineries that emit less than 35,000 MT CO_2, with the qualification that these five refiners are "Potentially atypical refineries together with indication for not being a 'mainstream' refinery." ARB does not appear to have addressed emissions in their "atypical" criteria nor provided a comparison of GHG emissions of the "atypical" refiners (per ARB's criteria) in the context of the Ecofys analysis or relative to non-atypical refineries. Given this recognition by the EU and Ecofys that emissions are relevant to the "atypical" analysis, we request that ARB modify their criteria accordingly.

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Ecofys also states in its presentation and report that "in case a smaller refinery is connected with a nearby larger refinery, these refineries could be grouped together to form one mainstream facility for the purpose of applying the CWT methodology." CARB should ensure that the same is done in the Solomon CWB benchmark process; that is, if two refineries owned by the same company are grouped together as one refinery for general industry reporting, those refineries should also be combined for the sake of the CWB benchmark process.

In sum, "small" does not necessarily equate to "atypical." A deeper analysis of the refinery product slate and the magnitude of associated emissions is required in making any designation of "atypical" to a refinery. Valero recommends that ARB employ the accepted and recommended definition of "atypical," focusing on product slate, in determining which facilities should be treated outside of the Solomon CWB benchmark process. Doing so will eliminate the potential competitive concerns created by the current proposal while providing a defensible basis for refinery allocations in the second and third compliance periods.

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).

Regards,

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