WIRA **WESTERN INDEPENDENT REFINERS ASSOCIATION**

Executive Director: **Craig A. Moyer, 11355 West Olympic Boulevard, Los Angeles, California 90064**

August 26, 2013

Elizabeth Scheehle
California Air Resources Board
1001 I Street
Sacramento, CA 95814

VIA ELECTRONIC POSTING
Comment List: CAP-TRADE-DRAFT-WS

Subject: WIRA Comments on August 13, 2013 Refinery Benchmarking Workshop

Dear Ms. Scheehle:

The Western Independent Refiners Association (WIRA) appreciates the opportunity to comment on CARB Staff's refinery benchmarking proposal as presented on August 13, 2013. WIRA continues to support the use of Cap and Trade as a component of California's comprehensive plan to reduce greenhouse gas (GHG) emissions, but has serious concerns regarding how the rules governing refinery benchmarking are being developed as well as the limited time remaining to deal with ***unresolved critical issues***. Additionally, several of WIRA's members produce Asphalt and other primary refinery products at their facilities, CARB's proposed changes to the regulation simply ignore the specific issues associated with this unique sector of the refining industry.

WIRA is a trade association representing small and independent refiners on the West Coast and has been an active participant in CARB rulemakings for decades. The Board's previous rulemakings have consistently acknowledged that small and independent refiners are an important pro competitive force in the California market for refined petroleum products. WIRA members do not have the same access to capital and economies of scale as do the major oil companies, so it is imperative that this regulatory program not disadvantage the smaller, independent players in the refining sector. At WIRA's urging. CARB has already acknowledged differences in California's refineries by establishing separate benchmarks for the first compliance period. As we prepare for the second and third compliance periods, this recognition needs to be maintained.

WIRA believes that in-state production of lower-carbon asphalt and transportation fuels is an important element in achieving AB 32 goals. It is with this general theme that we respectfully submit the following comments:

Comment Issue 1: Changes to Section 95891(d)-First Compliance Period True-Up

CARB's proposal to add First Compliance Period Refinery "true-up" calculation is a regulatory overreach that undermines the integrity of the program. The proposed changes would impact the current compliance period *after* it has started. The change would result in higher compliance costs for WIRA members and would alter market and business plans developed to follow the current set of rules.

Amending the Cap and Trade Regulation in this manner is equivalent to a "clawback" regulation. When the CARB Board directed staff to revisit refinery benchmarking, they provided specific instruction to look at the Second and Third Compliance Periods. WIRA respectfully requests CARB to look ahead and avoid tinkering in the rear view mirror as it is bad public policy and can undermine confidence in the regulatory scheme and marketplace.

At the August 13, 2013, workshop, CARB staff intimated that this true-up change was needed for consistency with other proposed true-up changes and that it didn't have a material effect on compliance entities. We disagree on the latter point and believe that consistent implementation of the current regulation structure, without changing the rules midstream, is really the key market policy CARB should be striving to achieve. **Therefore, WIRA is opposed to any changes to Section 95891(d)**.

Comment Issue 2: Refinery Benchmarking-Policy Issues/Technical Issues

WIRA believes that CARB's policy of "one product, one benchmark" cannot be applied to the refining sector. Our members represent only a small fraction of the total in-state production of transportation fuels and do not possess the economic or physical wherewithal to match energy efficiency levels with California's mega refineries and associated economies of scale. CARB has repeatedly stated that the intent of the program is to provide incentives to facilities to be as energy efficient as possible. We concur with this goal, but the establishment of a single sector-wide benchmark runs counter to that idea in that our members' operations will be compared to those facilities that are clearly different in every conceivable operational and economic measure. This disadvantage will bear out in the marketplace to the detriment of the California consumer and to the detriment of WIRA member refineries. CARB is able to distinguish between different types of gas powered vehicles, from scooters to off road vehicles to large haulers, and has never suggested that all these vehicles should be regulated the same. To suggest one approach can be applied to all refiners reflects a lack of understanding of the current state of the refining industry, and how it evolved to where it is today.

In the refining sector, multiple benchmarks that compare like facilities are needed over the "one size fits all approach." WIRA members know what Solomon Associates confirmed on the record at the workshop, that a lack of heat integration and economy of scale prevent smaller refiners from achieving the energy efficiency levels of California's largest refiners. And though the Complexity Weighted Barrel approach can be used on all size refineries, Ms. He stated that "our CWB factors do not account for size and scale; this is out-of-scope for Solomon". Additionally, when U.S. EPA established their refinery Energy Star Program, they recognized this issue and instituted a tiered approach based on size in order to reward those refineries that are the best in their discrete class.

Early on in this process CARB's own consultant, Ecofys, acknowledged that a complexity-weighted approach may not be appropriate for "atypical" refineries, but this concept was never fully developed by CARB and in the end abandoned without a detailed discussion. Individual refiners do not posses the complete set of data that CARB or Solomon have, therefore it is incumbent on CARB to prove to WIRA why a single benchmark does not disadvantage smaller refiners. **Since we are confident that this is not the case, WIRA recommends that CARB establish more than one benchmark for the refinery sector reflecting the reality that size and complexity absolutely matter in CWB comparisons.**

Comment Issue 3: Lack of Recognition of Asphalt Refiners

Several WIRA members produce Asphalt and associated products. The type of refining process used to produce asphalt has unique characteristics associated with operations that are not typically replicated by the major refiners. California imports the vast majority of its asphalt product from out of state via railcars at higher GHG levels than in-state refiners--an example of leakage.

The issue of asphalt refiners and potential emission leakage has been under discussion with CARB for quite a while. At the August 13, 2013 workshop, the issue of asphalt refiners was discussed and WIRA learned that these refiners would be treated under this regulation the same as larger fuels only refineries. This is not acceptable in that it rewards large refiners for installing intense CO_2 producing equipment such as Cokers to squeeze the last drop of gas out of the bottom of a barrel of oil while punishing the smaller, poorer refiners that chose to stay in a low energy consumption, lower-CO_2 producing mode by not installing such high energy, high intensity equipment to make more GHG emitting product for transportation. One example of how asphalt refiners are unique is the issue of offsite energy factors. An option was proposed by CARB staff to eliminate the offsite energy and non-crude sensible heat components of Solomon's refinery CWB calculation. Removal of this factor will have a larger negative impact (lower CWB and lower predicted CO_2e) on smaller, less complex asphalt refineries that have fewer process units than larger refiners. As a result the non-process factors will make up a proportionately larger portion of the final CWB calculated. The CO_2 emissions associated with these unique processes will not be credited without an offsite factor, which will lead to under allocation and further competitive disadvantages. **Therefore, WIRA recommends that CARB recognize within the regulation the unique operational characteristics of asphalt refiners.**

Comment Issue 4: Regulatory Timing

Refinery benchmarking under the Cap and Trade program has historically been contentious due to its importance to the industry's competitive balance. But this issue has also been historically delayed and adopted under the pressure of deadline. With less than 10 days until the Proposed Amendments are due to be released, WIRA is concerned that remaining critical issues will not be adequately addressed. This is exactly what happened the last time refinery benchmarking was addressed when CWT was hastily adopted – complete with all the flaws Staff and stakeholders are looking to remedy now. WIRA is committed to working with CARB to provide the answers needed for informed decision making. Please reach out to our individual members directly for technical questions, and policy questions can be directed to me at 310-312-4300.

In conclusion, WIRA wishes to recognize all the hard work staff has put into this effort so far. We understand it is a complex regulation and commend the strides made thus far on such a difficult task. Nonetheless, it is imperative for the Board to "get this right", especially as the program heads into the second compliance period. We look forward to working with you on improving critical components of this program and moving forward together.

Sincerely,

/s/ Craig Moyer

Craig Moyer
Executive Director

cc: Steve Cliff
Eileen Hlavka