



Kern Oil & Refining Co.

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VIA ELECTRONIC MAIL

February 14, 2014

Rajinder Sahota
California Air Resources Board
1001 I Street
Sacramento Ca, 95814

Re: Comments on Cap and Trade Informal Discussion Draft Dated January 31, 2014

Dear Ms. Sahota:

Kern Oil & Refining Co. (Kern) is providing comments on the Informal Discussion Draft (Discussion Draft) of the Cap and Trade Regulation (Regulation) related to Refinery Sector Allocations dated January 31, 2014. Kern is a small, privately owned petroleum refiner located in Bakersfield, California, in the southern San Joaquin Valley. Kern has operated for over 70 years and employs approximately 120 employees. Kern's refining capacity is 27,000 barrels per stream day.

Kern continues to support the California Air Resources Board's (ARB) proposal to separately benchmark "atypical" refineries and which appropriately acknowledges the structural constraints imposed by size and complexity and that imposition of a single benchmark would codify an unfair competitive disadvantage for smaller, less-complex refineries. As a small, less-complex California refinery, Kern has been acutely aware of the uneven playing field of the California refinery sector. Kern is appreciative of the analysis performed by ARB Staff that underlies their proposal to separately benchmark atypical refineries and to adopt the full CWB methodology, inclusive of the off-site adjustment. Kern supports the proposal to define "atypical" facilities as those having less than 12 process units and less than 20 million barrels crude through the atmospheric distiller per allocation year, which Staff stated was a natural size and complexity break for the refining sector.

Kern however is concerned with the: (1) the significant change in the Atypical Refinery CWB benchmark; (2) the proposed "Jointly Operated" atypical refinery criterion; and (3) the continued lack of necessary stakeholder process and transparency.

1. Additional Detail Must Be Provided in Support of the Significant Change in the Proposed Refinery Benchmarks.

The Discussion Draft revised the proposed Atypical Refinery Benchmark from 6.78 to 5.11 allowances per complexity weighted barrel (CWB) and the proposed Typical Refinery Benchmark from 4.08 to 3.96. Staff has attributed the significant change in the benchmarks to calculation errors, mainly their failure to include consideration for Offsites and Non-Energy Utilities, and Non-Crude Sensible Heat. The previous proposed CWB methodology explicitly included these considerations but apparently Staff erroneously omitted them from the benchmark calculation last October. Offsites and Non-Energy Utilities, and Non-Crude Sensible Heat reporting requirements were included in the recently adopted Mandatory Reporting Requirements (MRR) in support of the previously proposed Regulation. Staff also acknowledged a smaller impact from updated data submissions from stakeholders in response to survey request clarifications. The change of more than 25 percent for the atypical refinery benchmark is significant and may reduce allocations for certain atypical refineries in excess of 30 percent, which represents a financial impact of several hundred thousand dollars annually at current Carbon Credit prices.

The previous benchmark miscalculations raise doubt as to the accuracy of the current benchmark calculations. ARB must take steps to assure stakeholders that the ultimately adopted benchmarks are correct and based on sufficient reliable data. To that end, ARB must be transparent in how the benchmarks are being calculated, what data is being utilized, how that data is being verified, and what checks are in place to ensure the accuracy of the benchmark calculation and the stakeholder data relied upon. Although Confidential Business Information must be protected, other ARB programs have released aggregate or masked data in support of proposed regulations and the expectation is that the same efforts should be made in support of the proposed benchmarks.

2. The “Jointly Operated” Criteria for Atypical Refineries is Misplaced and Should Be Dropped from the Regulation.

Utilizing a “Jointly Operated” concept to link what would otherwise be considered distinct facilities in order to disqualify an otherwise atypical facility is problematic – both conceptually and practically as currently proposed in the Discussion Draft. The Jointly Operated criterion is irrelevant to the justification for separately benchmarking atypical facilities. Only a single, integrated facility can benefit from the economies of scale, heat integration, and efficiency benefits afforded a larger, more complex facility. Absent such structural integration, an otherwise atypical refinery gains no efficiency or emission benefits from selling intermediates to a typical refinery for further refinement. Indeed, a defining characteristic of an atypical refiner is the lack of complexity necessary to fully process the bottom of the barrel, which necessarily requires utilizing an alternate avenue to market and sell those “intermediate” products. ARB has not, and cannot, justify the Jointly Operated criterion from a benchmarking, efficiency and/or emissions standpoint.

The proposed definition of Jointly Operated, which relies on an arguably arbitrary percentage make requirement of Primary Refinery products, imposes inappropriate and unintended commercial and operational restraints and pressures on atypical refineries' product slate. The proposed definition is inconsistent with the treatment of facilities across the program, including the definition of "facility" in both Cap and Trade and the Mandatory Reporting Regulations. Finally, the definition is vague and ambiguous, with several undefined terms and a lack of necessary specificity, for example with regard to timing. The Jointly Operated definition and limitation on what otherwise would be considered atypical refineries should be removed from the proposed Regulation.

3. ARB Must Improve Upon Stakeholder Involvement and Transparency.

Kern is disappointed that ARB Staff undertook significant revisions to the proposed Regulation after the October 2013 Board meeting without consulting or seeking the input of stakeholders. In response to a meeting request in December regarding outstanding issues (including the Jointly Operated criterion), Staff stated that it could not share any specifics on the 15-day changes. This position was reiterated in a brief meeting in January. Staff has taken a hardline and unnecessarily rigid approach that does not allow for stakeholder involvement or interaction until the near final release of a regulation. This approach has severely curtailed the time to work though these issues – many of which likely could have been resolved by Staff seeking input prior to finalizing the Discussion Draft for release – and goes against the Board's direction in October of 2013 to resolve these issues through a stakeholder process. While we appreciate Staff's release of a Discussion Draft in advance of the 15-day package for the April Board Meeting, practically speaking little time is left to work though these significant issues. More should have been done sooner and making significant changes at the last minute is a disservice to the process and to the stakeholders.

In conclusion, Kern appreciates ARB's consideration of these comments and looks forward to receiving the clarifications requested. This matter is far too critical, its impacts far too significant to not get it right. As always, we are committed to working with Staff throughout this regulatory process.

Sincerely,



Melinda L. Hicks
Manager, Environmental Health and Safety
Kern Oil & Refining Co.