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Michaeleen Mason
Director, Statewide Regulatory Issues

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Clerk of the Board
Air Resources Board
1001 I Street
Sacramento, California 95814

WSPA COMMENTS ON THE STAFF REPORT, "PROGRESS TOWARDS APRIL 2009 DEADLINE FOR ENHANCED VAPOR RECOVERY PHASE II SYSTEMS

The Western States Petroleum Association ("WSPA") is a trade association that represents twenty-six companies that conduct a substantial portion of the petroleum-related operations in California and the surrounding western states. WSPA member companies own and operate gasoline-dispensing facilities (GDFs) in California, and these GDFs are subject to the requirements of the ARB's Enhanced Vapor Recovery (EVR) program.

WSPA appreciates the opportunity to provide these comments with regard to the Board's consideration of the Staff Report, "Progress Towards April 2009 Deadline for Enhanced Vapor Recovery Phase II Systems dated April, 2008."

Clarification of WSPA's Earlier Comments. WSPA would first like to note that, while the Staff Report[1] mentions requests from "GDF operators and gasoline marketers' associations" for an extension of the April 2009 implementation deadline, WSPA's comment letter (dated September 27, 2007 to Chairman Nichols) regarding the EVR program did not make such a request. Rather, WSPA made several recommendations for fine-tuning the EVR program as we approach the April 2009 deadline.

The recommendations warrant repeating here as they are critical for the smooth transition to the new EVR requirements. They are summarized below:

1. The Board should express a policy consistent with the original expectation of the EVR program. Owners of RGOs should have multiple choices of equipment that will provide a variety of options for complying with EVR II requirements.

[1] Staff Report: Executive Summary (page iii), and Introduction (page 1).

1415 "L" Street, Suite 600, Sacramento, California 95814
(916) 498-7753 • FAX: (916) 444-5745 • MMason@wspa.org • www.wspa.org

2. ARB staff should have mechanisms in place for tracking the following:
   - The commercial availability of EVR Phase II systems after certification.
   - Permitting delays and difficulties – whether at air districts or other permitting agencies.
   - Any other EVR Phase II implementation challenges.

3. ARB staff should develop a mechanism to take appropriate actions as might be dictated by the tracking results of recommendation No. 2 above, while maintaining a fair and level playing field for those who are prudent in meeting the deadline.

In the comments that follow, we identify areas of overlap and inconsistency between ARB's current Staff Report on EVR progress and some of WSPA's recommendations:

On-Board Refueling Vapor Recovery (ORVR).[2] WSPA believes that ARB staff should point out to the Board that:
(1) EVR Phase II requirements are redundant with ORVR systems;
(2) ORVR is a technology that has been implemented nationwide, and the penetration of ORVR-equipped vehicles is increasing each year (ARB has estimated that the ORVR penetration in California will be 65% in 2010);[3]
(3) data from EPA's in-use verification program have shown that ORVR is an effective and more reliable alternative to Phase II; and
(4) the Federal Clean Air Act allows EPA to remove Federal requirements for Phase II systems once ORVR systems are in widespread use.

In the words of California Rep. Henry Waxman, "[a]t this point, the [Phase] II controls would be offering redundant emission control".[4] Florida and Maine have already removed their Phase II requirements, and other states are investigating similar actions because of the superior benefits provided by ORVR. WSPA believes that it would be appropriate to note these facts as part of the discussion of vapor recovery systems in Section I-B.

Costs and Benefits of EVR. The Executive Summary states that "Emission reductions from EVR vapor recovery systems will total 372 tons/day of reactive organic gases (ROG) statewide once fully implemented," and page 2 of the report identifies corresponding gasoline savings of 120,000 gallons/day and cost savings of $420,000/day. In fact, ARB staff calculated emission reductions associated with the EVR program as being only 25 tons/day in 2010 (as shown on page 2 of the staff report), and these benefits are decreasing every year.[5] ARB identified the remaining emission reductions as being from pre-EVR equipment, although they are in fact a

[2] Onboard Refueling Vapor Recovery (ORVR) is specifically required by the USEPA on most newer gasoline driven vehicles as a result of a mandate in the Federal Clean Air Act amendments of 1990.
[3] J. Guerrero, memo to G. Lew, "Updated ORVR Penetration Calculations," July 11, 2006.
[4] Waxman H.A., Wetstone G.S., and Barnett P.S. (1991) "Cars, Fuels, and Clean Air: A Review of Title II of the Clean Air Act Amendments of 1990," Environmental Law **21**, p. 1964.
[5] ARB, "Enhanced Vapor Recovery Technology Review," Staff Report, October 2002, Appendices 3-3 and 3-5.

combination of reductions from pre-EVR equipment and ORVR. The following table summarizes more clearly the information that ARB staff is identifying[6]:

	ORVR and Pre-EVR Vapor Recovery Program (for 2010)	EVR Amendments (for 2010)	Total
VOC Emissions Reductions, Tons/Day	347	25	372
Equivalent Volume of Gasoline, Thousands Gal/Day	112	8	120
Cost Savings, Thousands $/Day	392	28	420

With respect to the cost of EVR equipment upgrades identified in the ARB staff report, several important costs are missing. The Staff Report[7] acknowledges that the identified costs do not include the cost of additional electrical lines, mandatory permit fees, or the expense of start-up testing, and that some – and it is really quite a few – local agencies are imposing requirements unrelated to EVR as a condition of granting permits to construct.

However, the Staff Report does not acknowledge that these local requirements can add tens of thousands of dollars to the cost of implementing EVR, and require additional time for acquiring permits. Furthermore, the Staff Report does not discuss the fact that there can be significant operating and maintenance costs associated with (1) having to address alarms triggered by the EVR In-Station Diagnostics (ISD) systems and (2) downtime associated with ISD-triggered shutdowns, even though this issue has previously been raised by WSPA.[8]

WSPA believes the ARB staff deserves a great deal of credit for their continuing efforts to educate local permitting agencies about the purpose of the EVR upgrades. However, in general, WSPA members are finding that local requirements still represent significant additional and non-related expenses as well as an impediment to the smooth implementation of EVR.

Monitoring EVR Implementation Progress. The Staff Report addresses most of the considerations regarding both steps forward and obstacles to progress. However, there is one important consideration that has not been specifically addressed. There is no mention of problems with EVR-certified equipment that either have already occurred or may reasonably be expected to occur as increasing numbers of GDFs install EVR Phase II systems.

One of WSPA's 2007 recommendations was that ARB staff should track EVR implementation issues. While we know that staff is aware of equipment problems that have arisen, we believe that it would be helpful to have a specific and well-understood process for tracking and resolving

[6] These data are taken directly from the Staff Report, or, are pro-rated using that data.
[7] Staff Report: Section III-D (page 9).
[8] S. Arita (WSPA), letter to C. Castronovo (ARB), "Western States Petroleum Association Comments on ARB Plan for In-Station Diagnostics (ISD) Cost-Effectiveness Review," August 30, 2006.

these problems as they occur. Then, as significant problems are resolved, ARB staff should formally convey the outcome back to the regulated community.

Availability of EVR-Certified Vapor Recovery Systems. As a practical matter, the "availability" of systems includes the hardware as well as the trained and certified contractors to install and test it. The ARB staff has been doing a good job of tracking these issues and this task will become increasingly important between now and the April 2009 deadline. However, we are still not clear on the mechanisms to be considered relative to a determination that a certain system may be found not to be "commercially available."

Statewide Enforcement of the EVR Phase II Deadline. WSPA submits that ARB needs to work with CAPCOA to recognize the need for uniform enforcement of the EVR Phase II implementation deadline, even though such enforcement, more than likely, will be conducted by individual air districts. While there may be various challenges associated with uniform enforcement, WSPA believes that regulatory agencies collectively need to ensure that there is a level playing field.

WSPA appreciates the work ARB staff and CAPCOA have done on the EVR program to date. We have conducted an analysis of the ARB/CAPCOA ISD evaluation that was done last year and we are actively working to meet with BOTH CAPCOA and ARB to discuss issues and concerns relative to the findings of the joint study. We believe there are ISD operational and data interpretation issues that need careful review and consideration.

We would be glad to provide an update to the Board once we have discussed these issues and concerns with your staff and CAPCOA. We will continue to engage constructively with the Board and the staff as we seek to make EVR Phase II implementation as smooth as possible.

WSPA appreciates the opportunity to provide these comments. Please feel free to contact me with any questions.

Sincerely,

Michaeleen Mason
Director, Statewide Regulatory Issues

cc: Cathy Reheis-Boyd, COO, WSPA
William V. Loscutoff – ARB-MLD, Sacramento

1415 "L" Street, Suite 600, Sacramento, California 95814
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