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STATE OF CALIFORNIA
AIR RESOURCES BOARD
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BY BOARD SECRETARY

15 Day comment

MHS
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August 24, 1994

Board Secretary,
Air Resources Board,
P. O. Box 2815,
Sacramento, California 95812

Dear Madam:

ARCO Products Company is pleased to submit the following comments relating to the Proposed Amendments to the Small Refiner Volume Provisions in the Regulation Limiting the Aromatic Hydrocarbon Content of California Motor Vehicle Diesel Fuel.

We believe that the regulations, as originally written, have been more than fair to small refiners. They allow them until October 1, 1994 to reduce aromatics levels in their motor vehicle diesel fuels and then permit them to meet a 20%, rather than a 10%, aromatics standard as has been required for the rest of the California refiners since October of last year. Many refiners in California have invested millions of dollars in equipment to produce diesel fuel containing 10% aromatics or its equivalent. We, therefore, support the ARB's reaffirmation of the October 1, 1994 compliance date for small refiners to produce 20% aromatics content motor vehicle diesel fuel.

We are pleased to see that what had most distressed us about the proposed amendments, the coupling of an increase in the exempt volume of 20% aromatics diesel with a limit on total distillate production, has now been dropped in the staff's modified proposal. We believe that this provision represented a potentially precedent-setting interference into the free workings of the marketplace which could have been used by the ARB in the future as a pretext to regulate the volumetrics of other refined products, such as CARB Phase 2 gasoline.

However, ARCO is greatly concerned about, and opposes, amendments which would allow small refiners to increase the exempt volume of 20% aromatics fuel which they are permitted to produce above that stated in the ARB's current regulations. Not only has the Board increased their exempt volume above the 65% of total distillate specified in the regulation, the

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staff's modified proposal increases it to above 100%. The regulation as written limits the small refiners, in aggregate, to about 11,000 B/D of 20% aromatic diesel production. The first proposal would have permitted them close to 17,000 B/D and the modified proposal would allow them to produce about 24,000 B/D. Staff's own analysis indicates that these proposals would have significant adverse emission impacts. In fashioning the small refiner provisions for this rule, the ARB stated in its final statement of reasons that it had "sought to limit emissions from small refiner diesel fuel to the extent feasible. These limits include(d) Imposing a significant cap on small refiner diesel fuel subject to the less stringent 20 percent standard." The proposals being considered obviously go contrary to limiting these emissions.

As the Board has acknowledged when it originally passed this rule, and has subsequently reaffirmed as part of the stipulated judgment in a suit brought by ARCO last year, "... primary consideration in the modification of its regulations is to be given to the mandate to attain and maintain ambient air quality by achieving the maximum degree of emission reduction possible from mobile sources ..." Amending the rule to permit more higher polluting 20% aromatics diesel fuel to be marketed at the expense of 10% equivalent aromatics fuel is in clear contradiction of that stipulation. It is a poor rationalization by the staff that no more NO_x and PM10 emissions would be produced than had originally been expected when the rule was originally adopted in 1988. We do not believe that a reduction in the number of refiners producing more polluting diesel can be used as a justification for such action, especially as California is out of compliance with these emissions standards. The volumetrics associated with relaxation of aromatics limitations under the original rule were carefully considered, and there have been no new pertinent facts uncovered which should cause the Board to reconsider its original 1988 action. As the decline in the number of small refiners in California did not result from adoption of this diesel rule, the Board should not take it upon itself to try to affect the economic well being of small refiners by changing the rules in mid-stream. This is unwarranted meddling in the marketplace. It results in skewing of the market and provides a windfall to the small refiner at the expense of other refiners and of air quality. Further, this action sends the wrong signal and invites abuses of the regulatory process. It certainly casts doubt upon the credibility of the process.

The argument regarding the economic well-being of the small refiner is further weakened when one considers that the Board modified their original proposal requiring the small refiners to produce as little as 25% of the diesel fuel supplied from the small refiner's refinery from distillation of crude oil at

their refinery. Had the Board increased this small 25% fraction to a significantly higher one, it might have made the Board's concerns for the small refiner seem less unconvincing. If the small refiners are now capable of producing so much more diesel fuel through running crude oil in their refineries, the Board should require that they show that they can produce 75% or better of this fuel from crude runs. To do other than that is to permit these refiners to be, in effect, diesel fuel blenders rather than refiners. We do not believe that this should be the Board's intention.

With regard to the proposal of delaying the imposition of the exempt volume limits until January 1, 1995, this proposal would allow the small refiners to produce diesel volumes significantly above their current production for three additional months. This delay is wholly unjustified. The reason cited in the staff report is the concern over potential shortages that might occur during the high demand period of October. Staff is apparently concerned that a repeat of last year's spot shortages might occur. We believe that the situation is completely different this year than last. Last year, a surge in diesel purchases was fueled by the increase in federal taxes, anticipated increase in diesel price with the introduction of CARB diesel fuel, unanticipated operating problems, and uncertainty resulting from granting of variances for over 50% of the diesel supply close to the October 1st deadline. This year, according to the ARB staff report, if the current rules stay in effect, the small refiners will need to reduce their production of motor diesel by about 10 MBD from current production on October 1, 1994. This amounts to only 6-7% of California's diesel supply and should pose no major supply obstacles, especially if the ARB acts now to reject this proposal, allowing the industry to know well in advance and properly plan.

In summary:

1. While ARCO supports the ARB's affirmation of the 10/1/94 implementation of the 20% aromatics diesel rule for small refiners, we strongly oppose the option which would allow small refiners to increase production of higher polluting 20% aromatic content diesel above the exempt volumes specified in the rule and especially to the levels of the modified proposal.
2. We also oppose delaying the implementation of existing exempt volume limits for motor vehicle diesel fuels until 1/1/95 for small refiners.

3. There has been no compelling reason given for amending the regulation. The basic facts have not changed since the original rule was adopted. Further, the changes proposed have nothing to do with improving air quality and, in fact, in the staff's words, "...would constitute a significant adverse environmental impact." The staff and Board, without any independent evaluation, have taken the word of the small refiners that they would suffer harm if the amendments were not adopted. They have failed to adequately analyze the environmental impact on the small refiner as required under CEQA. Therefore, we believe that the Board should reject these amendments.
4. Should the Board decide to proceed in adoption of these amendments despite our objections, we would recommend that the modified proposal be further amended to require small refiners to produce 75% of the diesel that they supply from their refinery from distillation of crude oil at their refinery.

ARCO is concerned that this will not be the last time this year that the ARB will be asked to address the small refiner diesel issue. We are concerned that these refiners may not be able to meet the 20% aromatics standard by October 1st, or by January 1st of next year. We would hope, that if the small refiner is unable to qualify a diesel fuel that meets the 20% aromatics standard, they will not be afforded variances to continue to supply the high aromatics fuels which they have so far been producing. We have already been subject to the granting of variances for refiners to supply massive amounts on non-conforming diesel fuel. We urge the Board to be vigilant and prevent recurrence of these situations.

Sincerely,



David A. Smith
Manager, EH&S Issues Management

cc: Mr. James D. Boyd
Ms. Jacqueline E. Schafer

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August 24, 1994

Dennis W. Lamb
Manager, Fuels Planning
Planning and Services

California Air Resources Board
P.O. Box 2815
Sacramento, California 95812
Atten: Ms. Pat Hutchens
Board Secretary

SMALL REFINER DIESEL
PROVISIONS - WRITTEN COMMENTS

Dear Board Members:

76 Products Company is providing the following comments on CARB's proposed amendments to the small refiner volume provisions in the regulation limiting the aromatic hydrocarbon content of California motor vehicle diesel fuel.

Staff's proposal would provide small refiners with an optional method to calculate their exempt volumes. This option would increase the volume of 20 volume percent aromatic diesel fuel produced by small refiners by approximately 120% or 12,800 barrels per day.

We believe that the proposed amendment is clearly contrary to CARB's stated intent, in adopting the small refiner provisions, to preclude a small refiner from using the less stringent 20 percent standard to increase its market share, over that experienced in the period from 1983 to 1987. CARB accomplished this objective in their original regulation, by limiting the volume of each small refiner's production of 20 volume percent aromatic diesel fuel to its historic production level of California motor vehicle diesel fuel. The low aromatic diesel regulation, adopted by CARB in 1988, defined the small refiners' historic production as the average of the three highest annual production volumes from 1983 to 1987 (13CCR 2282(b)(4)). This definition prevented small refiners from increasing their exempt volume by increasing their California diesel production after the regulation was adopted.

Staff's proposed amendment allows a small refiner's exempt volume to be calculated using the following factors: 1) the small refiner's operable crude capacity for 1991 and 1992,

2) an average industry refinery utilization rate for 1991 and 1992, 3) the small refiner's two highest annual crude oil distilled to distillate produced conversion ratios for the period 1988 through 1992, and 4) the small refiner's two highest annual fractions of distillate production that have been sold as California motor vehicle diesel fuel during the period 1988 through 1992. Each of these factors is based on small refiners' diesel fuel production for years subsequent to CARB's adoption of the low aromatic diesel regulation, not the historic production period prior to the 1988 adoption date, which was CARB's intent. This amendment simply allows small refiners to take advantage of increased production periods that occurred after adoption of the regulation, but prior to its implementation date, by calculating increased exempt volumes based on these later periods of higher production. This is clearly contrary to the intent of the original regulation, which specifically bases the exempt volume on annual production for the period 1983 to 1987.

We also believe that CARB lacks the authority to approve an amendment to the original regulation that would result in significant adverse environmental impacts. CARB's proposed Resolution #94-52 states that the significant adverse environmental impacts that would result from this action are outweighed by the need to assure a pro-competitive force in the motor vehicle fuels market. While the Health and Safety Code directs CARB to consider the effect on the economy of the state when adopting and implementing motor vehicle fuel specifications for the control of air contaminants, it does not authorize CARB to adopt and implement motor vehicle fuel specifications for the sole purpose of promoting a pro-competitive force in the motor vehicle fuels market, at the expense of acknowledged significant adverse environmental impacts.

Moreover, CARB has failed to prove that the economy of the state would be jeopardized without adoption of the proposed amendment. Information presented at both the workshop and hearing indicate that, excluding small refiners, California refiners can produce more than enough diesel fuel to supply California market demand. Adoption of the proposed amendments to allow small refiners to maintain or increase their diesel production is not necessary to guarantee adequate diesel fuel supply for, or protect the economy of, the state.

CARB notes in Resolution 94-52 that the total emission benefits from the proposed amendment will be at least as great as the emission benefits that would have been achieved by the original regulation. It is important to recognize, however, that the emission benefits may be as great as those of the original regulation because nine of the original thirteen small refiners have exited the California diesel market since adoption of the original regulation in 1988. If any of these nine small refiners decided to re-enter the California diesel market, perhaps in response to the substantial increase in the exempt volumes allowed by the proposed amendment, the total emission benefits would be less than those expected from the original regulation. CARB would have to close the door to any small refiner who wishes to re-enter the California diesel market in order to guarantee that the emissions benefits of the amended regulation are at least as great as those of the original

regulation. This outfall would be even more detrimental to the California economy than leaving the small refiners' exempt volumes as they are currently defined in the regulation. Furthermore, Saba Petroleum Company recently announced its acquisition of Conoco's 10,000 barrel per day refinery in the Santa Maria Valley. If Saba chooses to produce California vehicular diesel fuel as a small refiner, an option which was not available to Conoco, the exempt volume of 20 volume percent aromatic diesel fuel produced by Saba will likely decrease the emissions benefits of the amended regulation below those of the original regulation.

In summary, CARB should not adopt the proposed amendment to the small refiner volume provisions in the regulation limiting the aromatic hydrocarbon content of California motor vehicle diesel fuel because:

- 1) The amendment is contrary to the intent of the original regulation because it redefines the bases from which to determine small refiners' historic production, from a period before the regulation was originally adopted (1983 to 1987), to a period after adoption of the original regulation (1988 to 1992).
- 2) CARB does not have the authority to adopt regulations for the sole purpose of promoting competition in the fuels market, at the expense of acknowledged significant environmental impacts.
- 3) CARB has not demonstrated an economic or supply need for the proposed amendment; the California fuels market can be adequately supplied without adoption of the proposed amendment.
- 4) CARB would have to close the California fuels market to additional small refiners in order to guarantee that the emissions benefits of the amended regulation are at least as great as the original regulation.

We appreciate the opportunity to comment on the proposed amendment to the small refiner volume provisions in the regulation limiting the aromatic hydrocarbon content of California motor vehicle diesel fuel. If you have any questions or require further information, please do not hesitate to call me at (213) 977-5974.

Sincerely,

Dennis W. Lamb



Charles T Walz
Vice President
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STATE OF CALIFORNIA
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Jacqueline Shafer, Chair
California Air Resources Board
P. O. Box 2815
Sacramento, California 95812

Attn: Pat Hutchens, Board Secretary

Re: Board Resolution 94-52
Small Refiner Volume Provisions
Motor Vehicle Diesel Fuel Aromatic Hydrocarbon Content

Dear Board Members:

Texaco Refining & Marketing Inc. ("Texaco") appreciates the opportunity to present comments on the Board's latest motor vehicle diesel fuel aromatic hydrocarbon regulatory changes as applied to small refiners. In its Resolution 94-52, granting even more generous relief than its original proposal, the Board failed to comply with the requirements of the California Environmental Quality Act ("CEQA") and the CEQA Guidelines, its own administrative regulations. Also, we believe the Board acted without statutory authority or solid evidence.

I. FAILURE TO COMPLY WITH CEQA

A. CARB Has Not Complied with CEQA in Expanding the Exemption for Small Refiners.

In adopting regulations controlling the sulfur and aromatic hydrocarbon content of motor vehicle diesel fuel, the California Air Resources Board ("CARB" or the "Board") provided special treatment to certain refiners, which it defined as "small refiners." Specifically, while large refiners were required by October 1, 1993 to meet a 10 percent aromatics hydrocarbon content requirement or certify an alternative formulation, the so-called small refiners were allowed to produce a 20 percent aromatics diesel fuel, and were given a longer deadline in which to do so.

On July 29, 1994, the Board voted to approve an expansion of the regulatory exemption provided to the small refiners. In so doing, the Board acknowledged the important part the California Environmental Quality Act ("CEQA") plays in the promulgation of

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such regulations. Page three of the resolution concedes that CEQA and CARB's own regulations "require that an action not be adopted as proposed where it will have significant adverse environmental impacts and alternatives or feasible mitigation measures to the proposed action are available which would substantially reduce or avoid such impacts." The Board further conceded that its action would result in a "significant adverse environmental impact" but stated that the "need to help assure that small refiners remain a procompetitive force in the motor vehicles fuels markets" was an overriding consideration that outweighed the significant environmental impact.

However, CEQA requires more than conclusory statements and superficial analysis of the feasibility of potential mitigation measures and possible alternatives to a proposed action before a statement of overriding considerations may properly be used. CARB has ignored this requirement under CEQA and its own regulations in the modified text to the diesel regulation by expanding the special exemption for small refiners with minimal analysis of the significant adverse environmental impacts.

B. CARB Failed to Adequately Analyze the Environmental Impacts of the Small-Refiner Exemption.

Under Section 21080.5 of the Public Resources Code, certain regulatory programs may be certified as exempt from CEQA's requirement to prepare an environmental impact report ("EIR"). The legislature was careful to ensure that, in permitting EIR exemptions for the certified regulatory programs, the other substantive policies and requirements of CEQA would be carried out. To qualify for such certification, the agency's rules must require that an activity will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures which would "substantially lessen any significant adverse impact which the activity may have on the environment." Pub. Resources Code § 21080.5(d)(2)(i).

In addition, such programs must still provide written documentation that contains specific information. That documentation must include a description of the proposed activity with alternatives to the activity, and mitigation measures to minimize any significant adverse environmental impact. Pub. Resources Code § 21080.5(d)(3).

The CEQA Guidelines¹ expressly state that a certified program remains subject to other provisions in CEQA such as the policy of avoiding significant adverse effects on the environment where feasible. Guidelines, § 15250. The Guidelines establish strict requirements for documents used as a substitute for an EIR. In addition to providing the description of the proposed activity, the document must include either:

(1) Alternatives to the activity and mitigation measures to avoid or reduce any significant or potentially significant effects that the project might have on the environment, or

(2) A statement that the agency's review of the project showed that the project would not have any significant or potentially significant effects on the environment and therefore no alternatives or mitigation measures are proposed to avoid or reduce any significant effects on the environment. This statement shall be supported by a checklist or other documentation to show the possible effects that the agency examined in reaching this conclusion.

Guidelines, § 15252.

In addition, CARB's own regulations applicable to Board Meetings and Hearings provide:

Any action or proposal for which significant adverse environmental impacts have been identified during the review process shall not be approved or adopted as proposed if there are feasible mitigation measures or feasible alternatives available which would substantially reduce such adverse impact.

17 C.C.R. § 60006.

¹ Under Section 21083 of the Public Resources Code, the California Resources Agency has promulgated regulations to implement CEQA, called CEQA Guidelines. These guidelines appear at Title 14, California Code of Regulations, Section 15000 et seq.

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While expanding the small refiner exemption by last-minute modifications, the ARB failed to carry out its obligations under CEQA or its own regulations. The adverse environmental impacts, declared significant in the preliminary staff report, were exacerbated after the Board's action on July 29th. By the Board's own calculations contained in their resolution, their expansion of the exemption will result in an additional 2,153.5 tons per year of nitrogen oxides ("NOx") and an additional 219 tons per year of particulate matter ("PM10") after January 1, 1995. The increased emissions during the fourth quarter of 1994 will occur at an even higher rate.

The Board took the action on the basis of a cursory one-page examination of the environmental impacts in the June 10, 1994 Staff Report ("Staff Report"). Essentially, the Staff Report described only two alternatives to its proposed action: allowing the small refiners to cumulatively produce over 35,000 barrels per day or to restrict the small refiners to their current levels of approximately 11,000 barrels per day. Staff Report at Page 22. The staff initially proposed a level of approximately 16,700 barrels per day in the report. Rather than allow an increase of almost 6,000 barrels per day, however, the Board decided to allow the small refiners to increase production of exempt volumes by 24,700 barrels per day during the fourth quarter of 1994 and by approximately 12,800 barrels per day after January 1, 1995. Resolution at 4. In stating that there were no feasible alternatives to its action, the Board apparently ignored at least one alternative--the original staff proposal--that was itself not environmentally protective and chose to make declarations rather than provide analysis of other alternatives.

CARB stated that it was unable to determine any "feasible" mitigation measures and that it found the economic arguments of the small refiners "compelling." However, the courts have instructed that determinations of economic infeasibility must be supported by substantial evidence in the record. Citizens of Goleta Valley v. Board of Supervisors, 197 Cal.App.3d. 1167, 1180-1181 (1988). Simply listing the self-serving assertions of the small refiners, including that provided to the Staff as a basis for the last-minute changes, does not constitute substantial evidence. The Staff Report is replete with references to the effect of "Kern Refining claims" or "Paramount claims" without any indication that the staff attempted to independently verify these claims of the small refiners. The staff simply accepted that the small refiners would suffer fatal hardship if forced to comply with the current regulations.

Such unsupported conclusions do not satisfy the test articulated in Goleta: "[t]he fact that an alternative may be more expensive or less profitable is not sufficient to show that

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the alternative is financially infeasible. What is required is evidence that the additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project." Id. at 1181. In its discussion of the potential economic effects, the staff discusses the effect of the current regulations on production levels but does not provide evidence, aside from small refiners' assertions, that the presumed effect on profitability is sufficiently severe that the only practical alternative is a generous exemption for the small refiners. Simply put, CARB has failed to discharge its obligations under CEQA to analyze the feasibility of mitigation measures or alternatives to its proposed action. Other alternatives the Board might have considered include: (1) Keeping the exempt volumes at 65% and, for the remainder volumes, requiring the small refiners to obtain an alternative certification under license ; (2) for volumes above the 65% limit, requiring a minimum cetane number; (3) purchasing of low aromatic blend components, or (4) as a minimum precondition, requiring proof that the small refiners will meet the October 1 deadline.

CARB has also failed to consider the cumulative effects of its expansion of the exemption in light of its other actions. Cases such as EPIC and Mountain Lion Coalition v. Fish and Game Commission, 214 Cal.App.1043 (1989) have stressed how important a cumulative impacts analysis is to regulatory actions even in certified programs. The court of appeal noted that "[a] cumulative impact analysis which understates information concerning the severity and significance of cumulative impacts impedes meaningful public discussion and skews the decision maker's perspective concerning the environmental consequences of the project, the necessity for mitigation measures, and the appropriateness of project approval." (quoting Citizens to Preserve the Ojai v. County of Ventura, 176 Cal.App.3d 421 (1985)).

The importance of the assessment of cumulative impacts in documents prepared for certified programs under CEQA was discussed recently in Ultramar v. South Coast Air Quality Management District, 17 Cal.App.4th 689,703 (1993), a case that is particularly noteworthy in light of the Board's decision on these amendments. In Ultramar, the air district had prepared under its certified program an environmental assessment 288 pages in length. The court reversed the agency decision, in part, because the district had failed to properly provide to the public the portion of the assessment (though only 12 of the 288 pages) that focused on the cumulative environmental impact of the rule.

In the case of the small refiner exemption, a regulation with statewide applicability and effects on air quality, CARB has chosen to provide a single page of environmental analysis in

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considerations must include significant assertions supporting the policy choice made by the agency, which in turn must be supported by substantial evidence in the record. Sierra Club v. Contra Costa County, 10 Cal.App.4th at 1221-1224 (citing San Francisco Ecology Center v. City and County of San Francisco, 48 Cal.App.3d 584 (1975); City of Carmel-By-The-Sea v. Board of Supervisors, 71 Cal.App.3d 84 (1977)).

CARB's statement of overriding considerations is not supported by substantial record evidence because, as discussed above, CARB's analysis of alternatives and mitigation measures is inadequate and CARB's economic analysis consists mainly of the small refiners' unsupported assertions. CARB's record fails to include the necessary documentation or other evidence to support the factual premises underlying its choice to proceed with the proposed amendments because of its belief the significant environmental impacts are outweighed by the benefits of the proposed amendments.

CARB attempts to justify the proposed amendments on the grounds that they are procompetitive -- that they will promote viability of the small refiners which will keep the industry as a whole competitive. In addition to lacking support in the record, CARB's judgment about the economic justification for the proposed amendments is misguided. First, it is highly unlikely that the production, pricing and supply strategies of four small diesel refiners will have a meaningful impact on the practices of larger diesel refiners. Second, if the viability of the small refiners is doubtful for reasons other than the clean fuels requirements, as CARB has indicated, the proposed amendments will prolong market inefficiencies by, in effect, subsidizing the small refiners at the cost of cleaner air and at the expense of the public. Therefore, CARB's economic policy justification is not entitled to deference from a reviewing court.

In conclusion, CARB failed to meet the minimum requirements of sufficient analysis regarding unavoidable impacts and of presenting underlying support in the record regarding its policy choice to proceed with the proposed amendments. Therefore, CARB has not met the requirement of an adequate statement of overriding considerations.

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II. LACK OF STATUTORY BASIS TO SUPPORT FURTHER VOLUME EXEMPTION REGULATIONS.

The Board Staff unequivocally stated at the July 29 hearing that its two purposes in proposing this new windfall for the small refiners was "fairness and equity" and recognition of "the role of the small refiner in the marketplace". We search in vain for any such allowable rulemaking purpose in the California Clean Air Act or implementing regulations. Rather, given the strong mandate that fuels be regulated to the maximum extent feasible, these reasons seem doubtful, if even legally valid.

In its proposed rule and staff report, the agency proffered another reason for the small refiner exempt volume extension, namely, fears of a Fall supply shortage. This fear is based upon shortages experienced during the introductory phase of CARB diesel fuel last year. We reemphasize that the major causes of that unfortunate event were 1.) uncertainty with the new regulation and the impact on street price and 2.) the imminent increase in excise tax concurrent with the effective date of the new regulation. Both circumstances, which resulted in panic buying prior to October 1, are no longer factors in the diesel fuel market. One need only look at California Energy Commission published CARB diesel fuel inventory (1993-94 data attached for reference) and CEC's testimony at the July hearing, to realize that there should be ample inventory to offset any unforeseen situation (there is in excess of 15 days supply at current demand levels, assuming zero additional production.) Demonstrated capacity of complying refiners far outweighs expected demand. Accordingly, the agency's subjective fears are contradicted by objective evidence from the California Energy Commission.

The Board seems to feel personally responsible for the shutdown of several small refiners. Even were that an allowable concern, the record is devoid of evidence that would support the arguments that enactment of the reformulated diesel rule is the sole or significant cause of these unfortunate business closures. Past history teaches us that small refiners (e.g., Powerine, Edgington Oil, etc.) enter and leave the market due to a number of factors (environmental regulations, poor margins, noncompetitive out-of-date refineries, etc.). The Board has no reason to place the decision solely at the feet of the diesel regulations, especially when the viability of a single business entity or two is beyond its legislative mandate. Yet the Board is willing to bend its statutory authority to the breaking point to keep the remaining small refiners in business at the expense of pollution reduction, even though there is a similar dearth of evidence that these extensions will even effectuate that purpose.

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We note that the Board is allowing three or four small refiners to emit the same level of pollutants that it formerly provided for fourteen small refiners. Apparently, the Board feels that it is charged with cleaning up the air in California only if it won't adversely impact certain businesses.

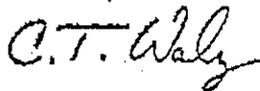
III. OTHER ISSUES

As testified during the Board hearing on July 29 Texaco believes there is no compelling need to relax the existing CARB diesel regulation. All manufacturers have had ample time to develop plans to achieve compliance. CARB has overstepped their bounds of authority by revising small refiner exempt volumes. CARB has the responsibility to focus on developing and implementing plans to improve air quality for the people of the State of California, not to establish incentives to keep business viable and/or operating at the expense of clean air. Small refiners have been enjoying major economic benefits since October, 1993, and now they are looking for a continuation and extension of those benefits.

There were assurances made by the small refiners during the Board hearing on July 29, that they will be in a position to produce 20 percent aromatics (or equivalent) diesel fuel by October 1. Texaco would oppose granting any variances to small refiners should they be unable to comply with the 20 percent aromatics rule by October 1 of this year. Small refiners have had several years to comply with the regulation, yet have not demonstrated that they will be in compliance by October 1. Texaco has three alternative formulations available for licensing (two of which are certified in excess of 20 percent aromatics). Other manufacturers have announced proprietary certification alternatives as well. No genuine interest has been expressed by the small refiners to establish feasibility of these certified alternatives within their operations.

For all of the above reasons, Texaco respectfully submits that the additional relief granted the small refiners is unlawful, and the Board should withdraw its Resolution.

Sincerely,



C. T. WALZ

CTW-mc

cc: Peter Venturini
James D. Boyd



Chevron

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California Air Resources Board
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Dixon B. Smith
General Manager
Strategic Planning and Business Evaluation
Phone 415- 894-3268
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Dear Ms. Hutchens,

Chevron feels obliged to comment on the modified regulatory language made available pursuant to the Public Hearing held July 29, 1994 to consider amendments to the small refiner provisions of California's regulation limiting the aromatics content of motor vehicle diesel fuel.

We must express Chevron's extreme displeasure with the actions taken by the Board in this matter since it benefits a handful of small refiners at our expense and at the expense of the environment.

The gravity of the precedent that this and a number of related, prior Board actions sets cannot be minimized. The Board has signaled the regulated community once more that the Board's rules are open to change to benefit those with a well enough articulated tale of woe. When these changes affect the price and/or supply of products, they affect our ability to recover our investments which are made based on an expectation that rules, once adopted, won't change and upon an expectation that the Board will enforce them.

We wonder where the limit to the Board's largesse is. As we stated in our comments to the Board on July 29, California small refiners were handed an enormous benefit over the last year as they were allowed to, and took full advantage of, selling EPA low sulfur diesel in direct competition to large refiners such as Chevron who either incurred the costs of producing CARB diesel fuel, paid a substantial variance fee, or, as in Chevron's case, both. Since the wholesale diesel price difference between EPA low sulfur diesel and CARB diesel has varied from 4-6 cents per gallon over the past year, three small refiners stand to net 20-30 million dollars by the time the sulfur suspensions expire. In addition, these same small refiners have been handed sulfur credits pursuant to Federal Clean Air Section 410(h) valued at 200-300 thousand dollars for the low sulfur fuel they made during the last quarter of 1993 (59 FR 34811). They will continue to earn sulfur credits until the year 2000; at this rate, they will net another \$6 million. With such government largesse available, it is little wonder that small refiners added desulfurization capacity well in excess of their historic diesel production rates. Either the Board has been had or, through selective application of its rulemaking powers, is intentionally imposing its own views of what the marketplace for fuels in California should look like.

It is clear that we have not found the right words to persuade the Board that its growing involvement in marketplace issues is inappropriate, misguided, and hazardous. As we make the vast investments

Ms. Pat Hutchens

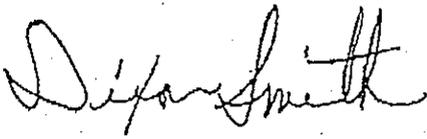
August 24, 1994

Page 2

in our west coast refineries required to make ARB's Phase 2 gasoline, we are increasingly uncomfortable with trusting our financial well-being to a Board more concerned with short-term political fallout than with the long-term health of the industries it regulates or with the public it is obligated to protect.

For nearly a year, we have been looking for a sign that CARB will reverse its course of accommodation with every special interest group except the one that really makes the difference between the success and the failure of a fuel regulation. It is time such a signal was sent; the rejection of the modified proposal would be a good start.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dixon Smith".

cc: Ms. Jacqueline Schafer
Chairwoman
California Air Resources Board

Witco

Golden Bear

Witco Corporation, 10100 Santa Monica Blvd., Ste 1470, Los Angeles, CA 90067-4183 Tel 310-277-4511 Fax 310-201-0383

15-Day Comment
XC: GMS
Legal
SSO

STATE OF CALIFORNIA
AIR RESOURCES BOARD
RECEIVED 8/23/94
BY BOARD SECRETARY

August 19, 1994

Board Secretary
California Air Resources Board
P.O. Box 2815
Sacramento, CA 95812

Re: Comments to Modification to Title 13 CCR, Section 2282

Dear Sir,

Witco Corporation, Golden Bear Products, Lubricants Group appreciates the opportunity for public comment on the proposed modifications to Title 13 of the California Code of Regulation, Section 2282, concerning the small refiner's exempt volume calculation. Three of the criteria for establishing the new option for a small refiner's exempt volume are acceptable to us. The fourth factor, the determination of the fraction of distillate production that we sold as California motor vehicle fuel during the period 1988 through 1992, however, presents some problems for us.

We are a unique refiner in that our primary focus is that of a lube refiner in contrast to the other three small refiners, whose primary focus is that of an energy refiner. Even though our focus is that of a lube refiner, our crude does contain a diesel fuel fraction. Therefore, we sell into the same diesel fuel market as the other three small refiners. We are also unique in that we are the only small refiner that has been selling complying small refiner's diesel fuel in the state of California since the law went into effect on October 1, 1993, and we have not requested a suspension or a variance at any time.

Unfortunately, we are not able to determine our fraction of distillate production sold as California motor vehicle diesel fuel during the period 1988 through 1992. The primary reason for this is that we do not sell directly to the end user, but sell our product to distributors. These distributors, in turn, sell our product to whatever markets they deem most profitable for them. We cannot determine what these markets might have been. Other refiners, such as Chevron, have indicated this is a problem for them in determining their market share as well.

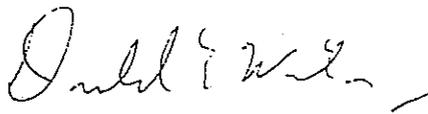
The proposed modification does allow the Executive Officer to review other information from the small refiners deemed necessary by the Executive Officer to establish what each small refiner's distillate production might be. We would like to suggest three possible alternatives for our situation:

1. We would accept the use of the average of the other three small refiners' percentage as our average. Again, this number would have a factual basis since the Executive Officer would have established the average of the other small refiners through factual and verifiable means, and we do sell to the same marketplace as the other three small refiners.
2. Because the CARB specification for diesel fuel set up a unique product that is most likely used only for vehicular diesel fuel, and since we supplied a complying small refiner's diesel fuel since October 1, 1993, the volume of shipments of low sulfur distillate as reported on the California Energy Commission Form M-07 from January 1994 through May 1994 could be compared to the total volume of shipments of distillate production used as motor vehicle diesel fuel. Although the time frame is shorter than the two years specified, the number can be considered actual and verifiable and the values would have been submitted to the California Energy Commission prior to June 30, 1994.
3. We could make an estimate of the percentage of vehicular diesel fuel. We do not feel this would be accurate as it would be highly subjective and could not be substantiated.

We would like to thank the Board and the Executive Officer for giving us this opportunity to comment and discuss our situation.

Sincerely,

Witco Corporation
Golden Bear Production



Donald E. Weinberg
Vice President/General Manager

DEW:tt\carb0819

POWERINE Oil Company

12354 Lakeland Road, P.O. Box 2108
Santa Fe Springs, California 90670

(213) 844-9861
(213) 944-6111



TLX No: 4720404
AVB Powerine
Teletype No: 944-8522

Via Facsimile (916) 323-0764

August 25, 1994

15-Day Comment

MHS
Legal
SSD

STATE OF CALIFORNIA
AIR RESOURCES BOARD
8/25/94
SECRETARY

Patricia Hutchens
Board Secretary
California Air Resources Board
P.O. Box 2815
Sacramento, California 95812

Re: Small Refiner Volume Provision for Low Aromatics Diesel

Dear Ms. Hutchens:

Powerine Oil Company provides the following comments regarding the Modified Text of Proposed Amendments to the Small Refinery Volume Provisions in the Regulation Limiting the Aromatic Hydrocarbon Content of California Vehicle Diesel Fuel ("the Amendments"). For the record, Powerine hereby incorporates by reference the data, comments and materials previously submitted in connection with this matter. Any material previously designated confidential should remain so. In general, we support the Amendments approved by the Board on July 29, 1994 and as implemented by the language changes reflected in the modified text to 13 CCR 2282. We believe that California small refiners have justified even larger exempt volumes than CARB proposes in the Amendments. However, the Amendments are conceptually appropriate, move us closer to optimal refinery operation and are certainly an improvement over Staff's interpretation of the version of regulation existing prior to the July 29, 1994 hearing. Therefore, we support the proposed Amendments as reflected in the Notice of Public Availability of Modified Text dated August 10, 1994.

There is one issue that must still be addressed. One of the factors that will be taken into consideration in calculating a small refiner's exempt volume is the "operable crude oil capacity" of the refinery for 1991 and 1992. Powerine's operable crude oil capacity is 46500 barrels per day. Our operable crude oil capacity has not changed since 1987. The EIA 810 "Monthly Refining Reports" earlier submitted by Powerine were prepared by our Accounting Department. At the time of the earlier submittal, the Accounting Department personnel were unfamiliar with the term operable crude oil capacity and reported the number based on mistaken information and beliefs. However, Powerine's 1991 and 1992 operable crude oil capacity was and is 46,500 barrels per day. We have corrected the EIA 810 and 820 reports for the years 1991 and 1992 as of the date by which they were required to be submitted to reflect our correct operable crude oil capacity at the time. We believe that this corrected data which was current in 1991 and 1992 and submitted as of the appropriate dates should be

POWERINE Oil Company

Patricia Hutchens
California Air Resources Board
August 25, 1994
Page 2

used to calculate our exempt volume.

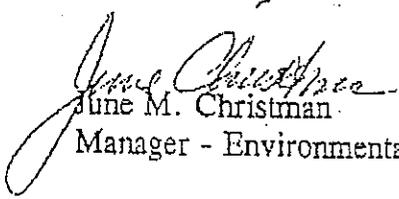
Unless this corrected data is directly used to calculate our exempt volume, we do not believe that CEC can derive any data from our monthly EIA 810 reports. Unless the correct information is used, the originally submitted reports will not allow CEC to make a determination in Powerine's case. Other publicly available and generally recognized sources of this information include:

National Petroleum Refiner's Association (NPRA) United States Refining
Capacity Reports
Oil and Gas Journal Annual Reports
Oil and Gas Journal Worldwide Reports

These publications confirm without exception that Powerine's operable crude oil capacity was 46500 barrels per day during 1991 and 1992.

In summary, Powerine supports the Amendments proposed by CARB. They are an improvement over the existing rule and will allow small refiners to operate closer to optimum conditions in order to remain financially viable. CARB should address the issue of misreported operable crude oil capacity and allow for corrections as long as operable crude oil capacity has not changed prior to the initial rulemaking in 1988. We believe CARB is able to do this within the scope of the Amendments as currently written.

Sincerely,



June M. Christman

Manager - Environmental Engineering

JMC:aj\aromatic.doc

cc: Peter Venturini (CARB)
Dean Simeroth (CARB)
John Courtis (CARB)
Tom Jennings (CARB)
Reader File



SAN JOAQUIN REFINING CO., INC.

15 Day Comment
MHS
Legal
SSD

STATE OF CALIFORNIA
AIR RESOURCES BOARD
8/25/94
BY BOARD SECRETARY

August 24, 1994

Board Secretary
Air Resources Board
P.O. Box 2815
Sacramento, CA 95812

Re: Public Hearing to Consider Proposed Amendments to the Small Refiner Volume provisions in the Regulation Limiting the Aromatic Hydrocarbon Content of California Motor Vehicle Diesel Fuel

For the record, San Joaquin Refining Company, Inc. (SJR) is a small independent refiner located in Bakersfield, California. Board staff have determined that SJR qualifies as a small refiner under 13CCR2282. SJR operates exclusively on California heavy crude oil from the San Joaquin Valley. We sell our products nation-wide helping the California and San Joaquin Valley economies. Before passage of this regulation, SJR supplied most of its diesel to the motor vehicle market in the San Joaquin Valley.

This is in response to the current proposed changes to 13CCR2282. It is clear from the Board Resolution 94-52 language that the Air Resources Board recognizes that the cost of compliance for this regulation to small refiners continues to exceed the cost to large and independent refiners. Also, that you recognize the importance of the small refiner to the distributors and market place. The current situation in the San Joaquin Valley due to the Texaco Refinery fire, demonstrates the need to not have motor vehicle diesel in the San Joaquin Valley from one source. You also need to understand that small refiners need maximum flexibility to stay in business. We have no control over product or crude prices. We have to sell at the market price and tailor our products to get the best price for them.

As we have previously notified the Board and staff, SJR has been placed at a severe disadvantage by these regulations and needs relief. While the proposed changes are a step in the right direction, SJR was apparently not considered. Unnecessary restrictions make it much more difficult for SJR to regain our place in the motor vehicle diesel market. SJR needs the flexibility to be able to sell 100% of our diesel production in the motor vehicle market place at the 20% aromatic equivalent level. While your proposal is a step in the right direction, it doesn't go far enough. These restrictions also pose a threat to SJR continuing to operate as a lawful business by limiting our ability to sell the natural diesel fuel portion of the crude oil processed at our refinery.

At a minimum, we request amendment of the current proposed language for the following reasons:

1. Your proposal doesn't increase the exempt volume of diesel for SJR sufficiently. Less than one hundred (100) percent results in an economic disadvantage to SJR and restricts the potential available supply of motor vehicle diesel in the San Joaquin Valley. Specifically, SJR due to market conditions and the impending diesel regulations compliance date sought out customers who wouldn't be effected by the approved regulations. This was done because of the fact that modification costs to make complying diesel would price SJR complying diesel out of the market. Also, the uncertainty of the marketplace for complying diesel fuel prevented SJR from obtaining financing. Therefore, our diesel sales to the motor vehicle market dropped drastically starting in 1989. See attached percentages. We request that you either include 1987 in the base year for the fourth calculation or allow the highest year out of 1988-92 instead of the average of the highest two years.

Your staff and other agencies are already working on additional regulatory changes which will reduce or eliminate our non-motor vehicle market. Yet, the cost of the hydrotreating facilities to produce a low sulfur 10% aromatic diesel or a 20% aromatic diesel are still a much greater economic burden per gallon for SJR than major refiners, independents and most other small refiners.

2. The current changes proposed were made by staff prior to the hearing, but after the public notice without apparent consideration of their impact on SJR. Any changes can seriously effect our plans to return to the motor vehicle diesel market in the San Joaquin Valley. We need to be considered in all matters relating to diesel fuel.
3. The changes proposed unfairly favor certain small refiners that were able to commit to earlier deadlines. SJR couldn't commit to the deadlines due to lack of financing to construct our already permitted facility. We have spent and are continuing to spend considerable time and money to be able to make complying diesel including numerous pilot studies.
4. We need relief for 100% of our produced diesel. As a small refiner in California, San Joaquin Refining Company, Inc. is exposed to far greater costs to stay in business than refiners in other states and countries. This is demonstrated by the status of small refiners in California, most of whom are either shut down or barely staying in operation. Also, as strictly a small refiner using

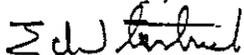
exclusively heavy San Joaquin Valley crude oil, we do not have complex processing equipment. The diesel is a natural portion of the crude oil received at the refinery and must be sold for us to stay in business. We must construct all the equipment needed to produce a low sulfur/aromatic diesel. We do not have existing units that supply hydrogen, treat sulfur, treat sour water or that can be modified.

In summary, we request that the changes proposed be modified to allow SJR to sell 100% of our produced diesel at 20% aromatic equivalent. At a minimum, we request that the fourth calculation be made at the highest motor vehicle sales during 1988-92 or include 1987. If this action requires further Air Resources Board action, we hereby request that the matter be sent back to the Air Resources Board. Resolution of this issue will assist us in financing and installing a diesel hydrotreating facility. This also has the benefit of helping:

1. assure there is sufficient low sulfur/aromatic diesel in California year around,
2. improves air quality in the San Joaquin Valley,
3. increases California employment
4. continues an exclusive market for San Joaquin Valley heavy crude oil and
5. specifically increases the motor vehicle diesel supply for farming in the San Joaquin Valley.

Diesel sales are necessary for our economically viable continued operation. If you have any questions or need further information, please feel free to call me at 805/327-8248 or Jack Caufield at 805/589-0483.

Sincerely,



Ed Starbuck
Vice President Operations

cc: Air Resources Board, Chairperson Jacqueline Schafer
Air Resources Board, Supervisor Doug Vagim
Assemblyman Trice Harvey
Assembly Jim Costa
Senator Phil Wyman
Independent Oil Producers Association, Les Clark
California Independent Producers Association, John Donovan
Nisei Farmers League, Manual Cunha, Jr.

DIESEL MOTOR VEHICLE SALES

PERCENT OF SAN JOAQUIN REFINING COMPANY DIESEL SOLD FOR MOTOR
VEHICLE FUEL BY YEAR

| | | | | | |
|-------|-------|-------|------|------|------|
| 1987 | 1988 | 1989 | 1990 | 1991 | 1992 |
| 78.8% | 84.8% | 51.6% | 0.6% | 0.4% | 0.2% |

WESTERN INDEPENDENT REFINERS ASSOCIATION

801 South Grand Avenue, Tenth Floor
Los Angeles, California 90017
(213) 624-8407

15 Day Comment

August 25, 1994

*MHS
Legal
SSD*

STATE OF CALIFORNIA
AIR RESOURCES BOARD
RECEIVED 8/25/94
BY BOARD SECRETARY

VIA FACSIMILE AND FEDERAL EXPRESS

Ms. Patricia Hutchens
Board Secretary
California Air Resources Board
P.O. Box 2815
Sacramento, California 95812

Re: Public Hearing to Consider Proposed Amendments to
the Small Refiner Volume Provisions and the
Regulation Limiting The Aromatic Hydrocarbon
Content of California Motor Vehicle Diesel Fuel

Dear Ms. Hutchens:

The Western Independent Refiners Association ("WIRA") is pleased to submit these comments on the Regulatory Amendments approved by the Air Resources Board ("Board") at the public hearing on July 29, 1994. Although WIRA contended at the Board hearing and continues to believe that the refinery utilization factor element of the calculation for small refiner 20 percent aromatic hydrocarbon content volume should be at least 95 percent, WIRA accepts the Board's decision and submits these comments in support of the proposed amendments included in the Notice of Public Availability of Modified Text regarding this matter. The proposed language amendments implementing the Board's policy decision appear to reflect the Board's intent.

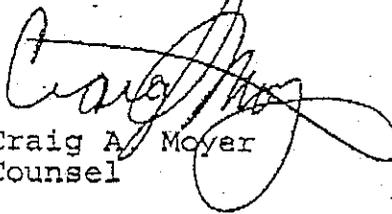
For the record, WIRA and its member companies have previously submitted data, documents and comments prior to the staff report and during the 45-day comment period following release of the Staff Report to the public on June 10, 1994. Such letters, data and comments are incorporated herein by reference. In order to demonstrate the appropriateness of a modification to

Ms. Patricia Hutchens
Board Secretary
California Air Resources Board
August 25, 1994
Page 2

the existing provisions of 13 California Code of Regulations Section 2282, small refineries submitted a great deal of confidential financial and operating information. Again, the information previously designated as confidential should remain confidential.

Thank you for the opportunity to submit these comments. If you require additional information, please contact me.

Respectfully submitted,



Craig A. Moyer
Counsel

CAM:mth



Kern Oil & Refining Co.

7724 E. PANAMA LANE
BAKERSFIELD, CALIFORNIA 93307-9210
(805) 845-0761 FAX (805) 845-0330

STATE OF CALIFORNIA
AIR RESOURCES BOARD
8/25/94
BY BOARD SECRETARY

15-Day Comment

MHS
Legal
SSD

August 25, 1994

****VIA FAX****

Board Secretary
California Air Resources Board
2020 "L" Street
Sacramento, CA 95812

Re: Amendments to the Small Refiner Volume
Provisions in the Regulation Limiting
the Aromatic Hydrocarbon Content
of California Motor Vehicle Diesel Fuel

Gentlemen:

At a public hearing conducted July 29, 1994, the California Air Resources Board (the Board) adopted amendments to the small refiner volume provisions in the regulation limiting the aromatic hydrocarbon content of California motor vehicle diesel fuel.

Kern Oil & Refining Co. (Kern), a California small refiner, supports the amendments as adopted by the Board. The amendments are necessary to allow Kern and other California small refiners to continue operation of their refineries at or near normal rates. Without the amendments, the regulation would restrict the diesel production of California small refiners far below recent production rates. This restriction would jeopardize the viability of Kern and would cause severe hardships to many of Kern's approximately 70 diesel fuel customers. These diesel fuel customers are primarily independent marketers, fleet operators and farming concerns that operate in the southern end of the San Joaquin Valley.

Again, Kern supports the amendments adopted on July 29.

Sincerely,

Thomas L. Eveland
Vice President, Government Affairs

:dr

| | | |
|------------------------------------------|-----------------|--------------|
| Post-It™ brand fax transmittal memo 7671 | | # of pages > |
| To Board Secretary | From T. Eveland | |
| Co. CARB | Co. Kern | |
| Dept. | Phone # | |
| Fax # | Fax # | |

Mobil Oil Corporation

August 24, 1994

3800 WEST ALAMEDA
BURBANK, CALIFORNIA 91505

C. R. MORGAN, MANAGER
ENVIRONMENTAL AFFAIRS — WEST COAST
U.S. MARKETING & REFINING DIVISION

Board Secretary
Air Resources Board
P. O. Box 2815
Sacramento, CA 95812

15 Day Comment
MHS
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STATE OF CALIFORNIA
AIR RESOURCES BOARD
RECEIVED 9/25/94
BY BOARD SECRETARY

Re: Proposed Amendments to
Motor Vehicle Diesel
Fuel Regulations -
15 day Public Comment

Dear Sir/Madam:

We are greatly concerned with the Air Resources Board's approval on July 29, 1994 of the amendments to the small refiner volume provisions in the diesel fuel regulations. The Board's willingness to change the rules in a manner that clearly impact the market place after businesses have made the required investments for compliance is simply bad policy. Because this action creates uncertainty and increases investment and shareholder risk, it discourages the regulated community from striving to meet new regulatory requirements in an expeditious manner. Also, it sends the wrong message about the Board's commitment to ensuring that its regulations are fair and equitable and do not create undue competitive dislocations.

We are particularly concerned about the implications with regards to the Phase 2 gasoline regulations and the uncertainties created as to whether refiners will be operating on a level playing field when these regulation become effective. We therefore urge the Board to utilize the 15-day comment period to carefully reconsider the need and wisdom of proceeding with such drastic amendments to the diesel fuel regulations.

We believe the difficulties encountered with the implementation of the diesel fuel regulations point out the need for more detailed variance protocols and mitigation fee provisions in the Phase 2 gasoline regulation. We would like to work with ARB staff in the development of such provisions.

Very truly yours,

C. R. Morgan
C. R. Morgan

crml46

cc: James D. Boyd - ARB
Jackie E. Schafer - ARB