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DOCKET 02-P11-1
DATE <u>JAN 18 2005</u>
RECD. <u>JAN 20 2005</u>

Gina Grey
Manager, Fuels & Manager, Southwest Region

January 18, 2005

Docket Number 02-P11-01
California Energy Commission
Docket Office
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

Re. Docket Number 02-P11-01
Proposed Amendments to the Petroleum Industry Information Regulations (CA Code of Regulations Title 20, Sec 1361 et seq.)

The Western States Petroleum Association (WSPA) appreciates the opportunity to review and comment on the proposed amendments to the PIIRA regulations. Since the PIIRA regulations relate directly to requirements for our industry, WSPA has been very engaged over the past two years in working with CEC staff on the amendments. We would also like to thank Sue Kateley in particular for her efforts on these regulations, and on the open and frequent communications between CEC and WSPA.

We recognize the deadline for requesting a hearing expired on January 2, however, WSPA would like to request that a hearing, or, at a minimum, a public workshop be held. Our companies reviewed the documents after returning from the holidays, and it became evident that there are a number of new reporting requirements inserted in the amendments that we were not previously aware of, in addition to several requirements that remain in the proposed amendments after WSPA has repeatedly opposed their inclusion. Hence, WSPA's desire to have CEC hold a hearing or workshop.

WSPA would first like to make several general comments, but has also provided below a detailed list of comments on the proposed amendments:

General Comments:

- There seem to be several new items in these proposed amendments that were not previously discussed with WSPA (see detailed comments below). Most of them seem quite burdensome and need further discussion/clarification.
- WSPA strongly believes that a copy of the actual forms our industry will be required to submit should be included with the rulemaking. While we understand that Government Code 11340.9 indicates that forms, or any instructions relating to the use of the forms, do not need to be included in this kind of action, we believe it would be helpful to include the report

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forms – perhaps as an appendix. The regulations do contain Appendix A thru C (weekly, monthly or annual), that indicate our members must supply information on the most recent version of specified forms using instructions and forms published by CEC. In addition, the appendices list the information that must be reported – however, it isn't clear whether the specified forms include all the listed information or not. In addition, for the annual reports, the CEC requires we submit flow diagrams – this is a burdensome requirement and is excessive.

- WSPA understands the value of providing the CEC PIIRA-directed data but we continue to have very significant concerns over the usefulness of the requested detailed DTW data to the overall CEC mission and guidance under the PIIRA statute, when weighed against the cost and accuracy issues that have been discussed extensively in WSPA meetings. Please review our more detailed comments below, and delete the DTW portion of the reporting requirements.
- It is unclear from reading the “Notice of Proposed Regulatory Action” when impacted parties would be required to begin reporting the new information. It may take companies varying amounts of time to get internally ready to report this information once the requirements are finalized. We recommend CEC poll our companies for this information and then include an initial reporting deadline.

Specific Comments:

Re document "Initial Statement of Reasons"

- Under the Introduction, the first sentence of the third paragraph states that PIIRA authorizes CEC to collect data on a weekly, monthly, or annual basis. However, also in the Introduction under "3. Alternative That Would Lessen Impacts on Business, Including Small Business, Mandated Technologies" the first sentence states that PIIRA authorizes CEC to collect data on either a monthly or annual basis. These two sentences are inconsistent.
- Under “Consideration of Alternatives” the CEC says that since “...this information is not made available to the public in any form and the Energy Commission has determined there is “no reasonable alternative . . .”. WSPA would argue that requiring weekly and monthly reports of much of the same information is unnecessary and that the monthly reports could be eliminated altogether if CEC just relied on the weekly reports. Much of the information requested is the same for both the weekly and the monthly reports. WSPA suggests CEC eliminate the monthly reports and just use the weekly reports to estimate monthly numbers, if they are needed.
- Add EIA 810 to the table of monthly reports in the Introduction.
- Although our companies have not indicated any concern with complying, they do not remember discussing the submission of the EIA 820 forms.
- In discussing the cost of the new forms the CEC concludes that, “... a representative business will incur modest costs in compliance with the proposed action that will be offset by

elimination of some existing reporting requirements.” At a minimum, this statement should be amended to say, “partially offset”.

Re document "Proposed Regulations"

- Pg 4: The definition of “EPA Off-Road No 2 Diesel Fuel” has a maximum sulfur content of 500 ppm. Currently the limit is 5000 ppm.
- Pg 6, (2)(B): WSPA questions the term AZBOB? We agree that AZRBOB is a recognized term, however we have not come across this acronym in all the years of dealing with Arizona gasoline, nor the recent CBG work with the Arizona Department of Weights and Measures.
- Pg 9: Three definitions of petroleum coke are included. Petroleum coke includes calcined coke and petroleum coke. They say that petroleum coke is also known as “Marketable Petroleum Coke” and “Catalyst Petroleum Coke” and add separate definitions for both. A Marketable coke comes from a “coker” and a Catalyst coke is produced at a “fluidized coker”. Why does CEC need this level of detail for “coke”?
- Pg 10: The definition for “Airport retail fuel outlet” is confusing.
- Pg 12: The definition for Importer includes the following; “Importer includes firms transporting 5000 gallons or more of fuels that do not meet CARB regulations during any month of the current or previous year to a site in California for retail sale.” This doesn’t seem to make sense.
- Pg 13, (ii): Major Petroleum Products Storer means a facility that received into storage a minimum of 50,000 barrels ... Suggest adding the clarifying phrase "or produced" to the definition because CEC considers refineries to be major petroleum products storers. Received may be interpreted as applying only to materials delivered into the refinery.
- Pg 14: The definition for “Non-California Fuel” means fuel that does not meet CARB standards, sold in California at retail locations. Why would such fuels be sold at all? Similar comment for Non-Cal. Fuel Transporter.
- Pg 17, (cccc) makes mention of temporary independent contractors hired by CEC for the sole purpose of performing PIIRA data entry as being subject to all PIIRA confidentiality requirements. These contractors should be explicitly mentioned as well on page 22 under Section 1370 Confidential Information. What is the penalty imposed if they release confidential information?
- Pg 19, Section 1365.2 Information Requirements; Other Reporting Requirements: With regard to data collected by CEC on an emergency or ad hoc basis by phone, conversation, or other means, there should be more detailed definition of how confidentiality will be maintained here. Our primary concern is verbally communicated data. Our companies can always say in our own notes that we requested PIIRA confidentiality protection; however,

how do we ensure that CEC personnel notes reflect this as well? It becomes burdensome to follow up each verbal conversation with a written one when many conversations may occur.

- Section 1365.2 provides CEC authority to solicit information on an “emergency or ad hoc basis” that is not normally reported. There appears to be no definition for an “emergency”, nor is there any further information provided to define “ad hoc basis”. WSPA suggests a definition be added for each.
- Pg 20, (q) flow diagrams, and (r) site maps, appear to be new annual requirements that CEC has not discussed with WSPA. The specific instructions for these on pgs 37-38 seem quite burdensome. WSPA requests that further discussion take place on these requirements.
- Pg 21 Section 1366 (w) – member companies may currently submit excel spreadsheets instead of the “official forms”. Does this mean they need to get a written okay to continue?
- Pg 21, Section 1368.1 Financial Information: These appear to be new requirements that WSPA does not recall discussing at any of our meetings with CEC. This needs further clarification and discussion.
- Pg 21: Section 1369 Duty to Preserve Data requires the companies to preserve specified data and records. A company is relieved of this duty by submitting the information in a monthly report. Is all the information our companies supply weekly or annually part of the monthly submissions? If not, are they ever relieved of preserving the data?
- Pg 22, Section 1370 Confidential Information: Part (a) states that CEC staff will hold unaggregated data in confidence, but part (b) indicates the party submitting the data must request and specify the data to be retained as confidential. On the surface these two statements seem to conflict. We recommend the language be made clearer.
- Pg 24, II and pg 28, III. Pg 24, II crude oil is not mentioned in the first paragraph, yet crude oil data is requested in items A through E. This is inconsistent. The phrase “crude oil,” should be inserted after the phrase “subsections A through E for” in line 4 on both pages.
- Pg 25, IV CA Dealer Tank Wagon Price: Our additional comments to those in the general comment section address the proposed weekly DTW reporting, and are similar to previous comments shared with CEC. They include the following ongoing concerns:

Data integrity and value issues: DTW pricing practices vary between market participants leading to the problems of apples to oranges style comparisons of individual company submittals, i.e. some companies include rebates, volume discounts, etc in their DTW invoices and some treat them as separate items.

The sales volume information needed for the requested “volume adjusted DTW weekly reports” has a 2 to 3 day lag from the actual DTW pricing information. This lag time between the data sources availability raises questions about the accuracy of the “truing up” calculations of the submitted information. This is especially true with weekly

submittals where a 3-day lag could distort the final numbers. Monthly submittals of the weighted information significantly smooths out these distortions and should provide a more accurate data set.

Cost and workload: Weekly DTW reporting at this level of detail will require significant commitment of staff time and resources, especially if volume calculations are required on a weekly basis.

- Pg 26 IV D - Clarify whether "all locations within each specified region of California" means only the DTW locations, or all locations regardless of delivery method.
- Pg 28, III: On the M700 form, all reporting is in barrels except for the truck movements. This is confusing, and potentially will lead to incorrect reporting of the truck volumes since people might report all in barrels without noticing the change in requirements.
- Pg 28, III.E: "Distribution of Non California fuels" seems to be handled differently, which WSPA does not recall discussing in the past with CEC staff. Insert "by truck" after "non California fuels" in line 1. Clarification is also needed regarding whether trucks can be aggregated as in III. F and G.
- Pg 34 & 35, III & IV E - the submission of a map of each crude oil or product pipeline is a new requirement that would be burdensome and has not been discussed in prior meetings.
- Pg 34 & 35, III & IV F - This is another new development. WSPA companies are unsure how they could satisfy this requirement. In past discussions we were told that the existing annual reports were not going to change, but this does not now seem to be the case.
- Page 37 VII and Page 38 VIII - both of these sections seem to be totally new (as mentioned above) and very burdensome. Needs further discussion.

As indicated at the beginning of this comment letter, WSPA has several requests for changes in the proposed amendments, and several requests for clarification and discussion. We would appreciate the opportunity to further discuss our comments at a public workshop or at a public hearing. If you have any further questions, please don't hesitate to contact me at 480-595-7121.

Sincerely,

Gina Grey

Gina D. Grey

Document Management Form (Revised 4/29/04)

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