ITEM #3

CALIFORNIA INDEPENDENT OIL MARKETERS ASSOCIATION
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April 13, 2005

California Energy Commission
Dockets Office, MS-4
Re: Docket No. 02-PII-01
1516 Ninth Street
Sacramento, CA 95814-5512

Subject: CIOMA Comments on Petroleum Industry Information Regulations; Docket No. 02-PII-01

To Whom It May Concern:

This letter includes comments on regulations that will directly affect our members and our segment of the petroleum distribution industry. CIOMA represents independent marketers who purchase gasoline and other petroleum products from refiners and sell the products to independent gasoline retailers, businesses, and government agencies, as well as representing branded "jobbers" who supply branded retail outlets, especially in rural areas. Our members are primarily small, family owned businesses who encounter unique difficulties in meeting California's complex and increasingly expensive environmental and regulatory requirements. We represent approximately 400 members, about half of whom are actively engaged in the marketing and distribution of petroleum products and fuels. Additionally, CIOMA has been an integral component in helping the Energy Commission stay informed regarding the status of our state's complex fuel distribution processes, and is a key element in assisting the Energy Commission with the delivery of fuels during natural and other disasters.

We are extremely disappointed that the Energy Commission staff did not take into account any of our objections outlined in our January 18, 2005 letter regarding the first draft of the reporting forms and regulations. We are adamantly opposed to our members having to report – as a new reporting entity – under the proposed regulations and instructions. The list of reasons is as follows:

- The Commission staff report notes that SB 1962 (Costa) is an implementing force in these requirements. CIOMA was the sponsor of SB 1962 and we can assure the Commission that ***there was no intent, nor requirement, for CIOMA members to have to report under SB 1962.*** If a letter of intent is needed from Congressman Costa to emphasize this point, one can be obtained.
- The staff report also lists AB 1340 (Kehoe) as an implementing force for these requirements. CIOMA was an active participant in the negotiation of language for AB 1340 - especially regarding the price reporting elements - and received assurances from CEC staff (Tom Glaviano and Gordon Schremp) that the measure ***would not*** require members of CIOMA to report under that legislation. They indicated on several occasions that the large amount of data that would be received would be difficult to handle and would have limited value since it would not be connected to retail or resold pricing. Even after repeated assurances from these individuals we find that our members are being

subjected to new, intrusive and expensive reporting requirements. We do not view this as good-faith dealings with the Commission, especially when the response to comments indicates, "The Energy Commission is unaware of any commitment made during discussions at the California Legislature."

- The Energy Commission staff did not comply with Government Code Section 11346.3 which requires the analysis of regulations for impact on businesses. We are not aware of any empirical data collection or analysis regarding potentials costs of this regulation to businesses, nor are the reporting elements of Section 11346.3 addressed in the Initial Statement of Reasons (ISOR). We believe this rulemaking is deficient until the Commission complies with these requirements and fully discloses to the potential impact to businesses, including small businesses, to the Commission. In addition, we believe the Commission should insist on this information to fully understand the implications of this proposal. A copy of the Government Code section is attached for the record.
- The information provided with the Reporting Forms is insufficient to determine the exact nature and obligations being considered. We direct the Commission's attention to the instructions regarding instructions for CEC M782B INSTRUCTIONS MONTHLY SALES REPORT (page 20 of 38 in the Draft Instructions book). The list of instructions leaves many questions unanswered, such as whether reporting must be done only for the months where me exceeds 196,0000 gallons or whether reporting must be done for an entire year. It is unclear whether sales price data is to be averaged or customer-specific. We believe that very explicit instructions need to be provided ***before*** the forms and reporting mandates are adopted.
- Commission staff has completely underestimated the number of companies the monthly sales reporting will apply to. In the ISOR it is estimated that only 20 companies will need to report. Based upon voluntary volume reporting done to CIOMA for estimation of dues, we believe that at least 100 of our members are going to be required to report – possibly even more depending on whether the 196,000 gallon requirement is assessed on peak month volumes. Again, this shows a lack of investigation and analysis regarding the implications and impacts of these regulations.
- CEC is significantly increasing the amount of data it will be receiving and is not increasing their analytical capability. This leads to the high likelihood that the reported information will lay in files without practical use or application. Requiring reports ***must be linked to the ability to analyze it and make use of it***.
- The objections raised in our January 18, 2005 letter remain, as none of our original objections have been satisfactorily resolved.

In conclusion, we believe that the Commission, at the very least, should delay consideration of the Monthly Report and Annual Service Station Report forms – until the Commission has done its homework properly and has met its legal obligations. But beyond that, we believe the Commission needs to establish an understanding of the information it ***needs***, and the information it ***would like to have***. As the Commission knows, fuel margins, other than those being enjoyed by the major oil companies, are very slim. What is needed are ways to reduce the cost to those existing on the slim margins, not ways to increase costs. We have been collecting data from our members on the costs of compliance and there is quite a variety of costs involved – from hundreds of dollars per month to tens of thousands of dollars for reconfiguring reporting and accounting software. The point is that this expense will reduce

money available for employment, for raises, for benefits, for improving capital equipment and other aspects of running a business. The Commission must thoroughly understand if it is going to use the information on a regular basis, and if that information is ***critical*** to its operation. If it is not, then application of these reporting requirements to our members should be halted.

CIOMA has enjoyed a productive and mutually beneficial relationship with the Commission in the past. We hope this is mandate will not set a precedent diminishing that partnership.

Should you have any questions regarding this communication, please contact me at my office or vial email, jaymac@cioma.com.

Sincerely,

Jay McKeeman
Government Relations Director

cc: Energy Commissioners
Pat Perez, Tom Glaviano, Gordon Schremp, CEC staff

California Government Code

11346.3. (a) State agencies proposing to adopt, amend, or repeal any administrative regulation shall assess the potential for adverse economic impact on California business enterprises and individuals, avoiding the imposition of unnecessary or unreasonable regulations or reporting, recordkeeping, or compliance requirements. For purposes of this subdivision, assessing the potential for adverse economic impact shall require agencies, when proposing to adopt, amend, or repeal a regulation, to adhere to the following requirements, to the extent that these requirements do not conflict with other state or federal laws:

(1) The proposed adoption, amendment, or repeal of a regulation shall be based on adequate information concerning the need for, and consequences of, proposed governmental action.

(2) The state agency, prior to submitting a proposal to adopt, amend, or repeal a regulation to the office, shall consider the proposal's impact on business, with consideration of industries affected including the ability of California businesses to compete with businesses in other states. For purposes of evaluating the impact on the ability of California businesses to compete with businesses in other states, an agency shall consider, but not be limited to, information supplied by interested parties.

It is not the intent of this section to impose additional criteria on agencies, above that which exists in current law, in assessing adverse economic impact on California business enterprises, but only to assure that the assessment is made early in the process of initiation and development of a proposed adoption, amendment, or repeal of a regulation.

(b) (1) All state agencies proposing to adopt, amend, or repeal any administrative regulations shall assess whether and to what extent it will affect the following:

(A) The creation or elimination of jobs within the State of California.

(B) The creation of new businesses or the elimination of existing businesses within the State of California.

(C) The expansion of businesses currently doing business within the State of California.

(2) This subdivision does not apply to the University of California, the Hastings College of the Law, or the Fair Political Practices Commission.

(3) Information required from state agencies for the purpose of completing the assessment may come from existing state publications.