

Gina Grey, Manager

September 30, 2005

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

Re. PIIRA 15-Day Language

Docket No. 02-PII-01:

The Western States Petroleum Association (WSPA) would like to take this opportunity to provide comments relative to the PIIRA Regulations. As you know, WSPA is a non-profit trade organization representing 26 companies that explore for, produce, refine, transport and market petroleum, petroleum products, and natural gas in California and five other western states.

We comprehend that Docket No. 02-PII-01 relates to the availability of 15-day language on the PIIRA regulations that were proposed for amendment at the April 13, 2005 CEC Business meeting. We have several general comments in Section I of our letter, and then a number of detailed factual and clarification issues that are contained in Section II.

Prior to providing our comments, however, WSPA would merely like to remind the Commission of its commitment during the April hearing to return to the Commissioners after six months of reporting experience has occurred, in order to have staff report on the requirement's effectiveness and an evaluation of the need for weekly versus monthly reports. WSPA members remain concerned, for example, about the requirement for reporting gallons sold at a specific price on a weekly basis. We continue to believe that this information could be misleading due to data collection timing between weekly prices and gallon sales. A monthly report would be more accurate in this instance, however in almost all other cases a weekly report is preferable. We appreciate that reporting has not yet formally begun, but thought we would ensure our understanding of this commitment was correct.

Section I

Draft Forms and instructions for reporting information

As the record shows, WSPA raised a number of times during the regulatory proceeding the fact the actual forms and instructions for reporting information were not being included in the regulatory package. Staff indicated that the Administrative Procedures Act exempts forms and instructions from being required for inclusion in the package. We note that OAL initially denied the regulations due to a deficiency that materials referenced in the proposed regulations were not included within the text of the regulations (i.e., copies of the proposed reporting forms and instructions).

During the hearing staff reported that they had solicited input on the proposed forms and instructions from industry via a number of forums, and changes had been made to both. Further, staff indicated that once the rulemaking was complete, the draft forms and instructions would be made available again for review and comment before they were deemed final.

We truly appreciate all the time and effort staff took during the period of time prior to the hearing to review our comments on the forms and instructions. Our question at this point in time, however, is where do we now stand with respect to the forms and instructions, since CEC has decided to respond to OAL's comments by incorporating the forms and instructions as part of the regulatory package.

Several questions arise from this CEC action:

- Can the forms be amended in the future without another regulatory rulemaking?
- Will our industry be provided with an opportunity to review these draft forms that are now part of the regulatory package, per staff's earlier intention?
- The CEC Notice of Availability of 15-Day Language states on page 2 under the list of CEC revisions to address OAL's deficiencies, that **draft** forms and instructions were included in the regulatory file. WSPA therefore assumes that there is an intention to further work on both in order to finalize them. Is this correct and will our industry be invited to assist with the finalization?
- OAL differentiates between "the forms" and the "definitions" of terms and indicates the definitions must be in the rule and are not exempt from

rulemaking. Does this mean that CEC cannot include a request for information on the forms that isn't defined in the rule?

Implementation Lead Time

Staff has assured WSPA and its members that we would be provided with adequate lead-time to start implementing the forms requirements. The regulation appears in a few areas to either reference requirements for our industry to begin reporting a week, or a month (depending on the form) after the rule becomes effective which we understand is 30 days after the Secretary of State accepts them, but does not provide any clarity on the expected initiation of reporting (see numbers 5 and 10 under Section II). In order to ensure consistent understanding in our industry of what the Commission expects, we would appreciate a clarification on this matter.

Refinery Site Maps and Flow Diagrams

As you are aware, WSPA as well as ChevronTexaco registered comments both orally and in writing at the hearing regarding our strong objection to the inclusion of Appendix C Section VII, Refinery Flow Diagrams and Section VIII, Site Maps. We concur with statements made by staff during the hearing that the new requirements for refinery site maps and flow diagrams were apparently in the documents that had been made available for our review at the end of last year, however we also concur with their statement that they were not previously discussed or highlighted in any of our meetings or the workshop.

In reviewing WSPA's past comments, it has come to light that WSPA did submit comments in January of this year where we stated, "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." We do not recall that our request for further discussion was ever met, although there was a significant level of discussion on many other areas.

In fact, our members only realized these detailed requirements were still in the new proposed regulatory package the day before the hearing and we were left with minimal time to prepare comments. Our purpose in including the following is not to address our inadequate opportunity to fully develop our comments before the

hearing, but to request an opportunity in a new workshop or hearing to fully vet our members concerns and views.

During the hearing WSPA raised concern with the requirement based on potential security and terrorist threats, and we did receive some empathetic comments from the Commissioners. Mr. Tom Glaviano, who was representing legal counsel at the hearing, agreed to review the Homeland Security Act and any other relevant documents in order to ensure the Commission was not in conflict with statements or requirements in those documents. We understand from a subsequent conversation that he did not find any conflicts, but we would appreciate a fuller discussion of this issue.

Our legal counsel reviewed the CEC's authority pursuant to the Petroleum Industry Information Reporting Act (PIIRA), including the revisions to that Act which were enacted in 2000 (SB 1962 Costa) and 2003 (AB 1340 Kehoe), for the purpose of assessing whether such authority includes the power to compel refiners to submit Flow Diagrams and refiners, terminal operators, major petroleum products storers and marine facility operators to submit Site Maps for each of their California facilities on an annual basis, as proposed in Appendix C, Sections VII and VIII, of the draft revised Petroleum Information Report requirements. What follows is a preliminary analysis of the situation.

On December 3, 2004, the CEC gave notice that it intended to amend its regulations implementing PIIRA (which are set forth in Title 20, Sections 1361 et seq., of the California Administrative Code) for the purpose of updating the reporting requirements "to reflect the many changes in industry operations, definitions, and fuels grades that have occurred since 1980," add the expanded categories of information to be reported specified in the Costa bill and include the weekly reporting requirement mandated by the Kehoe bill. An Initial Statement of Reasons and the text of the proposed amended regulations were also made available for public comment. Based on the comments received, the agency staff published a revised set of regulatory amendments and its response to the public comments on March 15, 2005.

Among other things, the proposed regulatory amendments include new sections (VII and VIII) that would be added to Appendix C, which sets forth the information to be submitted in the Annual Reports required under PIIRA. New Section VII would require each Refiner to submit Flow Diagrams for each of its facilities in California illustrating the "number, diversity and interconnection of

individual process units at each refinery location." In addition, the Flow Diagrams are to show the "individual process unit identification and interconnection to other process units," as well as maximum throughput capacity, actual throughput capacity for the prior year, the intermediate and final products at each interconnection and the "average flow rates during the previous calendar year . . . for each interconnection . . .". New Section VIII would require each refiner, terminal operator, major petroleum products storer and marine facility operator to submit Site Maps for each of its facilities in California. "Each Site Map shall provide a plan view of their facility [to scale] that illustrates all structures, roadways, process equipment, storage tanks, and associated facility information that is relevant to the site." As authority for imposing these new Flow Diagram and Site Map requirements, the staff cites Section 25354 of the Public Resources Code, the provision of PIIRA that describes the specific types of information that are to be reported to the CEC under the Act and authorizes the Commission to request additional information "*as necessary to perform its responsibilities under [PIIRA]*." (Subsection (f)).

In response to industry concerns regarding the burden these new provisions would impose expressed during the public comment period, the staff advised that there had previously been a requirement to file pipeline maps and specifications, implying that there was precedent for this type of an information demand with respect to other petroleum facilities, and that "this information is critical in the case of energy emergencies, particularly if damage has occurred at a facility. Refinery and pipeline operators' flow diagrams and site maps should be readily available for emergency response and public safety purposes."

Section 25350, the "findings and declarations" provision, and Section 25354, which specifies the type of information to be provided by industry members, strongly suggest that PIIRA was intended to provide the state with sufficient information regarding the sources and capacities of the facilities which supply crude oil and manufacture and distribute refined products, as well as gasoline sales and prices, to enable the CEC to make informed predictions regarding future energy and related infrastructure needs and thereby plan for them, as well as suggest workaround solutions if and when constrictions in the supply system might develop. There is no suggestion in PIIRA that the Legislature intended the CEC to become involved in individual company decision-making regarding how to configure or operate their manufacturing and distribution facilities or to collect the

type of detailed (within the fence) information that would only be needed if the CEC were to involve itself in such decisions. The type of detailed Flow Diagrams and Site Maps that the proposed regulations would require refiners and storer/operators to provide would seem to fall in this later category and go considerably beyond what is needed to understand the state's manufacturing and importing capability and the layout of the distribution network.

It is correct that the prior version of the regulations contained a provision (Appendix B, Section V, E) that required Major Crude Oil Transporter's to provide "a description of the crude oil pipeline systems, including oil field flow lines, pipeline gathering systems, all pipeline diameters, the location and a description of all points of origin and all terminals and points of interconnections *with pipeline systems operated by others*, and an indication of whether the pipelines are heated or unheated" in their Annual Reports. However, that type of information is arguably much more relevant to the stated purposes of PIIRA than Flow Diagrams and Site Maps that depict operations within refinery and other facility fence lines. The information previously requested from pipeline operators is arguably externally, rather than internally focused, and designed to assist the agency in understanding what capacity and pipeline interconnections are potentially available to move crude oil into and around the state. Again, the refiner and storer/operator Flow Diagrams and Site Maps requested under the proposed regulations would only appear to be necessary if the agency were contemplating some form of intervention in facility operating decisions, an authority it has not been given under PIIRA.

Nor does the staff's assertion that the types of Flow Diagrams and Site Maps being requested are necessary for emergency response in the event of a problem at a particular facility appear to be sound. PIIRA does not give the CEC the authority to take charge of the situation when an accident or upset occurs at a specific facility. That authority has generally been conferred on local fire departments and other first responders, agencies that already possess the type of site-specific information needed to deal with emergencies at petroleum facilities in their communities. While the CEC staff might argue that the Legislature also intended that it have such information in the event of a "disruption" (see Section 25350(b)), from its context, the term "disruption" appears to be referencing a condition having fairly widespread impacts, not an upset at a single facility. Furthermore, and consistent with the foregoing interpretation, the types of information that the Act

specifically specifies be collected are all designed to provide the agency with a more global picture of the supply/demand balance situation.

WSPA would argue that, while the CEC has been given the authority to request "additional information as necessary to perform its responsibilities under [the Act]" (Section 25354(f)), PIIRA is not a license for the CEC to become involved in day-to-day operational decisions at individual facilities. In addition, under long-standing principles of statutory construction, the additional information that can be requested by the CEC must be of the same general type as specified in the Act, not information that would really only be of value to the agency if it intended to insert itself into individual company business decisions concerning the products to be manufactured and how to configure its own internal refining and distribution systems.

Section II

As indicated earlier, this section provides a number of detailed comments and questions. Again, we understand that at this stage in the process we are limited to commenting on the 15-day issues, however we also understand that it is in the best interest of both our industry and CEC to ensure the regulations are both sound and as clear as possible, so we would like to point out the following, and suggest that these items be included in any new workshop or hearing:

1. CEC's regulation needs to differentiate between Commercial LPG and Motor Vehicle Grade LPG in the definitions and the forms. Supposedly, Commercial propane is not to be used in motor vehicles.
2. Page 8 - (b)(2) EPA Low Sulfur No. 2 Diesel Fuel reads "No. 2 diesel fuel with a sulfur level no higher than 0.05 percent by weight (500ppm). In fact the current EPA regulations state that Low Sulfur No. 2 Diesel contains between 15 ppm and 500 ppm sulfur (between 0.0015 and 0.05 percent by weight). This is differentiated from EPA Ultra Low Sulfur Diesel, which is less than 15ppm (or less than 0.0015).

(b)(3) The state does not differentiate On highway vs. Off highway Low Sulfur Diesel, EPA or otherwise.

(b)(4) Since there is a CARB Ultra Low Sulfur Diesel, shouldn't Low Sulfur read between 15 ppm and 500 ppm.? The way it currently reads, diesel less than 15ppm would be reported as both Ultra Low Sulfur and Low Sulfur.

3. Page 18 - definition of "Product Pipeline System" – WSPA suggests deleting the phrase "or interconnections with other pipelines" in the second line. Since most refineries have interconnections that connect the refinery piping into a common carrier pipeline system such as Kinder Morgan, inclusion of this phrase makes these refineries have "product pipeline systems" and as such, these refiners become "petroleum products transporters". Is this CEC's intent?

4. Page 20 - "Stocks" excludes Crude Oil and product in-transit by pipeline, but what about product in-transit by rail car, truck, and marine vessel. Should they be excluded also since they should be reflected on the movement report. These types of items are included in the stocks numbers on EIA reports.

5. Page 21 (b) - This paragraph seems to indicate that the first monthly reports are not due until January of the year following final adoption of the statute, but there is no indication as to when the weekly reports would start in section (a).

6. Page 23- Why is (j) and (k) not combined into one item since they pertain to the same report? Is there a distinction we are missing?

7. Page 24 (q)- We suggest adding the phrase "for their applicable facilities" at the end. This is needed to clarify that refiners are only responsible for reporting on their company-owned and operated retail stores; other types of retail stations need to be handled by their direct operators/leasees.

8. Page 24 (t)- We are not sure what this means - needs more clarification, with examples.

9. Page 27, Section 1370 Confidential Information- In (b) what is meant by "item-by-item basis"? Does an item pertain to an entire report or only a piece of data in a report? Doesn't each report form already have a confidentiality protection clause that is invoked when the report is submitted? Are these regulations requiring something additional to that?

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10. Page 28, Section 1371 Failure to Provide Information- CEC should be flexible in the startup/implementation phase of these regulations until everyone understands the requirements.
11. Page 31 D. - Who will report rail cars that are outside of the terminal gate? They do not belong to the terminal and therefore will not be in their inventory. The EIA is currently struggling with this problem also.
12. On page 32 Appendix A, number IV is lined out in error.
13. Page 32, III. A. and page 40, IV. A.- Under CARB regulations, truck loading racks adjacent to the refinery are considered outside the refinery gate, that are downstream facilities in the distribution system. WSPA thinks CEC should be consistent with CARB in drawing the demarcation of "refinery gate" and use another phrase such as "adjacent to the refinery".
14. Page 32, IV. A.- Is the data sought after here the "adjusted" DTW price?
15. Page 39 F - I - Why require both state and country? One or the other should be all that is needed.
16. Page 39, III. F- Why is the last sentence crossed out? Should allow trucks of identical product and identical point of origin and discharge and discharge date to be reported in aggregated form.
17. Page 41, V. A- Same comment as Page 32, IV. A. In addition, it mentions "adjusted dealer tank wagon prices here, but it is not mentioned in the section for the corresponding weekly reports.
18. Page 42 - Section VI D - The word "rack" is left off the branded and unbranded sales.
19. Page 47 Appendix C Section VI should be clarified to show that any stations other than Company Owned and Operated stations will have to submit their own reports. The major producers will only have data for Company Owned and Operated sites.

20. Page 48, first C- Replace "Actual throughput capacity" with "Actual average throughput".

21. Page 48, VIII. A- Why is another description of the function of process units being asked for here when it was already asked for at the top (partial) paragraph on the same page?

In conclusion, while we understand our comments are perhaps not directly relevant to the CEC's Notice of 15 day package for the new and amended regulations on petroleum industry reporting requirements, we nevertheless request that the Commission provide careful consideration to our comments since we believe it is in both our interests to ensure the adopted regulation is sound and clear, to minimize significant future controversy.

In addition, we request that CEC respond to our request for a new workshop or hearing to address the substantial concern we continue to have about the site maps and flow diagrams requirement in Appendix C.

Please feel free to contact me with any questions or comments.

Sincerely,

Gina D. Grey

c.c. Fernando DeLeon