

McReynolds, Rana@ARB

Subject: WSPA comments AB 32 MRR Regulation Amendments
Attachments: WSPA Comments_ AB 32 MRR_09_19_2016 Final.pdf

From: Joey Martinelli [<mailto:jmartinelli@wspa.org>]
Sent: Monday, September 19, 2016 2:27 PM
To: Sahota, Rajinder@ARB
Cc: Corey, Richard@ARB; Chang, Edie@ARB; Aguila, Jim@ARB; Cathy Reheis-Boyd; Tom Umenhofer
Subject: WSPA comments AB 32 MRR Regulation Amendments

Sent on behalf of Catherine Reheis-Boyd.

Dear Ms. Sahota:

Please see attached WSPA comments AB 32 MRR Regulation Amendments. WSPA appreciates ARB's consideration of our comments and we look forward to your responses. If you have any questions, please contact Cathy at this office, or Tom Umenhofer of my staff at (805) 701-9142 or email tom@wspa.org.

Thank you.

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Catherine Reheis-Boyd
President

September 19, 2016

Ms. Rajinder Sahota
California Air Resources Board
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Sacramento, CA 95814

via e-mail at: rsahota@arb.ca.gov

Re: WSPA comments AB 32 MRR Regulation Amendments

Dear Ms. Sahota:

The Western States Petroleum Association (WSPA) is a non-profit trade association representing companies that explore for, produce, refine, transport and market petroleum, petroleum products, natural gas and other energy supplies in California and four other western states. WSPA appreciates this opportunity to provide comments on the proposed Air Resources Board (ARB) amendments to the AB 32 Mandatory Reporting Regulations (MRR).

Presented below are specific WSPA comments on key elements of the proposed MRR amendments. WSPA is particularly concerned that this regulatory package increases the overall burden on reporters. It adds requirements and significantly tightens verification and reporting deadlines with no regard to the potential consequences for accuracy and cost. Despite overwhelming opposition by industry to moving up the deadlines, and the long hours invested with staff on the substantial time pressures and limited number of qualified and willing verification firms, the proposed amendments remain unchanged. Additionally, the proposed rulemaking requires collection and submission of information that is not related to Cap & Trade, and potentially subjects entities to additional demands on the reporting and verification schedule in ARB's quest for miscellaneous data to be used for non-Cap & Trade purposes. As currently proposed, the amendments put extreme pressure on the verification and reporting process. We are very disappointed with ARB's lack of reasonable response to clear stakeholder objections to moving the deadlines forward in time.

Change in MRR Report Verification Deadline

WSPA is strongly opposed to changing the MRR report verification deadline to August 1st. Moving the verification deadline from September 1st to August 1st in Section 95103(f) will create a significant burden for both reporting entities and verification bodies alike. The verification deadline change to August 1st will likely result in less review of GHG reports and will ultimately, adversely affect verification bodies as they rush to complete their reviews. WSPA has provided substantial information to ARB staff that every month and nearly every week between January and the September deadline is spent organizing, scheduling, presenting, and working through the inevitable iterative process with both verifiers and ARB. This iterative and robust process is critical to a successful verification for complex facilities such as refineries and oil and gas production. The MRR reporting timeline presented in Enclosure A to this letter, which was previously provided to ARB staff, demonstrates the extremely tight reporting timeline that already exists today with the September 1st MRR report submittal deadline.

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ARB appears unaware that there is a lack of available verification firms that meet corporate business tests for contracting, are qualified to verify all areas of our facilities, and are willing to work as verifiers which then precludes them from competing for the provision of other services. Further given the specialized nature of some facilities (such as oil and gas facilities), it cannot be assumed that every verifier on the approved verifier list is appropriate or qualified for every facility type.

WSPA has offered alternatives that would allow for maintaining the September 1st verification deadline while providing ARB more time to make its cross-check calculations by pushing out the November 1st allowance allocation date. Disappointingly, ARB staff dismissed the suggestion that the deadline for allowance allocations be moved from October to December because “it would interfere with the holidays”.

We are also disappointed in the lack of transparency in the Staff Report: Initial Statement of Reasons for Rulemaking (ISOR), dated July 19, 2016, on this verification deadline issue. The Staff Report (ISOR, page 5) states that it does not have “sufficient time to reasonably perform quality assurance checks, calculations, analysis, and the data notifications and postings needed to complete all mandated activities under the cap-and-trade program.” Currently, reports are submitted to ARB on April 10th (and some on June 1st). Therefore, ARB has the opportunity to conduct independent data checks well before the September 1st deadline. ARB has no need to hold off in-depth reviews to post-September 1st.

The Staff Report (ISOR, page 5) states “an additional month after the verification deadline allows ARB sufficient time to assess a compliance obligation to all covered entities, as well as calculate allowance allocation amounts, prior to the November 1st Cap-and-Trade Regulation compliance deadline.” ARB has been issuing Cap & Trade allowances and assessing obligations for the past three years. ARB has been able to meet all reporting required under the Cap & Trade program. It would be reasonable to assume that the knowledge gained with each passing year that allowances are allocated must have resulted in reduced cycle-time, thus enabling staff to issue allowances more efficiently each subsequent year.

Finally, the Staff Report (ISOR, page 5) states that “This additional time will provide covered entities time to review their compliance obligation, assess how many allowances they receive, and make arrangements to acquire any additional compliance instruments needed for timely compliance.” We fail to follow this logic because ARB is not proposing any changes to the Cap & Trade deadlines related to allowance allocation deadlines or to compliance obligations.

While strongly in opposition to moving up the verification deadline to August 1st, WSPA believes a far more reasonable option is to, if necessary, consider pushing back Cap & Trade-related deadlines (i.e., allowance allocation date of November 1st) that appear to have flexibility. Alternatively, if ARB feels strongly about moving forward the September 1st deadline, WSPA requests that ARB consider a compromise verification completion date of August 15th, and eliminate the requirement in Section 95242(c)(4) that the verifier notice ARB in advance of any deficiencies, in recognition of the added scheduling burden to reporting entities.

Material Misstatement Definition

WSPA believes that the modification to the definition of “material misstatement” and the changes made to Sections 95131(b) and (14) regarding verification of covered product data require clarification. By eliminating the word “total” from covered product data in the definition of “Material Misstatement,” it could be interpreted that ARB is requiring the verification of all product streams. We understand from

our August 11, 2016 meeting with ARB staff that ARB does not intend to require verification for all product streams. Instead, staff indicated that the change is meant to separate material misstatements for different units of measure in alignment with the sector benchmarks. ***In order to minimize the risk that staff's intent is misinterpreted by future staff, WSPA recommends that the following alternative language be used for this section:***

*“Material misstatement” means any discrepancy, omission, or misreporting, or aggregation of the three, identified in the course of verification services that leads a verification team to believe that the **total** reported covered emissions (metric tons of CO₂e) or **total** reported covered product data (aggregated to the level of each different benchmark unit of measure used by the reporting entity) contains errors greater than 5%, as applicable, in an emissions data report. Material misstatement is calculated separately for covered emissions and covered product data, as specified in section 95131(b)(12)(A).”*

Material Misstatement Requirements for Thermal and Non Thermal Split Field Barrels Data

As currently drafted, Section 95131(b)(12) would double the potential for a material misstatement violation at the field level for “split” fields where both thermal and non-thermal barrels are produced. It makes each category of “barrel”, both thermal and non-thermal, subject to a separate potential material misstatement rather than a single misstatement for the aggregate field production. Although ARB staff has stated its intent to regulate all industries based on common unit of measure, a more stringent standard is proposed here for oil and gas production, putting owners of split fields at an arbitrary disadvantage compared to others. Fields having only thermal, or only non-thermal, production are not impacted.

The oil and gas sector is already burdened with additional reporting obligations, as it must report both on the basin level and on the field level. Thermal and non-thermal split fields report all product output in a common unit of measure; barrels. Because the production must fall into one or the other subcategory, making the split is a zero-sum game. An inadvertent error in one subcategory creates a concomitant error in the opposite direction in the other subcategory.

The proposed application of the material misstatement standard individually to thermal and non-thermal barrels creates a double jeopardy for the producer. This creates a blatant disadvantage for the owner of a split field vis-à-vis those who own fields having a single subcategory of production. A small, non-material error in one subcategory can lead to an amplified error in the other. For example:

A hypothetical 10,000 barrels/day (bbl/day) field with an assumed: 90% / 10% thermal/non-thermal split and 95% meter accuracy, could be off by no more than 50 bbl/day which would trigger a material misstatement. If the split field had a 99% / 1% split and the same volume and accuracy, the measurement could not be off by more than 5 barrels. On the basis of 10,000 bbl/day total production, neither the 50 bbl (0.5%) or the 5 bbl (0.05%) errors are material, yet both would trigger material misstatement criteria as written. Therein resides the patent unfairness of the proposed double-standard.

In addition to doubling potential for misstatement and fines, the example above shows that the proposed change is likely to result in very little gain in data accuracy. However, it doubles the work of the verifier in the product verification process, a service that comes at additional cost.

WSPA opposes the proposed change which disadvantages some operators and our industry sector over others. ARB should apply the same requirement to oil and gas production as all other sectors - material misstatement based on units of measure, in this case barrels.

Response Deadlines for ARB inquiries

In general, WSPA recommends that ARB be consistent in its use of deadlines by using working days instead of calendar days. Working days should be defined to exclude at a minimum, weekends and national and state holidays.

In Section 95131(c)(4)(B) and (c)(5), ARB has revised information request response deadlines from 5 working days to 5 calendar days. It is understood that ARB is attempting to lend clarity as “working days” may not be a term consistently interpreted by reporters and verification bodies. However to be consistent with other “working day” changes proposed (i.e., 10 working days to 14 days), WSPA recommends that ARB must allow at least 10 working days for any activity for which potential exposure to penalties could be involved. To give entities less than that is unreasonable and arbitrary.

In Sections 95131(f) and (g), the proposed language, changes the reporting entity response time and verifier response time to ARB inquiries, from 20 working days to 5 days without any indication of the breadth of ARB inquiries (i.e., inquiries may be simple or very complex). Demanding responses in 5 days without consideration of the level of effort, weekends and holidays, and the availability of key resources makes this substantial reduction of response time untenable.

Further, in 95105(b), the response time allotted to facilities to fulfill ARB’s requests for any MRR-related records was shortened from twenty days to ten days. The examples of data that may be requested was proposed as, *“This includes, but is not limited to, information used to quantify or report emissions and product data in the emissions data report, underlying monitoring and metering data, invoices of receipts or deliveries, sales transaction data, calculation methods, protocols used, analysis results, calibration records, electricity transaction data, and other relevant information.”* The list of information is extensive and housed in many different departments of the business.

Ten working days does not allow adequate time for the data reporter for the facility to communicate with the owners of all the relevant documents, and, review and submit. Much of the information (e.g., a copy of a specific invoice) requires coordinating with other staff that may not be available within ten days given weekends, holidays, and out-of-office days during the normal course of business.

As the existing response time was marginally sufficient, ***WSPA requests that ARB retain the existing language or, alternatively, replace “20 working days” with “21 days” which is effectively a week shorter than the existing language but much more reasonable than the proposed language.*** ARB could also add the caveat “unless otherwise specified by ARB” after the “20 working days” (or alternatively, “21 days”) as it has done in the Cap & Trade regulation language.

Carbon Sequestration Definition

We recommend that the definition of geological sequestration in Section 95102(a)223 be the one used by the USEPA: “Geologic sequestration is the process of injecting carbon dioxide, captured from an industrial (e.g., steel and cement production) or energy-related source (e.g., a power plant or natural gas processing facility), into deep subsurface rock formations for long-term storage.” (<https://www.epa.gov/uic/class-vi-wells-used-geologic-sequestration-co2>).

Designated volume of oxygenate

Section 95113(m)(1) indicates that the operator must report the quantity of CARBOB produced and imported for use in California “and the designated volume of oxygenate associated with the reported CARBOB”. The term “designated volume of oxygenate” is not defined in the regulation. One interpretation is that this is the amount of oxygenate that the producer of the CARBOB specifies in the predictive model notice with each production of CARBOB – although what is provided in the predictive model notice is expressed as a percentage and not a “volume” as suggested in this reporting requirement. It is not clear that this is CARB’s interpretation. Ultimately, the CARBOB producer may not be the person blending the oxygenate in the distribution system and so cannot know the exact amount of oxygenate added to the final blend – only what was designated when the CARBOB was first produced or imported. ***WSPA requests that ARB define what “designated” means and relate it to the predictive model notice and the percentage designated on that notice.***

Volume of biodiesel and/or renewable diesel associated with the reported fuels

Section 95113(m)(3) requires that the operator report the quantity of California Diesel produced and imported for use in California “and the volume of biodiesel and/or renewable diesel associated with the reported fuels”. Unlike CARBOB, where the oxygenate blend percentage is designated on the predictive model notice, no such notice related to biodiesel or renewable diesel is required by ARB. The California Division of Measurement Standards under the California Department of Food and Agriculture does require product transfer documentation and dispenser labeling consistent with federal trade commission standards for biodiesel blends or renewable diesel blends above 5% - but there is no such designation for blends below 5%; and even the blends above can be designated as a range (i.e., 6%-20%).

Because there is no designated specification, there is no way to know what downstream parties might blend into the diesel fuel in terms of biodiesel and renewable diesel. We understand that it is ARB’s intent to only require reporting of the quantity of biodiesel and/or renewable diesel that the producer or importer added to the fuel which is known and not some speculative volume that other parties might have added subsequent to the initial production or import. ***WSPA recommends that the current language be modified as follows:***

“California Diesel produced and imported, as defined by “California diesel” in section 95202 of the AB32 Cost of Implementation Fee Regulation, for use in California and the volume of biodiesel and/or renewable diesel associated with the reported fuels added by the company that produced and/or imported this California Diesel”.

Reporting Natural Gas Liquid and LPG end-user data

It is WSPA’s understanding from discussions with ARB staff that the end-user data reporting requirements under Section 95122(d)(7) and (8) apply only to liquefied natural gas (LNG) only transported in interstate pipelines. ***ARB’s written confirmation of this understanding is requested.***

Measurement accuracy requirement

ARB proposes amending Section 95103(k)(6)(A)(1) to: “Pressure differential devices must be inspected at a frequency specified in paragraph (k)(4) of this section, unless the device is located at a refinery that operates continuously with infrequent outages. In such cases, the owner or operator of the refinery must

inspect each device at a frequency of at least once every six years". This is directionally a positive change that appropriately recognizes the reality of infrequent outages. That being said, infrequent outages can be longer than six years. The EPA MRR (40 CFR 98.34(b)(1)(v)) allows the refinery to align the inspections with a schedule consistent with planned shutdowns.

WSPA supports adoption of the ARB-proposed amendment, but further recommends that the language be revised to read "In such cases, the owner or operator of the refinery must inspect each device at least once every six years or during the next scheduled maintenance outage."

Methodology requirements

We are concerned by the proposed changes to 95103(m), specifically those that relate to product data calculations and monitoring. As currently written, the proposed changes could be interpreted to mean that ANY changes to product data calculations or monitoring (including installing better meter technology, using financial data, etc.) would require ARB approval. This could trigger the submittal of a large number of alternate methods to ARB, creating a large backlog as has occurred with meter postponement requests. Historically postponement requests have taken 1 year to process, and that would be unacceptable for product data that is reported annually to ARB. In fact, any delays in the processing of these alternate methods for product data will cause facilities to reconsider any improvements/changes to their product data, reducing the overall accuracy of the data. A facility may not want to implement any changes, even if it leads to more accurate/reliable data, due to the delays created by the new ARB approval process. ***WSPA recommends that ARB delete all of the changes made to sections 95103(m)(1) through (3) to avoid affecting the quality of covered product data.***

Unnecessary reporting requirements

Section 95112(b)(3) has been modified to now require reporting of thermal energy that is vented, radiated or discharged. WSPA is opposed to this change in the regulation as it is duplicative and, therefore, unnecessary. Thermal losses can be determined by the reported combustion fuel inputs to Electricity Generating Units.

Sections 95113(l)(1) and (3) have been modified to eliminate redundant product reporting for refineries and new reporting requirements have been proposed. WSPA is opposed to the addition of the new reporting requirements. These data are unnecessary from a Cap & Trade standpoint. If ARB needs data for unrelated purposes, they can obtain sector level data from other agencies or request it by survey. ARB should eliminate requirements to report data that are subject to verification and potential enforcement exposure and penalty of reduced allowances that is not required for cap and trade. It is wholly unreasonable to subvert the Mandatory Reporting Regulations from a Cap & Trade purpose to any ARB regulatory need which then imposes severe burdens and deadlines on covered entities.

In Section 95121(d)(9), ARB is proposing to require the reporting of fuels previously excluded from emissions reporting due to demonstration of a final destination outside of California, used exclusively in aviation and marine applications, or that was previously delivered. ARB has indicated that this data is being requested by the LCFS staff within ARB. It is inappropriate for MRR entities to be burdened with non-MRR information requests within this regulatory construct. If there is a rationale for additional LCFS-related information requests, then this should be vetted with LCFS stakeholders in that regulatory proceeding. WSPA believes that there is no need for such data to be reported and this is the wrong way to collect such information. ***We strongly object to ARB collecting highly confidential business data without having a strong link to a regulatory purpose.***

Other reporting requirements which WSPA believes are unnecessary and requests that ARB consider eliminating include:

- Atomic Hydrogen Reporting Requirements (95114(e))
- Hydrogen Purchase and Sale
- By-product Hydrogen (95114(l))
- Natural gas purchases, electricity, and thermal energy reporting (e.g., in 95115(k), 95103(a)(1), 95104(d), 95112(a), and 95112(b)) where it does not factor into Cap and Trade obligations

Diagrams

ARB staff has indicated in meetings that these diagrams may be general process flow block diagrams. Further, it is our understanding based on ARB staff comments that specific location of meters will not be required. Documentation of meter location is available on-site at individual facilities. Further, ARB staff has indicated that diagrams available at refineries have satisfied verifier's needs. *To improve the availability of information at other facilities without placing an unnecessary burden on the refining sector and other sectors which already provide sufficient information, WSPA recommends the following change to Section 95105(c)(3):*

“Reference to facility records including one or more diagrams (such as simplified block flow or piping and instrumentation diagrams) that provide a clear visual representation of the ~~location and~~ relative position of all measurement devices and sampling locations, as applicable, required for calculating covered emissions and covered product data (e.g. temperature, total pressure, HHV). The diagram(s) may include and label fuel sources, emissions sources, and production processes, as applicable.”

Onshore Natural Gas Processing Categorization

Section 95150(a)(3) changes the definition for onshore natural gas processing by replacing existing language as follows:

“This industry segment includes processing plants that have an annual average throughput of 25 MMscf per day or greater, and fractionation facilities that have no petroleum and gas production activity within the same basin.”

Pursuant to discussions with ARB staff, WSPA suggests the following language modification for clarity regarding intended applicability of this section:

“This industry segment includes processing plants that have an annual average throughput of 25 MMscf per day or greater. This industry segment also includes fractionation facilities that have no petroleum and gas production activity within the same basin.”

Further clarity can be provided by adding to the end of Section 95150(a)(2):

“Onshore natural gas processing equipment as defined in section 95150(a)(3) that is owned and/or operated by the facility owner/operator and located within the same basin

is considered “associated with a well pad” and is included with the onshore petroleum and natural gas production facility, unless such equipment is required to be reported as part of a separate onshore petroleum and natural gas processing facility. Processing plants that have an annual average throughput of 25 MMscf per day or greater are not subject to this section.”

Adding new risk evaluations to verification process

Section 95131(b)(7)(B) has proposed language to evaluate “risk of incomplete reporting” for fuel and electricity data. ***WSPA does not support this change as there is no auditing standard by which risk of incomplete reporting can be evaluated.*** Thus, this new requirements can be interpreted much differently by each verification body. By removing this change, ARB avoids (reduces risk of) inconsistent and indefensible risk evaluations.

Verification Contract Time Limits

Another change to requirements for verification services in 95130(a)(2) states, “*Verification bodies may not provide verification services if the six year period ends prior to sixty days after the emissions data report is certified by the reporting entity, unless a verification plan is agreed to by the reporting entity, the verification body, and the Executive Officer. If the six-year time limit is exceeded, the reporting entity must engage a different verification body and meet the verification deadline.*” WSPA believes this restricts the number of reports a single verifying body may be able to verify from six data years of reports to only five if the timing window does not fall in the right timeframe. Given the relatively scarce supply of verifiers available to certify refinery reports, WSPA does not support the new proposed language that further restricts the available options for refinery report verifiers. WSPA believes ARB’s intent for the six year restriction was not based on a problem with having six calendar years verified by the same body, but actually by having the verifying body perform services too many times. ***As such, WSPA requests that reporting parties be able to use the same verifying body six times and that the proposed language be removed.***

WSPA appreciates ARB’s consideration of our comments and we look forward to your responses. If you have any questions, please contact me at this office, or Tom Umenhofer of my staff at (805) 701-9142 or email tom@wspa.org.

Sincerely,



cc: Richard Corey - ARB
Edie Chang - ARB
Jim Aguila - ARB
Tom Umenhofer - WSPA