



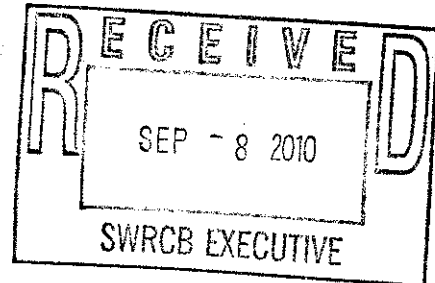
Western States Petroleum Association
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Kevin Buchan
Senior Coordinator, Bay Area and State Water Issues

VIA ELECTRONIC MAIL

September 8, 2010

Chair Hoppin, and Members of the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



RE: WSPA Comments on Proposed CEQA Regulations

Dear Chair Hoppin and Members of the Board,

The Western States Petroleum Association (WSPA) is a non-profit trade association representing twenty-eight companies that explore for, produce, transport, refine and market petroleum, petroleum-based products, natural gas and other energy products in California and five other western states.

This letter provides the comments of WSPA on the modifications to the proposed text for the amendments to the State Water Resources Control Board (State Board) regulations at 23 California Code of Regulations §§ 3720 et seq., containing implementation procedures for compliance with the California Environmental Quality Act (CEQA), California Public Resources Code §§ 21000 et seq.

WSPA submitted comments on the originally proposed CEQA regulation amendments on February 15, 2010. We note that, consistent with our previous comments, the new modifications delete § 3764 imposing unspecified, vague "charges for preparation of environmental documents" and modify § 3779(d) to properly reflect the State Board's obligation under CEQA to respond in writing to all comments, oral or written, timely submitted during the public comment period. We appreciate the State Board's attention to these issues.

The majority of the modifications are minor editorial corrections and changes to conform the State Board's regulations – in particular, the Appendix A Environmental Checklist (which corresponds to Appendix G of the State CEQA Guidelines) – to the revised State CEQA Guidelines that became effective March 18, 2010. We have no comments on those modifications.

However, other significant issues raised in our prior comments are not addressed by the proposed modifications. We note that the August 24, 2010 "Notice of Modification to Text of Proposed Regulations" states that the State Board will respond in the Final Statement of Reasons (FSOR) to previous comments on the original text, as well as comments on the modifications, and asks that this round of comments address the proposed modifications only. Nevertheless, given that our previously mentioned changes (above) have been addressed in this version and our other recommendations have not, we can only infer that our remaining comments have been rejected by staff. Without the opportunity to review the FSOR, we cannot know the rationale for rejecting our other comments. We reserve the right to comment further when the FSOR becomes available, and request the Board direct staff to publicly issue the FSOR in a manner timely enough for the regulated community to provide input prior to any Board decision to finalize the amendments.

In particular, we ask that the State Board give further consideration to the following important substantive points, discussed in greater detail in our prior comments, before finalizing the proposed amendments:

- Sections 3742(b) and 3751 exceed the legislative mandate of CEQA by purporting to authorize the State Board to use CEQA to regulate or abate nuisances, and should be modified accordingly.
- Section 3776 still reflects confusion as to the State Board's role as lead agency for purposes of approving the adoption or amendment of any regional water quality control plans or guidelines, and should be amended to clearly articulate the State Board's duty as a lead agency to exercise its independent judgment when evaluating a Substitute Environmental Document (SED) prepared by a Regional Water Quality Control Board (Regional Board).
- Section 3779(b) continues to state that the State Board need not consider written comments received after the deadline for written comments on the SED. While WSPA acknowledges that the Board need not respond to late comments, the CEQA statute and case law clearly provide that CEQA issues may be raised up until the close of the final hearing to adopt the project. We recommend this section be amended accordingly.
- Section 3779(f) continues to impose an "exhaustion of administrative remedies" requirement on parties appearing before a Regional Board, excusing the State Board from considering comments on the SED that were not raised before the Regional Board. As with Section 3779(b), this position is directly contrary to the State Board's role as lead agency and the CEQA mandate that the final decision-making body consider comments raised up to the final project approval. We request this section be therefore amended.

Thank you for considering our comments. If you have any questions, please feel free to contact me at (916) 498-7755.

Sincerely,

Kevin Buchan