



September 30, 2004

Office of the Governor
Constituent Affairs
State Capitol
Sacramento, CA 95814

Attn: CPR Commission; Comments on the California Performance Review

Commissioners:

The California Independent Oil Marketers appreciates the opportunity to comment on the Governor's California Performance Review. We applaud the Schwarzenegger administration for taking a critical look at governance and administrative issues facing this state's complex government and regulatory processes. There is certainly room for improvement.

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 requirements. We represent approximately 400 members, about half of whom are actively engaged in the marketing and distribution of petroleum products and fuels. The independent marketer is a critical component in keeping the state adequately fueled and mobile, while injecting vigorous competition into the petroleum marketplace.

Our comments relate specifically to the proposals regarding the streamlining of this state's notoriously complicated and cumbersome environmental regulation system, contained in Chapter 6 of the CPR. Our interests are particularly focused upon the recommendation that the Board structures of the Air Resources Board (CARB) and the State Water Quality Resources Control Board (SWRCB) be eliminated and substituted with a direct agency administration by the California Environmental Protection Agency (Cal/EPA) Secretary.

We commend this recommendation, with conditions. We agree with the Report's conclusions that "the Cal-EPA continues to operate as a collection of boards and commissions without a unified environmental protection strategy." Further we believe the Board structures for these agencies add additional administrative costs and that the Board selection process tends to make these bodies more politically-oriented rather than providing objective and diverse oversight of policy and regulation.

However, in centralizing authority and reducing access to decision-makers there must be a counter-balance integrated into this reorganization. Here are our recommendations:

- In elimination of access points to decision makers there needs to be a strong, objective and accessible regulatory contact for business interests. By-and-large the expensive improvements to technology and infrastructure needed to gain ever-dwindling pollution reduction comes from the private sector; our members are literally the ones required to pay for improvement. CARB's Office of the Ombudsperson is an excellent model for this component, although we would argue that the Ombudsperson Office should be an independent office not directly accountable to the Cal/EPA Secretary, to insure objective and unbiased perspective. This Office should provide service for all Cal/EPA divisions.

We also recommend that Kathleen Tschogl be appointed as the head of this Office. Her commitments to balanced and effective regulations, along with her excellent relationships with a wide variety of interests, make her the perfect candidate for this critical position.

- The new divisions should be customer oriented, especially when key "customers" are the businesses paying for environmental protection and improvement.
- Organizations should be held accountable, especially for incorrect (low) estimates of economic impact and cost of proposals. If incorrect estimates are made, then the Division should be required to offset the cost difference from their operating budgets. And, individuals making the estimates should be evaluated on their performance.
- Businesses should not be treated as "lab rats" in testing new technologies and equipment, especially when they have to pay for expensive state-of-the-art equipment and then have to pay to make it work right. Equipment and technologies should go through substantial field testing and verification before they are required universally. Further, it is prudent to require at least 2 certified vendors before technology is required to insure competitive markets.
- Businesses should not be liable for violations or penalties when they are verifying and field-testing new technology or requirements, as long as they are operating in a non-negligent manner.
- Agencies should attempt to build proposals on consensus. If they are going to ask the regulated community to provide "sweat" in developing regulations (such as providing information on operations and emissions) then that community should share in the "equity" by seeing reasonable, cost effective proposals from staff.

Again, we appreciate the opportunity to comment on the CPR elements of particular interest to the independent oil marketer community. If you need further information regarding our recommendations, or documentation that has led us to these proposals, please contact me at your earliest convenience. We look forward to working with the Commission and the Governor in achieving a more efficient and responsive government structure.

Sincerely,



Jay McKeeman
Executive Vice President