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February 20, 2009

Via E-Mail, Facsimile and US Mail

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*Re: Public Records Act Request
Docket Number 07-HFS-1
Fuel Delivery Temperature Study*

Dear Mr. Chamberlain and Ms. Miller:

Pursuant to California Government Code § 6253(b) of the Public Records Act, and SEC. 3 Art. 1 of the California Constitution, Consumer Watchdog hereby requests copies of any public records pertaining to changes made to the Fuel Delivery Temperature Study during the period between the publication of the June 2008 Draft of the study and the January 2009 Draft as well as communications between Commissioner Boyd and employees, officers or agents of the Western States Petroleum Association (WSPA) as described in more detail below.



215 Pennsylvania Avenue, SE
Washington, DC 20003

We request all communications, including, but not limited to, email communications, written correspondence, memoranda or recorded voice messages, and any notes about oral communications or meetings related to:

1. Any exchange of information between Commissioner Boyd and staff of the CEC regarding the June 2008 Draft, the November 2008 Staff Report, or the January 2009 Committee Report;
2. Any staff comments presented to Commissioner Boyd regarding the June 2008 Draft, the November 2008 Staff Report, or the January 2009 Committee Report;
3. Any comments to the June 2008 Draft, the November 2008 Staff Report or the January 2009 Committee Report made by Commissioner Boyd in writing or orally to CEC staff;
4. All documents showing whether Commissioner Boyd recommended any changes to the June 2008 Draft, the November 2008 Staff Report, or the January 2009 Committee Report;
5. All documents showing whether any of Commissioner Boyd's recommended changes to the June 2008 Draft, the November 2008 Staff Report, or the January 2009 Committee Report were accepted by the CEC; and

Additionally, we request all communications, including, but not limited to, email communications, written correspondence and recorded voice messages between Commissioner Boyd and any employee, officer, attorney, or other agent of WSPA, the American Petroleum Institute or California Independent Oil Marketers Association, between January 1, 2008 and February 19, 2009.

By way of background, on June 5, 2008, at the staff workshop for the AB 868 Fuel Delivery Temperature Study, the staff of the CEC distributed certain materials containing a draft report under AB 868 ("June 2008 Draft"). Subsequently, in November 2008, the California Energy Commission made publicly available a Staff Report entitled Fuel Delivery Temperature Study ("November 2008 Staff Report"). Finally, in January 2009, the Transportation Committee of the CEC (consisting of Commissioners Boyd and Douglas) issued a Committee Report entitled Fuel Delivery Temperature Study ("January 2009 Committee Report"). The November 2008 Staff Report contained material changes in conclusions and methodology from the conclusions and methodology contained in the June 2008 Draft. These changes were sought by and favored the oil industry. Further, the January 2009 Committee Report contained further and material changes from the November 2008 Staff Report and these changes also favored the oil industry.

Given the imminent business meeting of the CEC on February 25, 2009 at which the CEC, including Commissioner Boyd, will consider and vote upon the Committee Report dated January 2009, we respectfully ask that the CEC expedite the production of records in response to this request so that the records are produced and/or made available to us on or before February 23, 2009. Clearly, the public has an immediate right to know the content of the records sought by this request in light of the fundamental and continuing financial connection between Commissioner Boyd and WSPA and the upcoming vote of the CEC on February 25, 2009 respecting the January 2009 Committee Report.

Under California Government Code Section 6255(a), the public interest in disclosure of these records clearly outweighs any interest that could be served by not disclosing the records. The oil industry has strongly lobbied against automatic temperature compensation in California and elsewhere and certain positions and conclusions of the oil industry are now contained in the January 2009 Committee Report that were not contained in prior versions of the CEC documents. To the extent that Commissioner Boyd requested, demanded or made changes that were sought by the oil industry to the various CEC reports described above, at a minimum the public needs to know and should know this information without any delay. The information sought by this is vital not only to the concept of a full and fair hearing, but to the appearance of an impartial and untainted deliberative process by the CEC under AB 868.

If the documents requested cannot be produced before the scheduled hearing Feb. 25, we request that final consideration of the report be delayed until after the documents can be produced.

If you determine that any of these records are exempt from disclosure, we ask that you reconsider the determination in light of Proposition 59's (at California Constitution Article I, §3[b][2]) requirement that a "statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access and narrowly construed if it limits the right of access." Proposition 59 may modify or overturn authorities on which you have relied in the past.

Any public records withheld from production for inspection should be separately identified and should be accompanied by the claimed justification for withholding as provided by Gov. Code § 6255, stating the nature of the document withheld, the specific exemption under which the document is being withheld, and the public interest served by withholding said document. We reserve the right to appeal your decision to withhold any materials.

Should you contend that a portion of a particular document is exempt from disclosure due to confidentiality, we also request pursuant to Gov. Code § 6253(a) that the exempt portion be redacted and the remaining portion be produced for our inspection.

Consumer Watchdog is prepared to pay reasonable search and duplication fees in connection with this request. However, agencies have discretion to waive fees in order to provide greater access to public records pursuant to Gov. Code § 6253(e). (*See North County Parents Organization for Children with Special Needs v. California Dept. of Educ.* (1994) 28 Cal.Rptr.2d 359, 361.) As the information that is the subject of this request is of primary benefit to the public to inform how the Department arrived at proposed revisions to the consumer protections of Proposition 103, we ask that you waive all search and duplication fees.

If we can provide any clarification that will help expedite your attention to our request, please contact us. If a fee waiver is not granted, we ask that you notify us of any duplication costs exceeding \$50 before you duplicate the records so that we may decide which records we want copied or view the records in person.

Thank you for your time and attention to this matter.

Very Truly Yours,

(Signature on file)



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