

SUPERIOR COURT OF CALIFORNIA
County of Sacramento
 720 Ninth Street - Room 102
 Sacramento, CA 95814-1380
 (916) 874-5522—Website www.saccourt.com

NOTICE OF CASE ASSIGNMENT
 Proceeding for Writ of Mandate and/or Prohibition

Case Number: *24-2008-80000064*

This case has been assigned for all purposes to the judicial officer indicated below pursuant to rule 3.734 of the California Rules of Court and Sacramento Superior Court Local Rule 2.01; it is exempt from the requirements of the Trial Court Delay Reduction Act and the Case Management Program under Chapter 11 of the Sacramento Superior Court Local Rules.

JUDGE	COURT LOCATION	DEPT.	PHONE
Hon. <i>Cennelly</i>	Gordon D. Schaber Courthouse	<i>33</i>	<i>874-5591</i>

The petitioner shall serve all parties with a copy of this order and a copy of the Sacramento Superior Court Guide to the Procedures for Prosecuting Petitions for Prerogative Writs. The Guide is available in Room 102 of the courthouse, from the clerk of the department to which this matter has been assigned, and on the "Civil" page of the Sacramento Superior Court internet website (www.saccourt.com).

Scheduling

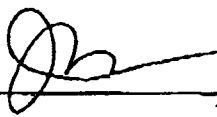
Contact the clerk in the assigned department to schedule any judicial proceedings in this matter, including hearings on ex parte applications and noticed motions.

Other Information

Pursuant to Local Rule 2.01, revised January 1, 2007, all documents submitted for filing in this case shall be filed in person at the Civil Front Counter (Room 102) or by mail addressed to the Clerk of the Sacramento Superior Court, Attn: Civil Division-Room 102, with the exception of certain documents filed on the day of the hearing. For specific requirements, please see the Sacramento Superior Court Guide to the Procedures for Prosecuting Petitions for Prerogative Writs.

Any administrative record must be lodged with the assigned department.

Date: SEP 30 2008

Signed: 
 , Deputy Clerk

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 ATTORNEY FOR (Name): Tesoro Refining and Marketing Company

FILE FOR COURT USE ONLY
 Superior Court of California,
 Sacramento
 Detoria Jones, Executive
 Officer
 REWARDS
 Peter
 by _____, Deputy
 Court Clerk
 24-2008-0000154-CV-WJG

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO
 STREET ADDRESS: 720 9th Street, Room 102
 MAILING ADDRESS:
 CITY AND ZIP CODE: Sacramento, CA 95814
 BRANCH NAME: Gordon D. Schaber Downtown Courthouse

CASE NAME: Tesoro Refining and Marketing Company v. California Air Resources Board; and Does 1 through 10, inclusive.

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000) Limited (Amount demanded is \$25,000 or less)
 Complex Case Designation
 Counter Joinder
 Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER:
 JUDGE:
 DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:
- | | | |
|--|---|---|
| <p>Auto Tort</p> <input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46)
Other PIP/D/W (Personal Injury/Property Damage/Wrongful Death) Tort
<input type="checkbox"/> Asbestos (04)
<input type="checkbox"/> Product liability (24)
<input type="checkbox"/> Medical malpractice (45)
<input type="checkbox"/> Other PIP/D/W (23)
Non-PIP/D/W (Other) Tort
<input type="checkbox"/> Business tort/unfair business practice (07)
<input type="checkbox"/> Civil rights (08)
<input type="checkbox"/> Delamination (13)
<input type="checkbox"/> Fraud (16)
<input type="checkbox"/> Intellectual property (19)
<input type="checkbox"/> Professional negligence (25)
<input type="checkbox"/> Other non-PIP/D/W tort (35)
Employment
<input type="checkbox"/> Wrongful termination (36)
<input type="checkbox"/> Other employment (15) | <p>Contract</p> <input type="checkbox"/> Breach of contract/warranty (06)
<input type="checkbox"/> Rule 3.740 collections (09)
<input type="checkbox"/> Other collections (09)
<input type="checkbox"/> Insurance coverage (18)
<input type="checkbox"/> Other contract (37)
Real Property
<input type="checkbox"/> Eminent domain/inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26)
Unlawful Detainer
<input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (39)
Judicial Review
<input type="checkbox"/> Asset forfeiture (05)
<input type="checkbox"/> Petition re: arbitration award (11)
<input checked="" type="checkbox"/> Writ of mandate (02)
<input type="checkbox"/> Other judicial review (39) | <p>Provisionally Complex Civil Litigation
 (Cal. Rules of Court, rules 3.400-3.403)</p> <input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Construction defect (10)
<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
Enforcement of Judgment
<input type="checkbox"/> Enforcement of judgment (20)
Miscellaneous Civil Complaint
<input type="checkbox"/> RICO (27)
<input type="checkbox"/> Other complaint (not specified above) (42)
Miscellaneous Civil Petition
<input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other petition (not specified above) (48) |
|--|---|---|

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary, declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): 3 - Writ of Mandamus; Writ of Admin. Mandamus; Declaratory and Injunctive Relief
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: September 29, 2008
 Mark D. Johnson

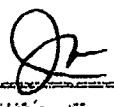
 (TYPE OR PRINT NAME) SIGNATURE OF PARTY OR ATTORNEY FOR PARTY

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

FILED BY FAX

Dept 33
Superior Court of California,
Sacramento
Dennis Jones, Executive
Clerk
By:  Deputy
Case Number:
14-2008-0000054-01-001-GDS

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16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 FOR THE COUNTY OF SACRAMENTO

18 TESORO REFINING AND MARKETING
19 COMPANY,

20 Petitioner and Plaintiff,

21 vs.

22 CALIFORNIA AIR RESOURCES
23 BOARD; and DOES 1 through 10,
24 inclusive,

25 Respondents and Defendants.

Case No.

**VERIFIED PETITION FOR WRIT OF
ADMINISTRATIVE AND
TRADITIONAL MANDAMUS,
REQUEST FOR TEMPORARY STAY
AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

[CCP §§ 1060, 1085 and 1094.5]

FILED BY FAX

26 Petitioner and Plaintiff Tesoro Refining and Marketing Company ("Tesoro")
27 submits this Verified Petition to this Court seeking a writ of mandate, pursuant to Code of
28 Civil Procedure §§ 1085 and 1094.5, and declaratory relief under Code of Civil Procedure
§ 1060. Tesoro alleges as follows:

GENERAL STATEMENT OF ISSUES PRESENTED

1. This Petition challenges the adoption by the California Air Resources Board
("CARB") of the amendments to the Phase 3 California Reformulated Gasoline
Regulations ("CaRFG3") regulations that were approved on August 29, 2008, by the

1 California Office of Administrative Law ("OAL"). In pertinent part, these newly adopted
2 CaRFG3 amendments require refiners to increase the amount of ethanol contained in
3 gasoline from the current level of 5.7% to 10% by December 31, 2009. The time period
4 between OAL's approval of the CaRFG3 amendments and the deadline to make fuel
5 compliant with the amendments is approximately 16 months. In contrast, historically,
6 when CARB has adopted new fuel standards, the time period between adoption of the
7 standard and implementation of the standard has been approximately 48 months. This
8 Petition contends that CARB did not have the authority to adopt the CaRFG3 amendments
9 because CARB failed to assess the land use impacts resulting from the increased
10 production and use of ethanol mandated by the CaRFG3 amendments. Scientific evidence
11 reveals that the use of crop based ethanol is harmful to the environment, particularly by
12 increasing greenhouse gas emissions.

13 2. This Petition further contends that CARB did not have the authority to adopt
14 the CaRFG3 amendments because CARB did not evaluate the cost to refiners and
15 California consumers to make the refinery modifications required to comply with the
16 CaRFG3 amendments by the December 31, 2009 deadline. In a report presented to
17 CARB on June 14, 2007, the California Energy Commission estimated that the cost to
18 California businesses and consumers of the CaRFG3 amendments will be 4.2 to 6.5 cents
19 per gallon of gasoline (\$716 million to \$1.1 billion per year). The failure of CARB to
20 make this required cost analysis is particularly problematic in that CARB is currently set
21 to adopt a new Low Carbon Fuel Standard ("LCFS") for gasoline. Due to the new
22 awareness of the environmental impacts associated with ethanol production and use, it
23 appears that the LCFS will mandate the production of gasoline that will require refinery
24 modifications that are technically inconsistent with the refinery modifications required by
25 the CaRFG3 amendments. Therefore, it appears that the substantial costs that will be
26 borne by the refiners and California consumers with respect to the CaRFG3 amendments
27 will ultimately be stranded or go to waste when further refinery modifications are required
28 to make LCFS compliant gasoline.

1 Tesoro will amend this Petition to reflect their true names and capacities once ascertained.

2 **JURISDICTION AND VENUE**

3 7. This Court has jurisdiction over this action pursuant to Code of Civil
4 Procedure §§ 1060, 1085, and 1094.5. CARB and the California Attorney General have
5 offices located in Sacramento County. Venue is proper in this Court pursuant to Code of
6 Civil Procedure § 401.

7 **PROCEDURAL BACKGROUND**

8 8. On August 29, 2008, the California Office of Administrative Law (“OAL”)
9 approved CARB’s adoption of the amendments to the Phase 3 California Reformulated
10 Gasoline Regulations (“CaRFG3”) regulations. These regulations amend sections 2261,
11 2262, 2262.3, 2262.4, 2262.5, 2262.9, 2263, 2263.7, 2264.2, 2265 (and the incorporated
12 “California Procedures for Evaluating Alternative Specifications for Phase 3
13 Reformulated Gasoline Using the California Predictive Model”), 2266, 2266.5, 2270,
14 2271, and 2273, and add new sections 2260(a)(0.5), (0.7), (7.5), (8.5), (10.5), (10.7),
15 (19.7), (23.5), and (23.7), 2262.3(d), 2264.2(a)(3), (b)(5), and (d), 2265(c)(4), 2265.1,
16 2265.5, and 2266(b)(3), (4), and (5) of Title 13, California Code of Regulations (“CCR”).
17 Notice of OAL’s approval of the CaRFG3 amendments was published in the California
18 Regulatory Notice Register on September 12, 2008.

19 9. Previously, on June 9, 2008, OAL disapproved the adoption by CARB of
20 the amendments to the CaRFG3 regulations. After this disapproval by OAL, on June 26,
21 2008, CARB opened a supplemental 15-day public comment period with respect to the
22 CaRFG3 amendments (the “Supplemental Comment Period”).

23 10. The Phase 2 California Reformulated Gasoline (“CaRFG”) regulations,
24 approved in 1992, established specifications for the following eight gasoline properties:
25 sulfur, benzene, olefin, aromatic hydrocarbon, oxygen content, 50 percent distillation
26 temperature (T50), 90 percent distillation temperature (T90), and Reid vapor pressure
27 (“RVP”). The CaRFG regulations allow refiners to use the Predictive Model to certify
28 alternative gasoline formulations. The Predictive Model is a set of mathematical

1 equations that relate emission rates of exhaust and evaporative hydrocarbons and carbon
2 monoxide (CO), oxides of nitrogen (NOx), and potency-weighted toxics for four toxic air
3 contaminants (benzene, 1,3-butadiene, formaldehyde, and acetaldehyde) to the values of
4 the eight regulated gasoline properties. Currently, most of the gasoline sold in California
5 complies with the CaRFG regulations through the use of the Predictive Model.

6 11. Health and Safety Code Section 43013.1(b) generally requires that the
7 CaRFG3 regulations improve or preserve the emissions and air quality benefits of the
8 Phase 2 CaRFG program. CARB staff has determined that the use of ethanol in CaRFG3
9 *increases evaporative emissions*, relative to Phase 2 CaRFG, through a process known as
10 permeation. Permeation occurs in both on-road vehicles and off-road engines and
11 portable fuel containers.

12 12. Generally, under the CaRFG3 amendments, starting December 31, 2009, a
13 fuel formulation cannot be treated as complying with the CaRFG3 standards unless the
14 excess emissions associated with permeation from on-road vehicles are fully mitigated.
15 To mitigate these excess emissions, refiners can choose one of two options. First, they
16 can use the Predictive Model to develop an alternative fuel formulation. Using this
17 approach will almost certainly require the use of a very low sulfur fuel content and
18 ethanol amounts approaching 10 percent by volume. As a result, most CaRFG3 producers
19 will be required to make refinery modifications in order to produce the very low sulfur
20 fuels and rebalance the production to accommodate the higher ethanol contents.
21 Producing gasoline with this reduced sulfur content and higher ethanol will also require
22 adjustments to other gasoline components in order for the gasoline to comply with the
23 criteria of the Predictive Model. CARB acknowledges that it may take gasoline producers
24 48 months to make the refinery modifications needed to make gasoline that complies with
25 the standards set in the CaRFG3 amendments.

26 13. To address the likelihood that at least certain gasoline producers will not be
27 able to make the refinery modifications required to make gasoline compliant with the
28 standards of the CaRFG3 amendments by the December 31, 2009 deadline, the CaRFG3

1 amendments provide gasoline producers with a second option, referred to as an alternative
2 emissions reduction plan (“AERP”). An AERP allows a producer or an importer that
3 cannot meet the December 31, 2009 deadline to mitigate the excess emissions associated
4 with permeation by obtaining emission reductions from combustion or other gasoline-
5 related sources. All AERPs sunset on December 31, 2011. However, CARB can approve
6 a 12 month extension of an AERP extending it to December 31, 2012.

7 14. More specifically, among other things, the CaRFG3 amendments:

- 8 • Revise the Predictive Model to incorporate newer data to enable
9 CaRFG3 producers to offset permeation emissions caused by ethanol
10 use.
- 11 • Require CaRFG3 producers to mitigate the permeation emissions
12 from on-road vehicles by December 31, 2009, by either:
 - 13 • Using the revised Predictive Model to develop an alternative
14 fuel formulation that maintains emission reductions from
15 vehicles using CaRFG3; or,
 - 16 • Obtaining the reductions by obtaining emissions offsets from
17 combustion or other gasoline-related sources by means of an
18 AERP.
- 19 • Lower the sulfur cap for CaRFG3 gasoline from 30 to 20 ppm,
20 increase the amount of ethanol present in CaRFG3 gasoline, make
21 minor changes to the RVP limits, and make certain other changes to
22 update standards and test methods.

23 15. Prior to the adoption of the CaRFG3 amendments on August 29, 2008,
24 Tesoro provided comments to CARB and voiced its objections to certain provisions of the
25 amendments. Tesoro is and at all times relevant herein has been a member in the Western
26 States Petroleum Association (“WSPA”). Tesoro worked with WSPA in drafting and
27 joined in the comments submitted by WSPA to CARB during the administrative review
28 and public comment period regarding the proposed CaRFG3 amendments. The comments

1 submitted by WSPA and the actions taken by WSPA and joined by Tesoro included the
2 following: written comments during the 45-day comment period, oral testimony at the
3 June 14, 2007 public hearing, and petitioning CARB to reconsider the CaRFG3
4 amendments after the final rule was adopted. In addition, Tesoro submitted written
5 comments to CARB during the Supplemental Comment Period. Therefore, Tesoro has
6 exhausted its administrative remedies with respect to the CaRFG3 amendments.

7 **FIRST CAUSE OF ACTION**

8 [Writ of Mandamus – Code of Civil Procedure §§ 1085]

9 16. Tesoro re-alleges and incorporates herein by reference each and every
10 allegation contained in paragraphs 1 through 15, inclusive.

11 17. Courts may rely upon mandamus under the Code of Civil Procedure § 1085
12 to review the validity of a quasi-legislative action. If an administrative agency has
13 exceeded its authority in the exercise of its quasi-legislative powers, a court may issue a
14 writ of mandate. *See Clean Air Constituency v. State Air Resources Board*, 11 Cal. 3d
15 801, 809 (1974). Tesoro has no plain, speedy, and adequate remedy in the ordinary
16 course of law, other than this proceeding to compel CARB to take the actions requested
17 by this Petition.

18 18. In adopting the CaRFG3 amendments, CARB exceeded its authority under
19 the Health and Safety Code. Specifically, CARB acted in violation of and exceeded its
20 authority under Health and Safety Code Sections 43013(e), 43013.1(b), 43013.1(b)(3) and
21 43013(e).

22 19. Pursuant to Health and Safety Code Section 43013(e), before CARB can
23 adopt or amend any standard or regulation relating to motor vehicle fuel specifications,
24 CARB must “[d]etermine the cost-effectiveness of the adoption or amendment of the
25 standard or regulation.” Pursuant to 13 C.C.R. Section 2265, as amended by the CaRFG3
26 amendments, the deadline for producers to make gasoline compliant with the standards
27 stated in the CaRFG3 amendments is December 31, 2009. Prior to OAL’s disapproval on
28 June 9, 2008 of the CaRFG3 amendments, CARB estimated that it would cost 200 to 400

1 million dollars in capital improvements to make the refinery modifications required to
2 make gasoline compliant with the CaRFG3 amendments. Further, CARB has
3 acknowledged that it will take at least some refiners 48 months to make the refinery
4 modifications required to produce gasoline compliant with the CaRFG3 amendments.
5 The cost of the refinery modifications required by the CaRFG3 amendments will
6 ultimately be passed along to retail consumers and businesses. In fact, in a report
7 presented to CARB on June 14, 2007, the California Energy Commission estimated that
8 the cost to consumers and businesses of the CaRFG3 amendments to be 4.2 to 6.5 cents
9 per gallon of gasoline (\$716 million to \$1.1 billion per year).

10 20. The time period between the August 29, 2008 OAL approval of the
11 CaRFG3 amendments and the December 31, 2009 deadline is approximately 16 months.
12 In order to have any prospect to make the required refinery modifications during this short
13 period, refiners have already started to design and engineer the required refinery
14 modifications. However, there is no evidence that CARB reevaluated the above-referenced
15 cost-estimate in light of the shortening of the time period for refiners to meet the
16 December 31, 2009 deadline resulting from OAL's June 9, 2008 disapproval of the
17 CaRFG3 amendments. Therefore, CARB has not, as required, evaluated the ability of
18 refiners or the cost required to make the required refinery modifications during this short
19 time period. Therefore, in adopting the amendments to this section, CARB acted in
20 violation of and in excess of CARB's authority under Health and Safety Code Section
21 43013(e).

22 21. CARB's failure to make this required cost analysis is particularly
23 problematic in that CARB is currently set to adopt a new Low Carbon Fuel Standard
24 ("LCFS") for gasoline. CARB acknowledges that adoption with the LCFS should be
25 consistent with the CaRFG3 amendments. Due to the new awareness of the
26 environmental impacts associated with ethanol production and use, it appears that the
27 LCFS will mandate the production of gasoline that will require refinery modifications that
28 are inconsistent with the refinery modifications required by the CaRFG3 amendments.

1 Therefore, it appears that costs that refiners and California consumers will incur with
2 respect to the refinery modifications mandated by the CaRFG3 amendments will be
3 stranded or go to waste when further refinery modifications are required to make LCFS
4 compliant gasoline.

5 22. Health and Safety Code Section 43013.1(b) only authorizes CARB to adopt
6 regulations for CaRFG3 that “[m]aintain or improve upon emissions and air quality
7 benefits achieved by California Phase 2 Reformulated Gasoline in California as of January
8 1, 1999.” Further, Health and Safety Code Section 43013.1(b)(3) requires regulations for
9 CaRFG3 to be “subject to multimedia evaluation pursuant to [Health and Safety Code]
10 Section 43830.8.” Pursuant to Health and Safety Code Section 43830.8(b), “‘multimedia
11 evaluation’ means the identification and evaluation of any significant adverse impact on
12 public health on the environment, including air, water or soil that may result from the
13 production, use, or disposal of the motor vehicle fuel that may be used to meet the state
14 board’s motor vehicle specifications.”

15 23. CARB stated in their Initial Statement of Reasons dated April 27, 2007
16 regarding the CaRFG3 amendments that the amendments would result in a decrease in
17 greenhouse gas (GHG) emissions. However, the additional ethanol blending required by
18 the CaRFG3 amendments will result in additional ethanol production causing increased
19 GHG emissions. In fact, in its May 23, 2008 response to WSPA regarding WSPA’s
20 petition to reconsider the CaRFG3 amendments, CARB stated that it “has now learned” of
21 the significance of GHG emissions associated with crop-based ethanol usage. Further, on
22 June 30, 2008 at the “Life Cycle Analysis Working Group Meeting” CARB admitted that
23 there is “much work left before [CARB] will be able to quantify land use change effects
24 for regulatory purposes.”

25 24. Therefore, CARB did not properly assess the land use impacts associated
26 with ethanol production required by the use of ethanol mandated by the CaRFG3
27 amendments. As a result, CARB did not make the required determination that the
28 CaRFG3 amendments will meet or improve upon emissions and air quality benefits.

1 CARB also failed to conduct the required multimedia evaluation of the land use impacts
2 associated with increased ethanol production mandated by the CaRFG3 amendments.
3 Therefore, in adopting the CaRFG3 amendments to this section, CARB acted in violation
4 of and in excess of CARB's authority under Health and Safety Code Sections 43013.1(b)
5 and 43013.1(b)(3).

6 25. Pursuant to 13 C.C.R. Section 2265.5, a producer that cannot meet the
7 December 31, 2009 deadline may sell non-compliant gasoline if it maintains a CARB
8 approved AERP, as discussed in paragraph 13 above. An AERP allows a producer that
9 cannot meet the December 31, 2009 deadline to sell non-compliant gasoline but mitigate
10 the excess emissions associated with this gasoline by offsetting them with emission
11 reductions obtained from other combustion or gasoline-related sources. The offset
12 emission programs potentially available for use under an AERP include participating in
13 older model vehicle destruction programs and providing incentive grants for cleaner-than-
14 required engines, equipment and other sources of pollution.

15 26. As stated above, Health and Safety Code Section 43013.1(b) only authorizes
16 CARB to adopt regulations for CaRFG3 that "[m]aintain or improve upon emissions and
17 air quality benefits achieved by California Phase 2 Reformulated Gasoline in California as
18 of January 1, 1999." However, the AERP offset emission program is not a regulation of
19 CaRFG3. Instead, it is an attempt to offset the emissions created by the use of CaRFG3
20 that does not comply with the CaRFG3 amendments through the regulation of other
21 sources. Therefore, CARB acted in violation of and exceeded its authority under Health
22 and Safety Code Section 43013(b) in adopting 13 C.C.R. Section 2265.5 of the CaRFG3
23 amendments establishing the AERP program because the AERP program does not
24 actually regulate CaRFG3.

25 27. Further, as stated above, pursuant to Health and Safety Code Section
26 43013(e), before CARB can adopt or amend any standard or regulation relating to motor
27 vehicle fuel specifications, CARB must "[d]etermine the cost-effectiveness of the
28 adoption or amendment of the standard or regulation." Further, Health and Safety Code

1 Section 43013.1(b) only authorizes CARB to adopt regulations for CaRFG3 that
2 “[m]aintain or improve upon emissions and air quality benefits achieved by California
3 Phase 2 Reformulated Gasoline in California as of January 1, 1999.” In addition, Health
4 and Safety Code Section 43013.1(b)(3) requires regulations for CaRFG3 to be “subject to
5 multimedia evaluation pursuant to [Health and Safety Code] Section 43830.8.”

6 28. Therefore, under the above-referenced provisions of the Health and Safety
7 Code, CARB only has the authority to adopt the AERP program, if CARB:

8 (i) demonstrates that an AERP maintains or improves gasoline emissions, (ii) determines
9 the cost-effectiveness of an AERP, and (iii) submits the AERP to multimedia analysis of
10 its potential environmental impacts. However, the specific components of an AERP will
11 be unknown until the producer selects and CARB approves a specific AERP. Therefore,
12 prior to adopting the CaRFG3 amendments, CARB could not have and did not take any of
13 these required actions or make any of these required findings as to any specific AERP or
14 the AERP program in general. Therefore, in adopting the AERP program, CARB acted in
15 violation of and in excess of CARB’s authority under Health and Safety Code Sections
16 43013.1(b), 43013.1(b)(3) and 43013(e).

17 29. In adopting the above-referenced provision of the CaRFG3 amendments,
18 CARB has exceeded its authority under the above-referenced sections of the Health and
19 Safety Code. As a result, the Court should issue a writ of mandate directing CARB to
20 rescind and invalidate these provisions of the CaRFG3 amendments.

21 SECOND CAUSE OF ACTION

22 [Writ of Administrative Mandamus – Code of Civil Procedure §§ 1085 and 1094.5]

23 30. Tesoro re-alleges and incorporates herein by reference each and every
24 allegation contained in paragraphs 1 through 29, inclusive.

25 31. Writ relief is available under Code of Civil Procedure § 1085 or Code of
26 Civil Procedure § 1094.5 to correct a legislative decision that is arbitrary, capricious,
27 entirely lacking in evidentiary support, contrary to established public policy, unlawful, or
28 procedurally unfair.

1 32. CARB, at all relevant times mentioned herein, proceeded without and in
2 excess of its jurisdiction and prejudicially abused its discretion in adopting the CaRFG3
3 amendments. CARB has not proceeded in the manner required by law, the CaRFG3
4 amendments and, in particular, 13 C.C.R. Section 2265, and the AERP program are not
5 supported by the required conclusions or findings, and the conclusions or findings made
6 by CARB are not supported by substantial evidence.

7 33. There is no evidence that CARB determined the ability of refiners to make
8 the refinery improvements required to make compliant gasoline within the approximate 16
9 month period from OAL's approval of the CaRFG3 amendments and the December 31,
10 2009 deadline. Further, there is no evidence that CARB determined the cost-effectiveness
11 of making these refinery improvements within this short time frame. Prior to OAL's
12 disapproval on June 9, 2008 of the CaRFG3 amendments, CARB estimated that it will
13 cost 200 to 400 million dollars in capital improvements to make the refinery modifications
14 required by the CaRFG3 amendments. However, there is no evidence that CARB
15 reevaluated this cost-estimate in light of the shortening of the time period for refiners to
16 meet the December 31, 2009 deadline resulting from OAL's June 9, 2008 disapproval of
17 the CaRFG3 amendments.

18 34. Also, to the extent that CARB did determine that it would be cost-effective
19 for refiners to make the refinery modifications required by the CaRFG3 amendments by
20 the December 31, 2009 deadline, there is no evidence, analysis, or explanation that would
21 support that conclusion. In fact, this finding is contradicted by CARB's own finding that
22 it would take some refiners 48 months to make the refinery modifications required by the
23 CaRFG3 amendments. Further, the estimate made by CARB prior to OAL's disapproval
24 on June 9, 2008 of the CaRFG3 amendments that it will cost 200 to 400 million dollars in
25 capital improvements to make the refinery modifications required by the CaRFG3
26 amendments is contradicted by a report prepared by the California Energy Commission
27 and presented to CARB on June 14, 2007 that the cost to refiners to make the required
28 refinery modifications will be \$825 million to \$1.2 billion at a cost to California

1 businesses and consumers of 4.2 to 6.5 cents per gallon of gasoline (\$716 million to \$1.1
2 billion per year).

3 35. There is no evidence that CARB properly assessed the land use impacts
4 associated with ethanol production required by the use of ethanol mandated by the
5 CaRFG3 amendments. CARB stated in their Initial Statement of Reasons dated April 27,
6 2007 regarding the CaRFG3 amendments that the amendments would result in a decrease
7 in GHG emissions. However, the additional ethanol blending required by the CaRFG3
8 amendments will result in additional ethanol production causing increased GHG
9 emissions. In fact, in its May 23, 2008 response to WSPA regarding WSPA's petition to
10 reconsider the CaRFG3 amendments, CARB stated that it "has now learned" of the
11 significance of GHG emissions associates with crop-based ethanol usage. Further, on
12 June 30, 2008 at the "Life Cycle Analysis Working Group Meeting," CARB admitted that
13 there is "much work left before [CARB] will be able to quantify land use change effects
14 for regulatory purposes." Therefore, in adopting the CaRFG3 amendments, CARB did
15 not make the required determination that the amendments will meet or improve upon
16 emissions and air quality benefits.

17 36. Further, to the extent that CARB made this finding, there is no evidence,
18 analysis or explanation that would support that finding. In addition, if it was made, this
19 finding is contradicted by recent scientific information regarding potential negative GHG
20 impacts from land use changes due to biofuel production and indicates that this conclusion
21 is suspect. For example, as referenced in Tesoro's comment to CARB during the
22 Supplemental Comment Period, a recent article by Timothy Searchinger published in
23 Sciencexpress advises that use of croplands for biofuels increases greenhouse gasses
24 through emissions from land use changes.¹ Also, as referenced in Tesoro's comment to
25 CARB during the Supplemental Comment Period, Nobel Prize winning chemist Dr. Paul
26 Crutzen has recently published an important paper suggesting that a higher percentage of

27 ¹ Timothy Searchinger, Ralph Heimlich, R. A. Houghton, Fengxia Dong, Amani Elobeid, Jacinto Fabiosa, Simla
28 Tokgoz, Dermot Hays, Tun-Hsiang Yu, "Use of U.S. Croplands for Biofuels Increases Greenhouse Gasses Through
Emissions from Land Use Change", Sciencexpress Report, 7 February, 2008.

1 GHG emissions than previously believed results from the use of fertilizer in the
2 production of corn-based ethanol.²

3 37. There is no evidence that in adopting the AERP program that CARB:
4 (i) determined that an AERP will maintain or improve emissions, and (ii) determined the
5 cost-effectiveness of any specific AERP or the AERP program as a whole. Further, to the
6 extent that CARB made these findings, there is no evidence, analysis or explanation that
7 would support either of these required findings.

8 38. Therefore, by adopting the above-referenced provisions of the CaRFG3
9 amendments, CARB abused its discretion and proceeded in an arbitrary and capricious
10 manner that is contrary to law and is factually deficient. Accordingly, this Court should
11 order CARB to rescind the above-referenced provisions of the CaRFG3 amendments.

12 THIRD CAUSE OF ACTION

13 [Declaratory and Injunctive Relief]

14 39. Petitioners re-allege and incorporate herein by reference each and every
15 allegation contained in paragraphs 1 through 38, inclusive.

16 40. An actual controversy has arisen between Tesoro and CARB concerning
17 their respective rights and duties.

18 41. Tesoro seeks a judicial declaration of the rights and duties of the respective
19 parties. Tesoro has no plain, speedy and adequate remedy at law, other than this
20 proceeding to compel CARB to take the actions requested by this Petition. Unless and
21 until CARB is enjoined from continued violation of the law by order of this Court, Tesoro
22 will suffer great and irreparable injury. Tesoro seeks declaratory and injunctive relief to
23 prevent continued harm and to protect Tesoro and the residents of California from
24 CARB's unlawful conduct.

25 42. Accordingly, Tesoro requests that this Court declare that: (1) CARB acted
26 in violation of and in excess of its authority under the Health and Safety Code in adopting

27 ² Dr. Paul Crutzen, Mosler, Smith and Winiwarer, "N2O Release from Agro Biofuel Production Negates Global
28 Warning Reduction by Replacing Fossil Fuels", Atmospheric Chemistry and Physics Discussions, 7, 11911-11205,
August, 2007.

1 the provisions of the CaRFG3 amendments discussed above; and (2) CARB abused its
2 discretion and acted without substantial evidence in adopting the provisions of the
3 CaRFG3 amendments discussed above.

4 **RELIEF REQUESTED**

5 WHEREFORE, Tesoro respectfully prays for relief as follows:

- 6 1. That the Court issue a preemptory writ of mandate ordering CARB to
7 rescind the provisions of the CaRFG3 amendments discussed above.
- 8 2. That the Court declare the respective rights and duties of the parties, and
9 that by such declaration and judgment, it be declared that CARB must rescind the
10 provisions of the CaRFG3 amendments discussed above.
- 11 3. That the Court issue a temporary stay prohibiting CARB from enforcing the
12 provisions of the CaRFG3 amendments discussed above.
- 13 4. That the Court grant a preliminary and permanent injunction enjoining
14 CARB from enforcing the provisions of the CaRFG3 amendments discussed above.
- 15 5. For attorneys' fees under Code of Civil Procedure Section 1021.5.
- 16 6. That the Court grant such other and further legal and equitable relief as it
17 deems just and proper.

18
19 Dated: September 29, 2008

MANATT, PHELPS & PHILLIPS, LLP
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CRAIG A. MOYER
MARK D. JOHNSON
DANA P. PALMER

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23 By: 

Mark D. Johnson
Attorneys for Petitioner and Plaintiff
TESORO REFINING AND MARKETING
COMPANY

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VERIFICATION

I have read the foregoing **VERIFIED PETITION FOR WRIT OF ADMINISTRATIVE AND TRADITIONAL MANDAMUS, REQUEST FOR STAY AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** and know its contents.



I am the Senior Vice President of Tesoro Refining and Marketing Company, the Petitioner in this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I have read the foregoing document. I am informed and believe and on that ground allege that the matters stated in it are true.

Executed at San Antonio, Texas on this 29th day of September, 2008.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Daniel J. Porter
Senior Vice President,
Tesoro Refining and Marketing Inc.