WIRA WESTERN INDEPENDENT REFINERS ASSOCIATION

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March 11, 2009

Client-Matter: 23292-030

VIA EMAIL

Ms. Jeannie Blakeslee
California Air Resources Board
1001 "I" Street
Sacramento, CA 95812
Email: jblakesl@arb.ca.gov

Re: Comments on Proposed AB 32 Administrative Fee

Dear Ms. Blakeslee:

The Western Independent Refiners Association (WIRA) is a trade association representing small and independent refiners on the West Coast. As your rulemakings have consistently acknowledged, small and independent refiners are an important pro-competitive force in the market for refined petroleum products. WIRA members do not have the same access to capital or economies of scale as major oil companies. WIRA does not support the adoption of the proposed AB 32 administrative fee (the "fee") as currently proposed. Highlighting the many problems with the fee is that it would *not* be imposed on nearly 40 percent of greenhouse gas (GHG) emitters, based on 2004 data. This makes the proposed fee inequitable at best.

<u>Improper Narrow Application of the Fee and Resulting Disproportionate Impact</u>

WIRA strongly believes the proposed fee improperly targets refiners instead of broadly applying to all significant sources of GHG emissions. Refinery processes comprise less than 10 percent of California's GHG emissions. Outside of the proposed fee on fuel usage, CARB staff have identified only two sectors (refining and cement manufacturing) to fund the AB 32 program, yet there are many other sectors that emit GHGs. AB 32 fees should be borne equitably across all sources within emitting sectors.

The proposed methodology overcharges the refining sector. Using 2004 as a basis, refiners would pay 65 percent of the fee but contribute a much smaller proportion (approximately) of statewide GHG emissions.

The proposed methodology also inequitably treats California-produced fuels versus imported fuels. Producers of gasoline and diesel fuels produced in California will have to pay almost 20 percent more per gallon than the fee assessed on the same fuel imported into California. Depending on the size of the Total Required Revenue that will be allocated, this inequity could have unintended consequences by affecting the relative competitiveness of locally produced fuels relative to imported fuels.

In addition to the fee, refiners will also be subject to the Low Carbon Fuel Standard (LCFS) and other potential controls identified in the Scoping Plan. CARB must recognize that refiners are part of the solution and have committed enormous amounts of capital into clean fuels projects that will benefit AB 32 program objectives by lowering GHG emissions.

Finally, placing the burden of funding the AB 32 program by imposing a fee on a very limited number of upstream sources is counter to the state law that fees be reasonably proportioned to avoid constituting a tax. Because transportation is the single largest source of GHG emissions, WIRA recommends a transparent "pay at the pump" fee specifically ear-marked to fund the AB 32 program. Through this approach, all taxpayers consuming gasoline could be made aware of the need for and use of the fee.

<u>"Blank Check" Approach</u>

WIRA is also uncomfortable with the apparent "blank check" approach for establishing the proposed administrative fee. Currently, it does not appear that CARB staff have finalized the revenue needs of the program or the scope of what will be funded. It is not clear if the proposed fees will include past costs of implementing the program to date or will it be limited solely to future program costs . It is not clear how cost sharing will be effected between CARB and other state and local District agencies acting within the AB 32 program.

<u>Calculation of Fee and Prevention of Double-Counting</u>

WIRA is opposed to establishing a fee without first itemizing how the revenue will be allocated and dispersed. WIRA also has concerns that adequate safeguards are not in place to prevent double-counting GHG emissions.

<u>Total Cap on Fee</u>

WIRA also recommends a total cap on the annual assessment of the fee, including safeguards against excess charges, and a transparent process that allows responsible parties sufficient notice if fee increases are proposed.

<u>Sunset Provision</u>

WIRA believes the proposed fee regulation should include a sunset provision so the fee will expire within a five-year period, then requiring CARB to consider all elements of the fee for review and reauthorization. This should be timed consistent with the five-year review of the Scoping Plan.

WIRA appreciates this opportunity to comment on the proposed AB 32 administrative fee.

Respectfully submitted, DBP for

Craig A. Moyer

Craig A. Moyer
Executive Director and General Counsel

cc: Edie Chang (via email)
Jon Costantino (via email)

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