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January 24, 2012

Clerk of the Board, Air Resources Board
1001 I Street
Sacramento, CA 95814

Via electronic submittal to: http://www.arb.ca.gov/lispub/comm/bclist.php

Re: **Notice of Public Hearing to Consider Adoption of the 2012 Amendments to the Clean Fuels Outlet (CFO) Regulation – ConocoPhillips Company Comments**

Dear Clerk of the Board,

ConocoPhillips Company (ConocoPhillips) appreciates the opportunity to provide these comments. ConocoPhillips will be directly impacted by this amended rule because we own and operate two refineries in the State of California and will be a "Major refiner/importer of gasoline" as defined in the proposed amendments. In addition, we have pipeline and terminal assets in the State that distribute fuels produced at our refineries.

ConocoPhillips also is a member of the Western States Petroleum Association (WSPA) and supports the comments submitted by WSPA for this hearing and rulemaking. Rather than repeat WSPA's detailed comments here, we incorporate them by reference into this letter. ConocoPhillips specifically opposes the proposed modifications to the CFO regulation that shifts the burden of motor fuel hydrogen infrastructure on to major refiner/importers of gasoline for the following reasons.

Legal Authority
As described in detail by WSPA in its comments, if amended as proposed the CFO regulation will violate several laws and/or legal authorities:

- the U.S. Constitution (both the Takings Clause of the Fifth Amendment as applied to the states via the Fourteenth Amendment and the Commerce Clause);
- the requirement of an administrative agency to remain within the scope of its statutory authority and not promulgate rules *ultra vires*;
- Proposition 26; and
- CEQA.

Bad Public Policy
We believe the proposed regulatory changes are bad public policy in that CARB is effectively picking "winners and losers" and placing the burden for those outlets on producers and importers of gasoline. The proposed amendments would require our company to install hydrogen fueling stations at sites that we do not own or operate. In fact, ConocoPhillips does not own or operate any retail outlets in California. In addition, the selection of those sites would be at locations prescribed by CARB. Further, the number of stations and the required investment would be based upon forecasts and

projections from vehicle manufacturers that may never materialize based upon consumer choice and actual vehicle sales.

We urge the Board to reject the staff proposed provision identified above. If the Government wants to mandate hydrogen fueling outlets, the burden of the mandate should not be borne by the petroleum based fuel suppliers. Thank you for considering ConocoPhillips' comments. Please feel free to contact me if you have questions regarding our comments.

Sincerely,

<H. Daniel Sinks>