January 25, 2012

Chairman Mary Nichols and Board Members
California Air Resources Board
1001 "I" Street
Sacramento, CA 95814

Re: Support for the Clean Fuels Outlet, Zero Emissions Vehicle, and Low Emissions Vehicle Regulations.

Dear Chairman Nichols and Members of the Board,

Energy Independence Now (EIN) would like to thank you for the opportunity to comment on the Advanced Clean Cars regulatory package. We want to commend you and your staff's efforts to put forward a comprehensive, well thought out set of regulations and to voice our strong support for their adoption.

In what follows, we direct our comments on the complimentary Zero Emissions Vehicle (ZEV) and Clean Fuels Outlet (CFO) regulation revisions.

<u>The Revised Clean Fuels Outlet</u>
The revision to the CFO recognizes that the ZEV program needs an infrastructure counterpart to ensure the next generation of vehicles and fuel infrastructure are deployed in tandem. We support this premise, as well as the current focus on hydrogen and fuel cell vehicles in this revision of the CFO regulation.

There is now widespread agreement among automakers, industry analysts and forward-thinking energy companies that infrastructure certainty is the most important factor needed to allow automakers to invest in commercial-scale fuel cell vehicle deployment. While other countries such as Germany, Japan and Korea are moving forward with infrastructure rollout, the CFO provides this certainty for the State of California, and shows that we are serious about deploying ZEVs for the mass market.

EIN's support for the revised CFO regulation is based on the following assessment:

1. The CFO presents a tremendous potential upside and minimal downside risks to consumers, industry and the State. If ZEV deployments proceed as planned, sustainable and profitable clean transport markets will be established. If ZEV deployments fail, losses to the regulated parties will be minimized. In the ARB staff's worst-case scenario (i.e., the CFO is fully activated and fuel cell vehicles [FCVs] do not come), expenses associated with CFO compliance would cost the equivalent of $0.0027 and $0.0076 per gallon of gasoline sold over the course of one year (e.g. 2020). Assuming the vehicles do come as projected, the first two years of the regulation would cost major oil refiners/importers less than $4 million net combined, compared to profits measured in

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the billions of dollars. After the first two years, these parties would start to realize a profit and be able to recoup their investments.

2. The change of the regulated parties is appropriate and fairly done. By changing the regulated party from owner/lessors of retail gasoline outlets to "major refiner/importers of gasoline," ARB is evenly spreading the requirement to build CFOs fairly among the parties that continue to benefit financially from California's use of gasoline.

3. We also recognize that the CFO revisions provide regulated parties with great compliance flexibility. This aligns with the ARB's emphasis on the outcomes, rather than the mechanism, and we strongly support it.

4. ARB staff has done an excellent job in thinking through the details of the CFO program to ensure that investment risks are minimized, while ensuring the necessary infrastructure certainty. This includes special attention to the numbers of vehicles that trigger the reviews and possible obligations, the use of regions to reflect the concentrated rollout plans, and to the *timing* of the reviews and mandates. We strongly support these revisions that have been established.

5. The CFO revision appropriately acknowledges that battery electric vehicles may also need a regulatory mechanism to meet some of their infrastructure needs, but that it is too early to know what that need is, and the best mechanisms to address it. We therefore also strongly support Staff's proposal to evaluate the development and usage of workplace and public charging infrastructure, and make recommendations for further actions in two years. Data gathering during that period will be critical, and we urge ARB staff to dedicated resources to that process in the lead up to the review.

The Hydrogen Infrastructure Memorandum of Agreement (MOA) Option

Over the past 5 plus months, EIN has participated in discussions with a diverse group of industry, government (including ARB staff), and non-profit stakeholders brought together by the goal of creating a voluntary, incentive based approach to hydrogen infrastructure deployment. This effort has taken place to essentially provide an alternate compliance path for the CFO regulated parties.

Our support for the MOA process hinges on the fact that it is focused on creating a profitable marketplace as rapidly as possible, while acknowledging that incentive funding, either from public or private sources, will be necessary for the first station investors. It is EIN's understanding that ARB staff may present regulatory language that would allow for the hibernation of the hydrogen section of the CFO should a MOA be signed and successfully implemented. We support the board's adoption of this provision if the following provisions are included:

1. The MOA must be agreed to by both the oil and auto industries.
2. Specific timelines and milestones must be clearly delineated so that the Executive Officer can activate the CFO if milestones are not met with the MOA.
3. Should the MOA fail, regulatory provisions must be in place to ensure time is not lost in the greater effort to deploy infrastructure.

The Complimentary Nature of the CFO and MOA

We are optimistic that MOA approach can meet the needs of the early commercial hydrogen infrastructure market. However, we remain convinced that the CFO is an absolutely critical backstop to this effort. From EIN's perspective, without the CFO proposal on the table, it is highly unlikely that the MOA process would have either begun or come as far as it has in developing a workable plan to move forward.

Assuming a MOA is signed, the CFO is needed for at least three reasons: 1) to keep all relevant parties at the table to give the MOA the maximum chance for success, 2) to provide a fallback option if the MOA fails to make the necessary progress, and 3) give automakers the certainty they need to invest in mass FCV deployment. Ideally, the MOA will set up a well-coordinated, cost-effective deployment strategy that can be used either with or without the CFO activated.

In short, the MOA effort represents an ideal approach to deploying infrastructure but carries with it substantial uncertainty. Conversely, the CFO provides certainty but not an ideal infrastructure deployment method. Together, the MOA and CFO can provide both the certainty and deployment strategy needed to successfully overcome the early market "chicken and egg" problem that defines FCV and hydrogen station deployment.

The Zero Emissions Vehicle Revision

A tremendous amount of work has gone into the redevelopment of the ZEV regulation, and we commend ARB staff's efforts to strengthen the ZEV requirement and engage stakeholders to ensure that a broad portfolio of ZEVs and TZEVs continues to move forward.

While we agree with the general structure of the ZEV revision, we believe the program should be even stronger to result in at least 1.8 million ZEV and TZEV sales between 2018 and 2025. This 20 percent increase from the staff proposal is needed to meet California's public health and climate goals. At least half of these sales should be pure ZEVs to ensure automakers make serious investments in vehicles that can deliver true zero emissions when combined with renewable energy.

Given the need for more ZEVs than currently proposed by staff, we have grown particularly concerned about the proposal to allow over-compliance with the national GHG program to count toward an automakers' ZEV obligation. This proposal should be eliminated or significantly modified to avoid the risk of lowering ZEV targets by as much as 40 percent between 2018 and 2021. Absent elimination, the following actions can help limit the losses to the ZEV program:

- Cap reductions in ZEV credits from the over-compliance provision to no more than 10% across the industry during the time period when such reductions are available.

- Raise the over-compliance threshold to at least 5 grams per mile to qualify for ZEV credits.

- Ensure that over-compliance is calculated in a manner consistent with full accounting of upstream greenhouse gas emissions for ZEVs and TZEVs.

- Clarify the intent of the program to be temporary and to not represent an inherent link between the ZEV program and national GHG program.

- Monitor the provision over MY2014 to MY2025 and report every two years back to the Board on the number of manufacturers intending to participate, their market share, and the number of ZEV or TZEV vehicles losses for the program.

Thank you for the opportunity to provide comments on this critical regulatory package. With this package, ARB continues to play a critical leadership role in reducing our state's dependence on oil, improving our air quality, and reducing greenhouse gas emissions. We applaud your effort to set attainable standards that will accelerate the transition to the advanced clean cars that consumers want.

Sincerely,

Tyson Eckerle
Executive Director

Remy Garderet
Policy Director