Elizabeth Bourbon
Managing Counsel
Environmental Legal
And Regulatory Affairs Law

March 8, 2012

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

Sent by electronic transmission via ARB webpage

Re: **2012 Proposed Amendments to the Clean Fuels Outlet Regulation Comments of Valero Refining Company—California, Ultramar Inc., Valero Marketing and Supply Company, and Valero Renewable Fuels**

Board Members:

On behalf of Valero Refining Company – California and Ultramar Inc, together with Valero Marketing and Supply Company and Valero Renewable Fuels (collectively "Valero"), I appreciate this opportunity to provide comments regarding the California Air Resources Board ("ARB") 2012 Proposed Amendments to the Clean Fuel Outlet (CFO) Regulation. Valero's refining entities in California own and operate two refineries in the state of California, with a combined throughput capacity of over 305,000 barrels per day. There are over seven hundred Valero-branded gas stations in California, the vast majority of which are owned and operated by independent dealers under a branding agreement. Valero is also one of the largest ethanol producers in the U.S., and is investing in renewable diesel and cellulosic ethanol projects at various locations.

Valero submitted comments on the proposed draft modifications to the CFO regulation prior to the January 26-27 Board hearing (see letter dated January 24, 2012, from John Braeutigam). Our concerns with the proposed revisions to the CFO regulation remain as discussed in that letter and in the letter submitted by the Western States Petroleum Association (WSPA), of which Valero is a member. In response to the Notice of Public Availability of Modified Regulation, WSPA is providing additional comments, which Valero supports and incorporates by reference herein. In this letter, Valero provides the following additional remarks to address modifications to the draft CFO regulation made pursuant to ARB Resolution 12-11.

One Valero Way • San Antonio, Texas 78249-1616
Post Office Box 696000 • San Antonio, Texas 78269-6000 • Telephone (210) 345-2000

- ***The "hibernation" provision in proposed new Section 2304(a)(2)(C)(3) is ambiguous, vague, and without sound legal basis.***

The Board Resolution to approve the draft CFO regulation with staff's recommended modifications was passed while discussions were underway to negotiate a Memorandum of Agreement that would provide an alternative means to achieve ARB's goal of developing hydrogen fueling infrastructure—notably, an alternative means which ARB did not consider in its analysis of alternatives to the proposed CFO regulation. Rather than allow the negotiations to reach some resolution, ARB has elected to approve the regulation essentially as proposed, but with the proposed addition of a "hibernation" provision in Section 2304(a)(2)(C)(3). This provision would suspend the obligation for major refiners/importers to provide hydrogen clean fuel outlets if, when, and while a Memorandum of Agreement addressing certain topics is negotiated and implemented. However, the "hibernation" provision is vague and ambiguous. For example, it fails to identify who is entitled to participate in the MOA process; who makes the determination that the MOA is no longer meeting the criteria of the rule and on what basis; and whether any relief will be provided from the scheduling requirements and/or penalty provisions under the rule if the rule springs out of "hibernation" at a later date. This degree of uncertainty belies a fundamental principle of administrative law that regulations should clearly identify parties' obligations. If ARB has any interest in negotiating a solution acceptable to the obligated parties, it should postpone adoption of the proposed revisions to the CFO regulation, rather than adopting these revisions conditionally.

- ***Adjustment of the required number of outlets based on updated auto manufacturer reports twenty months before the compliance year is still not sufficient to prevent harm to regulated parties.***

ARB proposes the addition of Section 2304(a)(2)(F) and 2307(f) to provide for the Executive Officer to adjust the final number of clean fuel outlets required for a particular compliance year nineteen months before the outlets are required to be completed based on updated projections from auto manufacturers. While Valero appreciates ARB's recognition of and attempt to mitigate the costs that may be incurred needlessly based on inflated automaker projections, we respectfully request that adjustments made nineteen months before outlets are to be operational are not likely to offer meaningful relief. For one thing, construction of these outlets may require ordering long-lead equipment subject to agreements that may or may not provide refunds for cancellation.

Further, auto manufacturers' twenty-month forecasts may be no more reliable than longer-term forecasts. A timely example of the speed with which auto manufacturers can and will adapt to changing market conditions occurred on March 2, when General Motors announced that it is laying off auto workers and suspending production of the Chevy Volt for a five-week period due to inability to meet projected sales volumes for 2011. According to several news sources, 2011 sales of the Volt reached only 7,671, falling well short of the projected sales volume of 10,000 vehicles, and forecasted sales for 2012 now are being drastically revised. It has been widely reported that the key reason sales did not meet targets was related primarily to the high price of the vehicles, rather than to availability of fueling infrastructure. This news story illustrates how automakers are likely to respond if the market does not support their projections. If the 10,000 vehicle projection had been targeted for a regional market in California after the CFO modifications were in effect, a nineteen-month adjustment to the CFO obligations would not have mitigated the costs incurred by obligated parties. The administrative penalty to be assessed automakers for falling short of projections is trivial in comparison with the cost savings from suspending or ceasing production. As indicated in Valero's comments on the draft regulation, refiners and importers should not be obligated parties at all. However, if ARB is willing to consider measures to mitigate the costs incurred by those parties based on shortfalls in auto manufacturers' projections, a more equitable remedy would be to require automakers to reimburse obligated parties for costs incurred in reliance on overly optimistic projections.

For the reasons discussed above and in the comments submitted by WSPA, and in Valero's and WSPA's previously submitted comments, Valero strongly urges ARB to refrain from moving forward with the proposed amendments to the Clean Fuel Outlet regulations. If the CFO modifications nevertheless move forward, we respectfully request that ARB consider the remarks above. If you have any questions, please contact me at (210) 345-4506.

Sincerely,

Elizabeth Bourbon
Managing Counsel