



# *Kern Oil & Refining Co.*

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**VIA ELECTRONIC POSTING**

Comment List: lcfs2018

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

Dear Chairman Nichols and Board Members:

Kern Oil & Refining Co. (Kern) is providing comments on the California Air Resources Board's (ARB) proposed amendments to the Low Carbon Fuel Standard (LCFS) regulation released on March 6, 2018. Kern is specifically providing comments on the following: (1) Post 2020 compliance curve aggressive reductions; (2) Expansive third-party verification requirements; (3) Denial of retroactive claims; (4) Establishment of a buffer account; (5) Transitioning to use of GREET 3.0 efficiently; (6) Temporary pathway carbon intensities (CI); (7) the Refinery Investment Credit Pilot Program (RICPP); and (8) Inclusion of Alternative Jet Fuel as an opt-in fuel.

Kern is an independently owned, small refinery located in the Southern San Joaquin Valley, just outside Bakersfield, California. From the inception of the LCFS, Kern has been acutely aware of the potential inequalities that result from methodologies adopted to effectuate program goals in a manageable manner for ARB. At a crude oil capacity of 26,000 barrels per day, Kern is the smallest refinery in California currently producing transportation fuels. Given the vast discrepancy in facility size and complexity in the refining sector, a "one size fits all" approach puts Kern at a distinct disadvantage to its competitors. Kern appreciates both the Board and Staff for not only acknowledging these circumstances and functional differences, but for taking action and incorporating provisions that recognize and mitigate the inequalities inherent in the broader LCFS "average refinery" approach. Kern respectfully requests this consideration be extended by Staff in the current proposed amendments.

## **1. Apprehension Over Aggressive Post 2020 Compliance Curve**

ARB proposes to smooth the compliance curve by adjusting the existing rate of decline in annual benchmarks between 2018 and 2020, and by applying a consistent annual decline of 1.25% from 2018 to 2030, to achieve a 20% reduction in the carbon intensity of fuels by 2030. Kern appreciates ARB's responsiveness to previous comments that compliance curves should be appropriately managed to prevent imposition of a sudden dramatic reduction that would

negatively affect the market and regulated parties' ability to comply. Kern supports requiring reductions in a ratable and smooth manner.

Kern remains apprehensive about the post 2020 emission reduction curve and the potential disproportionate effect on smaller refineries. Specifically, Kern has concerns about ARB's aggressive incorporation of a 20% reduction in carbon intensity by 2030, despite the 2017 Climate Change Scoping Plan<sup>1</sup> analysis showing an 18% reduction in target as ample means to reach the State's goals by 2030. Kern is one of the smallest refineries in California, and is one of only two remaining small refineries in California producing finished transportation fuels. California Energy Commission data indicates that roughly 25 years ago a dozen small refineries operated in the state. The demise of over 80 % of California small refiners over the last 25 years is due in large part to exponentially expanding regulatory burdens and accompanying compliance costs, which disproportionately harms small businesses. Kern urges Staff to continue to consider the potential disproportionate impact on smaller facilities and ways to alleviate that burden.

As an example, ARB could consider applying the 18% reduction in carbon intensity to smaller facilities to help alleviate the burdensome costs of compliance. Kern's production accounts for roughly one percent of the state's total pool of transportation fuels. Granting a compliance curve of even two percent lower reduction in carbon intensity to smaller refineries, like Kern, would have negligible impact on meeting the state's goals while making a substantial difference in the facility's ability to comply. As a smaller company operating a single facility, Kern is less able to absorb regulatory costs. Notably, the reduced costs to comply in this example would create an opportunity to utilize funds for reinvestment in the facility – investments which are critical for Kern's long term operation and success.

## **2. Addition of Third Party Verification for Virtually All LCFS Reporting**

ARB proposes to incorporate provisions requiring third-party verification of nearly all aspects of reporting within LCFS. Kern is wary of the increased burden this will impose on fuel reporting entities, especially those with multiple reporting obligations within the various program elements. ARB's proposal applies verification requirements much more broadly to fuel reporting and project reporting, whereas workshops and concept papers to date have presented a verification scope primarily limited to that of fuel pathways.

Kern recognizes that ARB is incorporating concepts aligned with verification requirements existing in the Mandatory Reporting Regulation (MRR) and compliance offset protocols in the Cap and Trade program. Further, Kern acknowledges that ARB's proposal includes a provision that allows a reporting entity to amend the written monitoring plan in place for MRR reporting to include the requirements for LCFS verification. Nonetheless, Kern is concerned about the overlap and duplicity of reporting and verification requirements. Reporting and verification must be simple, efficient and avoid unnecessary implementation costs for regulated parties. Kern

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<sup>1</sup> [https://www.arb.ca.gov/cc/scopingplan/scoping\\_plan\\_2017.pdf](https://www.arb.ca.gov/cc/scopingplan/scoping_plan_2017.pdf)

urges ARB to review the entirety of provisions for report verification for areas of overlap, and to simplify the breadth of data that LCFS verification bodies must review.

Kern is cautiously optimistic that ARB is incorporating verification provisions in consideration of each certified pathway's unique attributes. Specifically, ARB's proposal specifies a verifier must develop its own validation/verification plan specific to the client and data available, consider incorporating easily obtained, accurate, measurable, and verifiable data to be included as part of the plan, and specify which parameters require ongoing data as opposed to other inputs that have little variability. Kern urges ARB to continue working with stakeholders and prospective verifiers on the best way to implement these concepts on a practical level. Pathway holders should be afforded the opportunity to work with ARB on training and certification materials for approved verifiers, and with the verification bodies in determining the final parameters of the verification plans, required parameters for data checks, and similar components key to the verification process.

### **3. Section 95486(a)(2) – Denial of Retroactive Claims for Credit Generation or Deficit Elimination**

Kern strongly disagrees with ARB's proposal under Section 95486(a)(2) to prohibit any claim to retroactively generate credits or eliminate deficits for which a reporting deadline has passed. Such a provision unfairly denies a fuel reporting entity the adjustments to their credit bank and/or deficit obligation when simple, correctable errors are discovered and remedied during the annual third-party verification process. Kern understands ARB's desire to ensure maximum accuracy in reporting and avoid situations where fraudulent actions or simple reporting errors result in invalid credit generation. However, in light of the proposed requirement for third-party verification of quarterly fuel reports, this provision is unnecessary and unjustly punitive.

Kern urges ARB to reconsider this approach and work with stakeholders to develop a balanced and fair set of provisions that will satisfy the need for integrity and accuracy in reporting. As an example, Kern suggests the section could be rewritten to provide that no credit could be generated or deficit eliminated retroactively beyond the issuance of a positive or qualified positive verification. This approach would allow fuel reporting entities to make revisions for correctable errors discovered during the verification process, and fairly receive the credit/deficit adjustment commensurate with those corrections, in line with the intended, appropriate use of the verification process.

### **4. Section 95486(a)(3) - Buffer Account is Preferable to “Buyer Beware” Approach to LCFS Credits**

Kern is generally supportive of ARB's proposal under Section 95486(a)(3) to add a buffer account to mitigate invalidation risk for credits. A buffer account is an encouraging alternative to a “buyers beware” approach where regulated parties are open to significant financial risk in purchasing compliance instruments. Kern has concerns with the inclusion of paragraph (A) in this section, which would grant the Executive Officer the authority to place in the buffer account

any credits that could have been claimed were it not for the proposed denial of retroactivity in Section 95486(a)(2). Kern urges ARB to amend this paragraph referencing retroactive credits as an allowable source for credits in the buffer account, consistent with Kern's suggested edits to the provisions for retroactivity noted in the comments specific to Section 95486(a)(2) above.

#### **5. Section 95488(c) – Transition to CA-GREET3.0 is Unduly Burdensome**

Kern urges ARB to reconsider the proposed requirement under 95488(c) that fuel pathway holders reapply for pathway certification using the updated CA-GREET3.0 model to have a valid fuel pathway for use in 2021 and beyond. Kern recognizes and appreciates that ARB's proposed approach to transitioning from pathways certified under CA-GREET2.0 now includes an additional year to transition existing fuel pathways. However, requiring fuel pathway holders to reapply, subject to the full pathway application and certification process again is also unnecessarily rigorous. Kern urges ARB to work with stakeholders to develop a transitional approach for integrating CA-GREET 3.0 with pathways recently certified using CA-GREET 2.0 in lieu of full reapplication.

Fuel pathway applicants today are required to use CA-GREET2.0 to model the life cycle emissions and determine the carbon intensity of their fuel. Tier 2 pathway applications largely require the use of site-specific data in determining the appropriate input values for various parameters required by the model. The process for collecting and evaluating the site-specific data in support of these unique inputs is an arduous task, but results in a defensible and verifiable fuel pathway. At the September 22, 2017, workshop, ARB Staff verbalized that transitioning to CA-GREET3.0 certified pathways will not be "as simple as plugging CA-GREET2.0 inputs into the CA-GREET3.0 model." In actuality, the process should be just that easy. A certified fuel pathway holder has already made the required demonstrations for data integrity, such that the full application analysis is unnecessary, particularly in light of the proposed verification process.

The proposed third-party verification process includes provisions for a pathway holder to adjust the pathway CI if the verification determines an operational CI lower than the certified CI. Kern believes ARB could employ a similar strategy to provisions for transitioning from CA-GREET 2.0 to CA-GREET 3.0. That is, for pathways certified within 2018 and 2019, the transition could consist of a validation-type process, where the difference in CI would be attributed to difference in the models and the certified CI could be adjusted accordingly.

Kern has invested a more than a year of work and a significant amount of money into the process for fuel pathway certification, and at this time expects to receive a certified CI in the third quarter 2018. Kern would only be able to use the certified CI for generating credits during the remainder of calendar year 2018 through 2020, after which this fuel pathway would be deactivated. Under ARB's current proposal, Kern would need to begin the lifecycle analysis by mid-2019 in order to work through the approval process and receive a new certified CI using GREET3.0 by 2020. The current proposal would further require Kern to hire an approved third party to perform the pathway validation process, making the reapplication process even more costly. This duplication of efforts is a waste of financial resources and an inefficient use of staff's time, especially for a



small refinery. Kern is concerned that this requirement puts up barriers for small producers to get renewable fuels into the market with very little benefit to ARB.

#### **6. Section 95488.9(b) – Temporary Pathway CIs**

Kern disagrees with ARB's approach to combine temporary CIs for biodiesel and renewable diesel into a single CI for biomass-based diesel, and urges ARB to revert to previous provisions with temporary CIs specific to each fuel. Kern acknowledges ARB's attempt to simplify the temporary pathways listed in Table 8. However, Staff's conservative approach results in a penalty in excess of 5 grams CO<sub>2</sub>e/MJ to renewable diesel producers needing to utilize the temporary pathway code provision. This is a significant detriment to the fuel producer for what are negligible regulatory simplifications – literally the elimination of one temporary pathway entry from a list previously containing only two diesel substitutes. Kern requests ARB revert to the previous provision consisting of separate temporary pathways for biodiesel and renewable diesel, and ensure the new temporary CI for renewable diesel is adjusted only in the manner described in the Initial Statement of Reasons (ISOR), without the impact of biodiesel's temporary CI.

#### **7. Section 95489(e) – Refinery Investment Credit Pilot Program**

Kern is generally supportive of the RICPP and appreciates ARB's proposal to shift the threshold for determining eligibility to a one percent reduction of on-site refinery level GHG emissions. Kern is encouraged by the proposal to account for GHG emissions at the process unit/project boundary level, but cautiously reiterates the need for flexibility in doing so. However, Kern urges ARB to reconsider proposed provisions that continue to place limits on the types and/or duration of projects along with flexible uses of credits generated.

Kern is encouraged that application of a one percent threshold couples the amount of reduction to a refinery specific ratable parameter. This approach effectively achieves ARB's goal of reducing GHG emissions but avoids sizing out smaller refineries from the RICPP – something other thresholds considered would have done. Furthermore, ARB's proposal maintains the threshold at a degree which balances the incentive for executing a project with a small refiner's financial ability to make qualifying investments.

Requiring the quantification of emissions reductions at the project boundary level will provide for appropriate data comparisons while allowing for the necessary accounting flexibility. Refineries utilize a variety of data sources and methodologies to quantify and account for the material inputs, necessary utilities, and product outputs. No two refineries are alike, and no two refineries employ identical means to account for these parameters. The use of consistent measurement approaches across the pre- and post-project estimation methodologies will ensure integrity in the determination of emissions reduction achieved.

As expressed in previous comments, Kern reiterates disappointment with the unnecessary limitation imposed by the finite designation of types of projects proposed, and the additional

limitations imposed on credits generated from process improvement projects. Refineries are under extreme pressure to reduce GHG emissions, which will take equally extreme ingenuity and effort to achieve. Kern urges ARB to rethink the approach to the RICPP and include language allowing broader opportunities for qualifying projects.

Further, Kern urges ARB to eliminate the limitations on refinery process improvement projects imposed by Section 95489(e)(1)(H) and (I). Capping the use of credits generated from process improvements to meet no more than five percent of a facility's annual compliance obligation serves no benefit to LCFS and places unnecessary restrictions on a regulated party. Credits generated under the RICPP provision will have undergone the rigorous requirements of a third-party verification. All credits generated should be of equal value and utilized without restriction. Staff discussion in the ISOR justifies a sunset of the process improvement credit by 2025 as a means to encourage more innovative reductions at refineries. Kern disagrees with this narrow vision of how GHG emissions reductions should be achieved, and emphasizes the need to incent long-term reduction projects, whether perceived as innovative or not.

#### **8. Section 95482(b) - Support for Addition of Alternative Jet Fuel as an Opt-In Fuel**

As a California-based company that produces Renewable Diesel, Kern understands the benefit for including AJF as part of the LCFS program and would like to show its support in favor of this proposed amendment. Kern agrees that incorporating AJF into the LCFS shows California's interest in addressing a significant source of GHG emissions and may promote increased investment in facilities that are currently producing Renewable Diesel. Kern is encouraged by ARB's inclusion of this opt-in fuel in such a way that the use of conventional jet fuel will not generate deficits, making this provision a keen demonstration of how the program should incent additional renewable fuel opportunities.

In conclusion, Kern appreciates ARB's consideration of Kern's comments. As always, Kern is committed to working with Staff throughout this regulatory process. Please do not hesitate to reach out to me at (661) 845-0761 with any questions.

Sincerely,



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Kern Oil & Refining Co.

cc: Sam Wade, ARB  
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