



Kern Oil & Refining Co.

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VIA ELECTRONIC POSTING

Comment List: lcfs2015

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 15-Day Regulation Order (15-day Package) of the Low Carbon Fuel Standard (LCFS). Specifically, Kern is providing comments on the following: (1) Low-Complexity/Low-Energy Use (LC/LU) Refinery Adjustment Calculations; (2) Assignment of Default Crude Carbon Intensity within the Refinery-specific Incremental Deficit Option; (3) Inclusion of a De Minimum Threshold for Assessing Incremental Deficits; (4) Limits on the Use of Refinery Investment Credits; and (5) Changes to the Pathway Approval Process.

Kern is an independently owned, small refinery located in the Southern San Joaquin Valley, just outside Bakersfield, California. At a crude oil capacity of 26,000 barrels per day, Kern is literally the smallest refinery currently producing transportation fuels in California. In its comment letter dated February 17, 2015, Kern previously called attention to the potential detrimental impacts to certain refineries that result from methodologies adopted to effectuate program goals in a manageable manner for CARB. Kern gave recognition to 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" implementation methodologies. Kern echoes that appreciation here, as ARB's continued support for these issues is evidenced within the 15-day Package.

Simplification of Low-Complexity/Low-Energy Use (LC/LU) Refinery Adjustment Calculation

Kern reiterates its strong support of ARB's inclusion of a provision issuing a carbon intensity adjustment for Low-Complexity/Low-Energy Use (LC/LU) refineries in recognition of the inherent lower carbon intensities (CI) of transportation fuels produced at these facilities. The credit helps address the unfair subsidization of higher than average energy-use refiners that results from the current regulation's reliance upon the "average refinery" in determining CI values for finished transportation fuels. Kern greatly appreciates the extensive work performed by CARB staff in calculating the demonstrable lower CI of the transportation fuels produced by LC/LU refineries, which serves as the strong scientific and technical basis for the credit consideration being given to those refineries.

Staff is proposing to credit the LC/LU refineries 5 gCO₂e/MJ for CARBOB and diesel. The 15-day Package contains revisions to the calculations for quantifying the number of LC/LU refinery credits generated in a compliance year. Kern appreciates the added clarity and agrees with Staff's presentation that these revisions simplify the equations. Kern strongly supports the credit proposal and is grateful to staff for the years of work, analysis and stakeholder collaboration that have ultimately culminated in the current proposal.

Assignment of Default Crude CI within the Refinery-specific Incremental Deficit Option

Kern continues to be encouraged by ARB's acknowledgement that low volume refineries are disadvantaged by the current California Average Approach, in that they can be affected by the incremental deficit but cannot affect the sector-wide annual crude average CI. ARB is proposing a one-time opportunity for Low-Complexity/Low-Energy Use (LC/LU) refineries to opt out of the California Average Approach, and instead have their incremental deficits determined through a comparison of the facility's annual average crude CI and its 2010 baseline crude CI. Kern previously commented on the application of a default CI for crude oils that do not have a specific CI assigned in the regulation, noting that the use of the California average CI would have unnecessarily limited, or even prevented, LC/LU refineries from running new crude oils without incurring incremental deficits.

Kern appreciates Staff's consideration of comments made in Kern's February 17, 2015 letter. The 15-day Package includes revisions to use the individual LC/LU refinery baseline crude average CI as a default CI value for new crude oils until such time the specific CI value is added to the LCFS. This replaces the use of the California average crude CI as a default value which would have disadvantaged LC/LU refineries utilizing the option for individual compliance. Likewise, the 15-day Package incorporates the use of a three-year rolling average approach within the Refinery-specific Incremental Deficit Option, similar to the three-year rolling phase-in approach proposed in the California Average Approach for transitioning from the 2010 Crude CI Lookup Table to the 2012 Crude CI Lookup Table. Kern supports both of these proposed revisions.

Inclusion of a De Minimus Threshold for Assessing Incremental Deficits

Staff is proposing to include a de minimus value of 0.1 gCO₂e/MJ as a minimum threshold prior to assessing incremental deficits resulting from increases to the crude oil CI three-year rolling average. The de minimus threshold would apply to all refineries, regardless of their decision to comply through the California Average Approach or the Refinery-specific Incremental Deficit option. Kern and other refiners have voiced concern for this issue throughout the rulemaking process. Kern is pleased to see this addition to the proposed regulation and supports the revision.

Limits on the Use of Refinery Investment Credits

Kern's previous comment letter expressed cautious optimism for ARB's proposal to reward refiners for projects resulting in demonstrable emission reductions at a stationary source facility by means of incorporating a Refinery Investment Credit provision within the LCFS. Specifically, Kern noted its understanding that Staff's intention is to allow for a project to be implemented in multiple phases over an approved period of time in order to achieve the threshold 0.1 gCO₂e/MJ. Kern echoes its previous recommendation that additional language be added to the proposed regulatory text to clarify Staff's intent. As a small refinery, Kern has limited resources and must utilize its efforts, resources and investments with a high degree of efficiency. Allowing flexibility on the timing of a project is critical because it is not always financially feasible to carry out a substantial project all at once.

Staff has presented revisions within the 15-day Package that refers to the Refinery Investment Credit as a "Pilot Provision" and further has introduced language that will limit the use of credits generated from the provision to satisfaction of no more than 20% of a refinery's annual compliance obligation. Kern recognizes Staff's intent to avoid any unanticipated impacts to the credit market; however, Kern does not support the limited use of the credits, as proposed. Neither the regulatory text nor discussion within the 15-day Package address what is meant by "Pilot Program," what duration such a pilot testing is intended to span, or at what point the limitation expires and the credits then be available for unrestricted use. Similarly, the 15-day Package expresses Staff's concern that the volumes of these credits could outstrip the current expectations; however, there is no discussion of what these current expectations are and at what volumes this concern would actually be realized. Kern believes Staff should provide stakeholders with additional justification for this limitation.

Changes to the Pathway Approval Process

Staff is proposing revisions within the pathway application process, specifically the certification step of section 95488(c)(5), that would eliminate a 60-day limit within which the Executive Officer would be required to advise an applicant of whether their fuel pathway application is complete or incomplete. Rather, the current proposal leaves this duration open-ended, under the premise that numerous pathways will require recertification within a one-year period and that Staff could be faced with unrealistic deadlines. Coupled with the elimination of the 60-day limit, Staff is proposing to process fuel pathway applications in batches, where like fuels are grouped together for the purpose of review and approval.

Kern certainly appreciates the magnitude of work that will be faced in recertifying the hundreds of pathways and the need to prioritize that work appropriately. The proposal to review and approve pathway applications in batches of like-kind fuels should indeed add a necessary degree of efficiency to the process. However, Kern disagrees that leaving undefined the length of time ARB is granted in notifying an applicant of whether the application package is complete would add any further efficiency to the process. From the applicant's perspective, the effect of this revision is to the contrary; for applicants, this revision would add inefficiency by imposing unnecessary delay in compiling what information and/or data would complete the process. It seems reasonable that ARB would want to have a batch of applications for review and approval, already knowing that each application within the batch is complete. Kern urges Staff to revisit this proposed revision and incorporate a reasonable amount of time for deeming an application complete – one that is serving of both the agency and the applicant's needs.

In conclusion, Kern appreciates ARB's consideration of Kern's comments. As always, Kern is committed to working with Staff throughout this regulatory process.

Sincerely,



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Manager, Environmental Health and Safety
Kern Oil & Refining Co.

cc. Floyd Vergara, ARB
Elizabeth Scheele, ARB
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