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President

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Via Web link: http://www.arb.ca.gov/lispub/comm2/bcsubform.php?listname=slcpdraftstrategy-ws&comm_period=1

Mr. David Mehl (dmehl@arb.ca.gov)
Air Resources Board
1001 I Street
Sacramento, CA

Subject: WSPA comments on ARB's Draft Short-Lived Climate Pollutant Reduction Strategy, dated September, 2015.

Dear Mr. Mehl:

The Western States Petroleum Association, representing 25 companies that explore for, develop, refine, market and transport petroleum and petroleum products are pleased to submit these comments on the Draft Short-Lived Climate Pollutant (SLCP) Strategy that was recently released by the Air Resources Board (ARB). As ARB Staff noted in the workshops, the process of developing a strategy to address SLCPs will evolve as staff and stakeholders become more familiar with key issues and through input gained through additional workshops. Hence, these comments reflect larger policy issues. As the plans become more detailed concerning control of SLCPs, we may provide additional comments as appropriate.

Program Integration

The September 30 draft SLCP Plan appropriately places emphasis on avoiding overlap of existing programs, including criteria pollutant and air toxics programs that may have an effect on SLCP emissions, and comprehensive coordination of emission reduction planning efforts. We agree this effort will be necessary to avoid regulatory duplication that could undermine our shared goal of

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achieving additional emissions reductions at the least possible cost.¹ We also note that for some sectors such as transportation, the proposed path to 2030 depends upon separate initiatives that are still under development (e.g., ARB's Sustainable Freight Strategy). While we appreciate ARB's intent to apply anticipated SLCP emission reductions from these initiatives toward the goals identified in this Plan, until the individual program elements are better defined, it is impossible to comment on the feasibility and practicality of the SLCP Plan as a whole.

Data Gaps and Research Needs

Section II E (pp. 15) acknowledges that data on SLCPs and SLCP sources "is often less available or of lower quality than it is for CO₂." Accordingly, this draft plan provides new information on the state of SLCP science, identifies data gaps and additional research needed to fill those gaps. WSPA agrees with ARB's statement on page 1 of Appendix B that successful emission reduction programs for black carbon (and other SLCPs) "rely on scientific research to develop and deploy new technologies, quantify emission benefits and cost effectiveness, understand lifecycle emissions, and ensure continued emission reductions from programs in place." For these reasons, the results from ongoing and planned research projects identified in Appendix B along with a complete SLCP emission inventory must inform, not follow, the state's SLCP strategy. We are concerned that the approach envisioned in this document – to proceed with SLCP Plan adoption while simultaneously undertaking foundational research - would commit the state to particular policy pathways based on limited or inaccurate information and ultimately to aspirational measures that may not be achievable in practice.

We recognize ARB is subject to a statutory deadline for delivering a Plan to the Legislature. However, the statute does not preclude an iterative process whereby ARB could submit a preliminary plan in 2016 subject to future amendments and Legislative review as better information becomes available. For the reasons noted above, WSPA recommends this course of action.

Partnerships with Other Jurisdictions

The draft Plan states that "California is working with a set of national and subnational partners throughout the world to fight air pollution and climate change" which will deliver benefits to our state (pp. 20, 70). Yet, with a few notable exceptions, ARB does not identify these entities, and more importantly, does not disclose what actions they have committed to take, when they will act, and how those commitments will be enforced across jurisdictional boundaries. As WSPA noted in our October 19 comments on the Brown administration's concepts for a 2030-target AB 32 Scoping Plan update, non-specific, non-binding pledges in memoranda of understanding are symbolic and provide no assurance that these other jurisdictions will actually deliver meaningful emission reductions. Given the voluntary nature of these agreements, this Plan, and all other post-2020 climate program planning documents should include off-ramps to protect California's economy and consumers in the event that California's extra-jurisdictional partners fail to act, or choose at a later date to reduce the scope of their actions.

¹ To the extent there is overlap with EPA's recently proposed NSPS OOOOa for oil and gas wells, ARB should not propose duplicative and/or conflicting regulations of these sources.

SLCP Plan Implementation Authority

WSPA recognizes that ARB is developing this document pursuant to a statutory directive enacted in Senate Bill 605 (Lara, 2014). However, the document should disclose that the statute only authorizes ARB to develop a Plan to reduce SLCP emissions. While ARB does have authority under AB 32 to regulate certain SLCPs that are defined in the statute as greenhouse gasses (e.g., methane), neither AB 32, nor the SLCP law, authorizes ARB to implement control measures for the full suite of SLCPs identified in the draft Plan. The fact that the statute specifies development of a Plan, as opposed to the mandate in AB 32 to implement control measures by regulation (Health and Safety Code section 38560.5), makes clear that Plan implementation is contingent on further Legislative review and authorization.

Reliance on LCFS to Reduce Black Carbon and Methane Emissions

The draft Plan includes multiple references to reliance on the Low Carbon Fuels Standard to reduce black carbon and methane emissions. Our October 19 “Scoping Plan” plan comments cite ARB’s acknowledgement that development of commercial-scale, low-carbon intensity fuels has been much slower than originally envisioned. If this trend continues as expected, the 10% by 2020 target in the recently revised LCFS regulation will prove to be infeasible and ARB will be faced with more difficult choices – extend the compliance deadline, reduce the target or repeal the regulation. Given these options, it is inconceivable that ARB would double down on LCFS in a post-2020 program environment (as it implicitly proposes in to do in the SLCP strategy), whether for SLCP emissions reductions or any other purpose. Such action could lead to disruptions in the transportation fuels market and in California’s carbon emissions trading market and would serve as a cautionary signal to other jurisdictions as they consider California’s climate policy blueprint.

To maximize cost-effectiveness, stimulate innovation and encourage other jurisdictions to follow California’s lead, ARB’s SLCP Plan should prioritize market-based approaches over command and control policies such as LCFS.

Reliance on Other Programs and Plans for Black Carbon Sources

ARB’s 2030 target for black carbon reductions from on- and off-road sources relies on strategies that are still being developed in other proceedings, primarily the Sustainable Freight Strategy and regional State Implementation Plans. WSPA appreciates ARB’s acknowledgment that the existing suite of diesel emissions control measures, developed to reduce criteria pollutants and toxic air contaminants, will result in dramatic black carbon emission reductions by 2020. However, we object to the arbitrary proposal to establish a 2012 baseline for black carbon reductions rather than a 1990 baseline consistent with AB 32. This approach fails to credit significant emission reductions already achieved from source categories subject to existing regulations.

We agree, as noted above, that ARB should work to avoid overlap of climate planning and conventional air pollution control measures to prevent counter-productive regulatory duplication.

However, we are concerned that the timeframe for adoption of the SLCP Plan (Spring, 2016) will not allow ARB to incorporate important findings from other initiatives that will still be works in progress during this timeframe. One example, noted in our June 12, 2015 comment letter on ARB's May, 2015 SLCP Concept Paper, is analysis of the technological feasibility of electrifying heavy duty vehicles in light of payload, durability and range requirements.

Similarly, ARB's 2030 target for black carbon emissions reductions from stationary fuel combustion and industrial sources relies on regulatory proceedings that will still be underway in the Spring of 2016, including ARB's plan for compliance with USEPA's Clean Power Plan rule. It is premature to cite as a foundational element of the SLCP Plan a future regulation that could change significantly relative to ARB's current proposals. In any event, it is impossible to do meaningful cost-benefit analysis on hypothetical measures that may change before they are adopted.

For these reasons, ARB should approach the SLCP Plan as an iterative process and defer recommendations on new control measures for certain source categories where available information is insufficient to facilitate an informed policy decision.

Oil and Gas Sector Methane Regulations

WSPA has been engaged with ARB in an ongoing rulemaking process which would establish six significant control measures for oil and natural gas field operations. The proposed control measures cover a wide-range of operations and equipment including: storage tanks, compressors, certain well completions, pneumatic devices, gas well liquids unloading, and leak detection and repair. As the rulemaking process is still on-going, and given timeframe for adoption of this Plan (Spring, 2016), it is important that the Plan elements specific to methane emissions from the oil and gas sector are harmonized with ARB's final methane regulations.

We also note that Appendix B (page 5) forecasts additional research and data gathering to better assess the need for methane controls on well stimulation operations. WSPA generally supports efforts to improve information related to emissions. However, WSPA requests that ARB engage WSPA members in reviewing and commenting on all of the testing protocols and information ARB is planning to use. Our objective, which ARB presumably shares, is to ensure that any information used for future control measures is technically accurate and reflects technologies, systems and protocols unique to California oil and gas production operations. In addition, the timeline for adoption of the currently proposed methane regulation should be adjusted to ensure that any new data concerning SLCP emissions will inform the final regulation.

Additional Opportunities for Cost-Effective SLCP Emissions Reductions

ARB does not address ozone depleting substance (ODS) emissions reductions in the draft Plan because they are not listed as a GHG under AB 32 and will be "completely phased out" under the Montreal Protocol (pp. 57). This position contradicts core elements of the draft SLCP Plan and undermines ARB's stance that aggressive global reductions of SLCPs over the next 10-15 years are necessary for long term climate stability. For example, carbon black is not among the substances listed in the statute

as a greenhouse gas (Health and Safety Code section 38505(g)), yet it is a centerpiece of this draft Plan. We also note that the deadline for complete phase out of class II ODS under the Montreal Protocol is 2030, so these substances will persist in commerce and in the environment throughout the timeframe ARB has targeted for SLCP reductions.

Offset projects are among the most cost-effective means for near term SLCP emissions reductions. As WSPA indicated in separate comments on ARB's preliminary concepts for changes to the Cap and Trade regulation, the manner in which ARB conducted its 2014 investigation of ODS destruction projects at Clean Harbors in El Dorado, Arkansas has had a chilling effect on demand for ODS offsets. In fact, the market response to indications of heightened invalidation risk has not been confined just to ODS offsets. In this context, ARB's current investigation of a livestock methane reduction offset project could further undermine market confidence in ARB Offset Credits and sacrifice opportunities for methane emission reductions from a source that represents roughly 50% of California's methane inventory.

ARB's current posture on ODS emissions, coupled with existing limitations on generation and use of offset credits under the Cap and Trade regulation and ARB's previous and pending investigations of offset projects, sends the wrong signal to other jurisdictions and potential offset developers: California does not value these opportunities for cost-effective, near-term SLCP emission reductions. ARB cannot reasonably expect to achieve the SLCP emissions reductions it envisions without first removing disincentives to offset development and use embedded in the current Cap and Trade regulation and implementation guidance.

Economic Impact Analysis

WSPA supports ARB's stated intent to predicate its economic impact analysis for the draft SLCP Plan on actual control measures. However, WSPA objects to presumptive statements indicating that this Plan will deliver significant benefits and "low, and sometimes negative, costs" (pp. 72). These statements are premature until ARB actually identifies and evaluates the cost-effectiveness of specific potential control measures and concludes that this analysis supports such findings. The implication of the above referenced statement is that the outcome is pre-ordained and the economic analysis will be designed to support it.

The draft Plan also indicates a detailed analysis of SLCP measures will be conducted in the context of the 2016 Scoping Plan, suggesting at best an incomplete analysis of measures included in the SLCP Plan. Also, as noted above, findings from the post-2020 Scoping Plan economic analysis will not be available within the timeframe for adoption of this SLCP plan. Unless the timelines for these separate planning processes are properly sequenced, the Legislature and other stakeholders will not be able to evaluate the policy merits of the SLCP Plan or make informed recommendations on next steps.

Conclusion

Given the scale of climate policy work currently underway in California, and SLCP sources already subject to aggressive control measures under other programs, the state should focus this Plan and its finite resources on large emission sources that are currently uncontrolled or poorly controlled. By way of example, ARB should rely on existing criteria pollutant and air toxics regulations for additional reductions of black carbon emissions from the transportation sector and work instead with the appropriate state and federal agencies on forest management practices that can reduce the potential for catastrophic wildfires.

Should you have any questions, please feel free to contact me at this office or Mike Wang of my staff (Cell: 626-590-4905: mike@wspa.org).

Sincerely,



Cc: Mike Tollstrup (mtollstr@arb.ca.gov)