sierra research
A Trinity Consultants Company
1801 J Street
Sacramento, CA 95811
Tel: (916) 444-6666
Fax: (916) 444-8373
Ann Arbor, MI
Tel: (734) 761-6666
Fax: (734) 761-6755

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Via Electronic Submission

Clerk of the Board
California Air Resources Board
1001 I Street
Sacramento, CA 95812

Re: PUBLIC HEARING TO CONSIDER THE PROPOSED AMENDMENTS TO THE CALIFORNIA CAP ON GREENHOUSE GAS EMISSIONS AND MARKET-BASED COMPLIANCE MECHANISMS

Dear Members of the Air Resources Board:

On behalf of California ethanol manufacturers Pacific Ethanol, Inc., Aemetis Advanced Fuels Keyes, Inc., and Calgren Renewable Fuels we are pleased to provide the following comments on the August 2, 2016 proposed amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms ("Cap-and-Trade") Regulation. While we commend the Air Resources Board for its efforts to improve the Cap and Trade Regulation and to address greenhouse gas emissions beyond 2020, we nonetheless find that the regulation should (but does not) address leakage assistance factors in the third compliance period (2018 to 2020) for industries that have been assigned assistance factors in the current Cap-and-Trade Regulation that are potentially lower than those justified by ARB's recent domestic and international leakage studies. These affected industries should have their leakage assistance factors revised upward during the third compliance period in order to avoid being placed at a competitive disadvantage as compared to ethanol manufacturers in states without GHG regulations.

We offer the following comments on the proposed amendments:

1) ARB's "Emissions Leakage Analysis" in Appendix E to the rulemaking Staff Report does not provide much useful information regarding leakage factors for particular industry groups because it is just an outline that explains how ARB will calculate leakage risk for the post-2020 Cap-and-Trade rule. ARB is now proposing <u>not</u> to change the 2018-2020 assistance factors, even though ARB originally proposed to do so. Any post-2020 assistance factors will be proposed at a later date and will be implemented with a shortened 15-day notice and comment period.

   The problem with this approach is that any industries currently categorized as "low" or "medium" leakage risk which should have been a "high" leakage risk based on ARB's recent leakage studies could get fewer than necessary allowance allocations in the 2018-2020 third compliance period.

2) Appendix E introduces the concept that the assistance factor (AF) in the Cap-and-Trade Regulation is composed of two elements, "transition assistance" and "leakage protection," but this concept was not discussed in 2010 and 2013 when ARB performed its previous leakage analyses. ARB states that the three leakage studies it just completed are meant to only identify "leakage protection" values. ARB does not believe there is a need for "transition assistance" any longer.

   Again, the problem with ARB's approach to this rule amendment is that "high" leakage risk industries identified in ARB's recent leakage studies could have "leakage protection" values greater than the current third compliance period assistance factors of 50% (low risk) or 75% (medium risk). Consequently, these industries could receive fewer than necessary allowance allocations in the third compliance period resulting in a competitive disadvantage for these California businesses and unintended GHG emissions leakage.

3) The ethanol manufacturing industry currently faces significant out-of-state domestic competition, and, therefore, the costs of the Cap-and-Trade Regulation have a significant impact on the competitiveness of California ethanol producers with this existing, well-developed out-of-state market. We believe that the current Cap-and-Trade assistance factor of "medium" assigned to the ethanol manufacturing industry does not accurately reflect this existing level of competition, and the corresponding likelihood for small production price increases to drive ethanol production out-of-state.

   This determination may have been the result of a failure to recognize that information regarding state-level imports of ethanol is readily available. We note that the discussion of Trade Data in Appendix K of the 2010 rulemaking, beginning at K-20, states that national imports and exports for all US ports will be used for the specific reason that "[s]tate level import data do not exist." This statement may be true for other industry segments, but not for ethanol manufacturing. California imports over 80% of its ethanol from out-of-state. Therefore, if the state-level ethanol data were used, it would have resulted in a higher trade exposure metric and a corresponding higher initial leakage risk classification for the ethanol manufacturing industry.

   The recent ARB leakage studies appear to recognize this inequity, but it is difficult to tell how the studies will translate into actual assistance factor values, and ARB has not yet proposed any revised assistance factors. ARB's decision not to revise the third compliance period assistance factors could harm ethanol manufacturers, because the current leakage risk assigned to the industry is too low and does not accurately reflect the level of out-of-state market competition.

We request that the staff reconsider its determination not to revise the third compliance period leakage assistance factors, and review all industries that may have been previously categorized at a leakage assistance factor that was too low based on the recent ARB leakage studies. Any industries with lower leakage assistance factors than those justified by the recent leakage studies should have their leakage assistance factors revised upward for the third compliance period.

We thank the Members of the Board as well as the ARB Staff for their consideration of these comments and for their continued efforts to improve the Cap-and-Trade Program.

Sincerely,

Jeffrey Adkins
Sierra Research

cc: Tom Koehler, Pacific Ethanol
Andy Foster, Aemetis Advanced Fuels Keyes
Lyle Schlyer, Calgren Renewable Fuels