



Kern Oil & Refining Co.

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

Dear Board Members:

Kern Oil & Refining Co. ("Kern") hereby submits these comments in response to the California Air Resources Board's ("CARB") Preliminary Draft Regulation for a California Cap and Trade Program.

The comments below are focused on the draft regulation's treatment of small entities and emitters. We support the idea that there should be separate allowances and credit scenarios for small entities and emitters. These entities have limited capital and limited ability to obtain credit and will have a less ability to bid against larger, multi-national integrated organizations in a cap and trade program.

- Kern recommends that CARB create a small entity category in which there will be specific "category only" allowances and credits which larger entities will not be able to access.
- Currently, there are only two California "Small Refiners", providing motor vehicle fuel, as defined by CARB. Kern is the only remaining "Small Refiner" in California producing both CARB reformulated gasoline and ULSD. As a small refiner, Kern has a serious concern that if allowances are auctioned, that the larger refiners and speculators who have significantly more capital resources will drive the price up and Kern will be disproportionately disadvantaged. For these reasons, Small Refiners should be freely provided all available types of allowances outside of the auction process.
- Section 95940 proposes to change the phase-in date for transportation fuels from 2015 as discussed in the Scoping Plan to 2012. Kern is opposed to accelerating the phase-in of transportation fuels for the following reasons. Refiners are already significantly burdened with compliance with the Low Carbon Fuel Standard (LCFS). In addition, Mandatory Reporting Requirements (MMR), energy efficiency audits, and AB 32 administration fee regulations are severely impacting refiners and in particular Small Refiners. For the reasons mentioned, Kern recommends the phase-in date for transportation fuels be maintained at year 2015.

- Section 95970 proposes limiting the usage of offsets to 4% of the entities surrender obligation. Considering the lack of cost effective, technologically available and technologically feasible controls existing to reduce GHG emissions, it will be extremely difficult for small entities to meet their reduction targets by the application of GHG controls. Currently, the only “control” available to reduce GHG emissions from combustion sources is through energy efficiency. If sources have already maximized their energy efficiency, as most sources have done, there is no other way short of shutting down that is available. A regulation should not be structured in a way that forces companies to shut down and go out of business. Kern recommends there be no limit on the usage of offsets for meeting an entities surrender obligation.
- Subarticle 13 proposes that CARB is the body that issues and approves offset credits. Once CARB approves or otherwise certifies offset credits, the covered entities of the offsets should then be indemnified if at a later date the offsets are, for whatever reason, deemed to be invalid. CARB, through the offset approval and certification process must retain ultimate responsibility for the validity of the offsets, otherwise, uncertainty will adversely affect the ability to use and trade offset credits.
- CARB intends to revise the mandatory reporting regulations (MRR) to harmonize the rules with applicable cap-and-trade program provisions. Kern recommends when the MRR is revised that it be made consistent with the Federal EPA MRR so there is not “duplicative” State and Federal reporting of GHG emissions.
- Subarticle 13 discusses the general requirements for creating offsets and how CARB will administer the approval of offset projects, and the quantification and certification of offset credits. Considering the Local Air Districts already have a well proven method and process of banking criteria pollutant offsets, Kern recommends CARB delegate the administration and management of GHG offsets to the Local Air Districts. Local Air Districts have been verifying criteria pollutant offsets and issuing permits and demonstrating equivalency to EPA for many years. CARB has no experience or history of administering an offset program. CARB should not re-invent an offset program for GHGs, but rather, they should utilize the experience, resources and capabilities of the Local Air Districts throughout California to expend their existing Emissions Reduction Credit (ERC) programs.
- Attachment 3, Section 95107(a) proposes revisions to enforcement provisions within the MRR. Kern is opposed to a violation being assessed for each day, beginning on the day incorrect information is submitted to the verification body or to the Executive Officer, and ending on the day that all the information is corrected. This method of enforcement

is draconian and does not provide any protection to the reporting entity if the verification body does not expeditiously correct any misinformation or data filed with the report. Furthermore, Kern believes that since the MRR is a new and highly complex regulation, enforcement action should be phased-in over a several year period which would allow reporting entities to develop and further improve their data gathering and reporting systems. Considering GHG emissions do not adversely affect human health, Kern believes infractions or violations of GHG reporting should not carry the same level of severity as do violations in criteria or toxic pollutants.

- Section 95940 is proposing a “staggered approach” to phasing in sectors into the Cap & Trade program. The second compliance period commencing in 2015 is intended to bring in industrial sources less than 25,000 MT CO_{2e} and residential fuel combustion of natural gas and propane. Kern believes bringing in these small sources will overwhelm the system making it unmanageable with insufficient resources available to effectively implement the program. For these reasons, Kern recommends not phasing in the aforementioned sources.

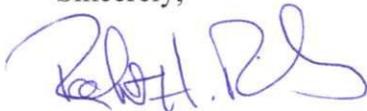
As a member of the Advanced Biofuels Association (“ABFA”), Kern agrees with ABFA comments that CARB's approach to regulating emissions of biomass used for power and recommends such an approach is the appropriate treatment for all biomass.

Kern also agrees with the following ABFA recommendations to CARB:

- Appropriately and consistently reward the environmental benefits of all forms of bio-energy regardless of whether the end-product created is electricity or fuel.
- Do not include lifecycle emissions in a cap and trade in surrender compliance obligations for any industry.

Kern recommends the overarching goal that the California Cap & Trade regulation should be consistent with a Federal Cap & Trade program. Inconsistencies and duplicative requirements with Federal programs will place additional economic and regulatory burden on California industries.

Sincerely,



Robert H. Richards
Manager, Environmental, Health & Safety