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THIRTY-THIRD SENATE DISTRICT



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April 21, 2009

Ms. Mary Nichols, Chairman
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Dear Ms. Nichols,

I am writing to express my concerns regarding an upcoming agenda item involving the adoption of a regulation to implement the Low Carbon Fuel Standard (LCFS).

The goal of reducing Green House Gas emissions is admirable, but I am concerned that the proposed regulatory action as drafted will have a significant and adverse impact on California's economic health.

As drafted, the regulatory action will seek to reduce emissions by reducing the carbon intensity by an average of 10% by 2020 by forcing producers of transportation fuels to lower their carbon intensity each year. An initial concern I have is an acknowledgement that downstream retailers responsible for distribution of transportation fuel may be held responsible for carbon intensity of fuels they dispense and thereby be subject to fines and other enforcement mechanisms. Additionally, I have concerns that holding retailers (whom may be unable to afford the purchase of credits) responsible for meeting the LCFS will force many small businesses to close rather than be subject to ARB fines.

With respect to the purchasing of credits to come into compliance with the proposed regulation, I have very strong concerns. If credits are not available or cost prohibitive, what remedies exist on the part of fuel providers to come into compliance with the proposed regulation? Simply asserting that credits will be available does not mean they will be affordable. Additionally, I am concerned that credits may be hoarded by certain producers to artificially drive up the cost to other producers of transportation fuels.

While I have serious policy concerns about adopting the proposed regulation, I recognize that the ARB is required to adopt measures to comply with Assembly Bill 32. However, I believe that additional work should be done to accurately determine the effects this regulation will have on the economy.

Staff of the ARB anticipated an increase in the number of ethanol, biodiesel and renewable hydrocarbon production facilities to comply with the LCFS requirements. My concern is that while that anticipation may be admirable, the current process to site and build these facilities does not assure their completion. My understanding is that the California Environmental Quality Act (CEQA) requires substantial work prior to the construction of many of these proposed facilities, and I have little confidence that the necessary permits will be granted in a timely manner to ensure compliance with the proposed regulation.

I would like to suggest that any adopted regulation contain a provision that if adequate capacity is not available to meet the new LCFS standards, the requirements to comply be waived until such capacity is available.

An additional concern I have about the proposed regulation is an assertion that there will be no significant impact on businesses for complying with this proposed regulation. This assertion is made even though an acknowledgement was made that additional annual costs for a typical business would be slightly less than \$1 million. This amount may not seem like a significant figure to some, but I assure you that this is a significant substantial impact to businesses who are already struggling to stay afloat in the current economy.

As a final note of concern, I would like to suggest that the ARB reject any attempt to impose a new fee to provide revenue to enforce this proposed regulation. Asking businesses to pay even more to fund the enforcement of the LCFS standards only adds insult to injury. I would suggest that if the proposed regulation is sufficient to be implemented, then the costs of enforcement should be borne within the existing budget of the Air Resources Board.

I appreciate the work staff has performed to draft regulations to comply with AB 32. Thank you for your attention to this matter, and I appreciate the opportunity to share some of my thoughts and concerns.

Sincerely,

//s//

MIMI WALTERS
California State Senator, 33rd District

CC: Air Resources Board
Governor Arnold Schwarzenegger