

April 20, 2009

Mary Nichols
Chairwoman, California Air Resources Board
1001 I Street
Sacramento, CA 95814

ORIGINAL:
Copies:

Board Clerk
Executive Officer
Chair

RE: Early Action AB 32 - Low Carbon Diesel Fuel Standard (LCFS)

Dear Chairwoman Nichols:

We, the undersigned associations and 1200 petitioners, represent end users of transportation fuels, who have major concerns with the premature adoption of a regulation designed to transform fuels beginning in 2011. Without the standard 5-year lead time and appropriate in-use testing, a technology forcing-fuels mandate will end up damaging engines and perpetuating market cartel dominance for a few, favored providers. With no compliance option, the state will repeat the harm done to businesses during the 1993 California-only diesel fuel reformulation, which severely reduced engine life and introduced market exploitation of California-situated businesses.

Should history repeat itself, and the probability is very high if the state proceeds on its current course, it will be because the same unscientific assurances are being used once again to justify this "emergency" early action under AB 32. And California businesses (and consumers) will be forced to re-live CARB's 1993 failed implementation of low-aromatics, low-sulfur diesel standards. Other alternatives that provide real reductions of greenhouse gases are available at a lower cost to the end user yet CARB has selected a high-cost fuel reformulation that provides little if any reductions and is proceeding with a half-baked regulation.

The upcoming LCFS adoption is proceeding without testing or the benefit of experiences with similar programs in other countries – a lower threshold than the 1993 commercialization. During the 5-year lead time provided in the 1988 rulemaking, CARB moved ahead despite outcry from many stakeholders about the lack of in-use testing. In-use problems, then as today, were documented internationally – in Sweden. Rather than learn from the Swedish implementation experiment upon the 1993 implementation deadline, CARB moved ahead with regulations that caused the exact damage predicted by the users. And, as before, California is on track for failure and market disruption.

Again, CARB is moving swiftly to repeat the past. Last time, poor policy implementation led to the damage of tens of thousands of diesel engines and necessitated urgent legislative action contained in AB 3290 (Canella; 1994) to amend Health & Safety Code § 43702 creating a reimbursement program for damaged diesel vehicles. California-domiciled companies were saddled with highly volatile diesel fuel prices, fuel rationing, and a record number of companies fueled their vehicles in bordering states.

The state-level revenue loss was so great from this fueling "leakage" that the California legislature had to apportion its in-state sales tax to collect the lost revenue of out-of-state gallons burned inside the state – legislation that was sponsored by the industry simply to protect itself from the misguided CARB policy.

We ask that you acknowledge the past lessons when CARB used a 5-year lead time and a commercialized product. Under early action for AB 32 implementation, CARB is planning to adopt an LCFS within an 18-month lead time even though Europeans evaluated and dismissed low carbon fuel based on the same data CARB is currently accepting. Less science, no commercialization pathway, no economic analysis, and no successful implementation in another country; by taking this path, CARB will repeat its practice of ignoring science and pushing a bizarre anti-California based-business agenda.

Forcing fuel standards within an 18-month lead time creates provider cartels and cartels, by their very nature, exploit the end users. If the only compliance path available is a variance or "tax" on each gallon of fuel sold, CARB must be transparent and include this as part of the rulemaking, as was the case in the history of CARB's own record of the single-state diesel fuel, as follows:

The following excerpt is taken from (ARB Reformulated Diesel Fact Sheet *Updated October 6, 2000*)

"California's refineries normally produce sufficient amounts of diesel to meet in-state demand. Diesel fuel also can be imported into California as long as it meets ARB's requirements. If a refinery is unable to produce sufficient California diesel due to unforeseen circumstances beyond its control (such as a refinery accident), it can request a temporary variance from ARB to produce or import diesel that does not meet ARB's requirements as needed to ensure minimum adequate diesel supplies in California."

Moving forward with implementation of the LCFS violates the AB 32 requirement for minimization of leakage. Even with a known fuel path and 5-year lead time, the 1993 reformulation was an economic disaster for diesel engines and companies that ran diesel-powered equipment in California. Moving ahead with an 18-month lead time and no compliance options will in all likelihood be even worse, severely damaging the state's already sagging economy.

We ask that you stop, develop a rulemaking that complies with the Administrative Procedures Act and that can be adopted by the Office of Administrative Law based on completeness, do the implementation properly, and protect California from going down the same path, a path with a clear scientific record of causing disparate economic harm to every California-domiciled business.

If you have any questions and want to contact any of the undersigned please don't hesitate to call Stephanie Williams at 916-718-1178.

Sincerely,

Joel D. Anderson, CEO & President,
International Warehouse Logistics Assn.

William Hudson, President & CEO
International Assn of Refrigerated Warehouses

Lucy, Dunn, President & CEO
Orange County Business Council

Rex S. Hime, President & CEO
California Business Properties Assn

Stephanie Williams, Executive Director
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B.J Patterson, CA Government Affairs
Distribution Management Association

Jim Camp, Chairman, CA State Council
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West State Alliance

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Cc:

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All Members of the California Air Resources Board
Members Senate Transportation Committee
Members of Assembly Transportation Committee