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April 23, 2009

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

Re: Adoption Hearing on Low Carbon Fuel Standard Program

Dear Chairwoman Nichols,

The Western States Petroleum Association (WSPA) wrote to the Governor in August 2008, and to the Governor and you on April 17, 2009, regarding outstanding issues pertaining to the California Air Resources Board's (CARB) development and proposed adoption of the Low Carbon Fuel Standard (LCFS) at today's public hearing. Our April 17 letter to you (copy attached for reference) included a list of the "Missing Pieces of the LCFS". Most of the issues we raised still have not been addressed, and, as we have noted previously, CARB staff has acknowledged a number of times that several LCFS elements are not yet ready for the adoption hearing. We have never before witnessed any government agency propose and prepare to adopt a rule that its own staff readily admits is unfinished. Put simply, WSPA believes CARB should finish writing the LCFS before adopting it.

We understand that staff contemplates bringing the rest of the rule to the Board for adoption late in 2009, but staff have been unwilling or unable to provide any information as to the details of the rulemaking process that would be used to complete the rule.

CARB's failure to complete the LCFS rule before this adoption hearing places the regulated community and the public in an untenable situation. The missing elements of the rule (such as key carbon intensity (CI) values, and a mechanism for tracking and reconciling CI credits and debits) are so essential to the rule's functioning that it is not possible to assess the rule as a whole and comment upon whether its structure and approach are reasonable and workable, or determine whether compliance with the

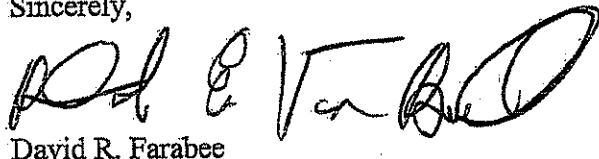
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rule is feasible. The result is that by piecemealing the rule's adoption into at least two pieces, the public is deprived of its opportunity to be fully informed about the nature and scope of the proposed rule, to evaluate how and whether the various rule elements work together or are inconsistent, and to comment on the rule as a complete package.

We also believe that an incomplete rule cannot satisfy the California Administrative Procedure Act (APA) clarity requirement for agency rules. The APA defines "clarity" as meaning that the rule is "written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them." The proposed LCFS cannot be easily understood by the persons who will be directly affected, because key elements are missing.

In light of the rule's substantial omissions, WSPA strongly recommends that the CARB Board postpone its consideration of the LCFS until such time as CARB staff can bring a complete rule to the Board for possible adoption. If the Board nevertheless proceeds to adopt the staff's proposal, WSPA believes that the remaining portions of the rule must also be subject to a full 45-day notice and comment process before they can be considered by the Board. To the extent that the new provisions would be closely related to, or potentially affect the meaning or application of elements of the rule that CARB proposes to adopt today, those "existing" provisions should also be subject to amendment or readoption, through notice and comment at that time.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "David R. Farabee".

David R. Farabee

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