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August 1, 2008

***VIA E-MAIL***

Ms. Mary Nichols, Chair  
California Air Resources Board  
1001 I Street  
Sacramento, CA 95814  
E-mail: [http://www.arb.ca.gov/lispub/comm2/bcsbform.php?listname=sp-industry-  
ws&comm\\_period=1](http://www.arb.ca.gov/lispub/comm2/bcsbform.php?listname=sp-industry-<br/>ws&comm_period=1)

**Re: AB 32 Implementation – Draft AB 32 Scoping Plan**

Dear Ms. Nichols,

Valero Energy Corporation (“Valero”) is providing to the California Air Resources Board (“CARB”) its comments relative to CARB’s Draft AB 32 Scoping Plan (released June 26, 2008)<sup>1</sup> (referred to hereafter as the “Draft Plan”). Valero owns and operates through its subsidiaries the Valero Benicia and Valero Wilmington Refineries. The Benicia Refinery produces approximately 25% of the clean-burning transportation fuels for the Bay Area market and the Wilmington Refinery produces approximately 14% of the clean-burning transportation fuels for the Southern California market. Statewide Valero produces approximately 17% of the compliant, clean-burning transportation fuels for California.

Through the many public workshops, expert groups, and individual stakeholder meetings both before and after the adoption of AB 32, Valero has worked cooperatively both individually and through the Western States Petroleum Association (“WSPA”) with CARB staff to identify and address its many concerns with AB 32, recently adopted GHG Mandatory Reporting Regulation, Low Carbon Fuel Standard (“LCFS”), and the AB 32 Scoping Plan. It is Valero’s view that if we are to succeed in meeting the very ambitious AB 32 goals, we will need to remain focused on some core principles. For Valero, those principles include:

- Ensuring California’s program is in harmony with whatever new federal climate program is ultimately adopted as well as with current federal and California legal requirements;
- Regulations and required technologies are technologically feasible and well-supported in the record;
- Programs are honestly and rigorously evaluated in the record and demonstrated to be cost-effective;
- Programs promote innovation;
- Utilizing the best available science, economic, and technical analyses in designing the program, as required by AB 32 and other applicable California and federal laws;

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<sup>1</sup> As the Draft AB 32 Scoping Plan Appendices were only released on July 22, 2008 and Valero is still reviewing them, Valero will not be providing comments on them at this time but provide its comments on this document in the future.

- Market mechanisms, such as a well designed cap and trade and offsets strategy are a significant part of the ultimate program; and
- Safe guards to ensure that as the Scoping Plan is developed and implemented that California will have an adequate, reliable and affordable supply of energy, including electricity, heat, and transportation fuels. The Scoping Plan should not pick winner and losers, but establish a program that lets the market dictate the most technologically viable and cost-effective energy solutions.

We urge that CARB embrace the above principles in the Final AB 32 Scoping Plan ("Final Plan").

Regarding the Draft Plan Valero is concerned, however, with the lack of specifics or detail in the Draft Plan as well as a lack of discussion describing concepts that the Final Plan would include. Accordingly at this point, the Draft Plan is currently in essence only a proposed policy and legal framework for a California program that links to regional and national efforts and lacks specificity. Therefore, Valero finds little in the Draft Plan that it can comment on in specificity at this time. However, some of the concerns it has are briefly discussed below.

The Draft Plan seems to envision a lesser role in reducing emissions than command and control despite the fact that market systems are known to result in more cost-effective emission reductions than command and control. Limiting market-based reductions to approximately 20% of the necessary reductions will, inevitably, increase the cost of compliance for industry and inevitably increase costs for energy and consumer goods for Californians. CARB should revisit the Draft Plan's emphasis on costly command and control measures and instead look toward an enhanced role for market based mechanisms that may help reduce the costs of the state's program. Market mechanisms have been successful throughout the world, and there is every reason to believe that they would be successful in helping implement AB 32 in the most cost-effective manner as required by the statute.

The Draft Plan envisions the LCFS as a major contributor to achieving the AB 32 emission reduction goal. CARB is also evaluating inclusion of transportation fuels in the cap and trade scheme by 2020. The LCFS alone will be a major undertaking requiring the use of breakthrough innovations that have not yet been developed. Valero urges CARB to carefully assess the pros and cons of including transportation fuels under the cap and trade instrument. The Final Plan must not inhibit industry's ability to provide adequate, reliable and affordable supplies of energy.

As the Scoping Plan rulemaking process moves forward, Valero strongly opposes the inclusion of "co-benefits/co-pollutants" analyses. As a GHG control strategy, AB 32 cannot be viable unless it is implemented to be self-sustaining on these grounds alone. This will not be possible if CARB seeks to obtain justification from other pollutant reductions that are already well regulated under a myriad of federal, state, and local regulations, adding yet another layer of regulation and economic burden. Moreover, given that GHG control is a global challenge that will require unprecedented effort adding a co-benefit factor to somehow make controls more

cost-effective or practical is unwise and will likely result in a compromise of the design elements such as the broad use of offsets that will help reduce the cost of the program.

The Draft Plan includes a significant discussion on fees and use of revenues from those fees. However, AB 32 does not provide CARB with the authority to impose "carbon fees" beyond those necessary to cover the administrative costs of the program. Therefore, use of a carbon fee as discussed in the Draft Plan requires additional legislative authority for CARB to assess and for ARB to allocate/distribute funds generated by such fees.

There is nothing in the Draft Plan regarding tracking mechanisms or early indicators that will identify and disclose the effect of the plan on energy supply and its impact on the economy. Valero urges that the Final Plan incorporate such tracking mechanisms or early indicators that will allow for CARB to identify needed course corrections on an ongoing basis - the five year review is the minimum required by AB 32.

The Draft Plan does not include a discussion of carbon capture and storage ("CCS"). We believe CCS is critical to the success of this program. Valero urges CARB to include in the Final AB 32 Scoping Plan a regulatory framework for a workable CCS program (as is required by AB 32 – H&SC §38561(f)). Further, we urge that the Final Plan promote research, development and demonstration of CCS in California.

Finally, as the AB 32 Scoping Plan rulemaking process moves forward, Valero believes that CARB must undertake a multimedia evaluation as part of its rulemaking and CEQA obligations for the entire Final Scoping Plan in order to access the totality of the potential environmental ramifications both positive and negative associated with the AB 32 Scoping Plan. Valero believes that it is legally impermissible for CARB to defer the multimedia and appropriate CEQA analyses and view impacts in isolation as it undertakes specific elements of the Final AB 32 Scoping Plan.

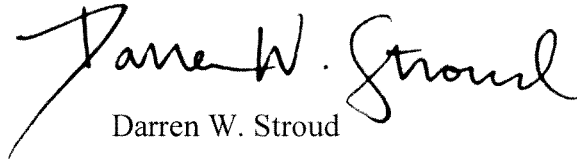
In conclusion, Valero would like to thank CARB for the opportunity to provide these comments and looks forward to working productively and cooperatively with CARB and other stakeholders in developing a Final Plan that meets the principles outlined above.

In submitting these comments, Valero incorporates by reference all of its previous correspondences and comments to CARB, verbal and written, concerning AB 32, recently adopted GHG Mandatory Reporting Regulation, LCFS, and the AB 32 Scoping Plan. In addition, Valero supports and adopts as its own the written correspondences and comments submitted by WSPA to CARB. Valero reserves the right to supplement its previous comments as well as provide future comments during the AB 32 Scoping Plan and LCFS rulemaking processes.

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August 1, 2008  
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Please contact me at (210) 345-2871 or Scott Folwarkow at (916) 503-1639 if you should have any questions or need clarifications concerning Valero's comments.

Sincerely yours,

A handwritten signature in black ink, reading "Darren W. Stroud". The signature is fluid and cursive, with a large, stylized "D" and "S".

Darren W. Stroud

DWS:sf

cc: Mike Scheible, California Air Resources Board, Deputy Executive Officer  
Bob Fletcher, California Air Resources Board, Chief, Stationary Source Division