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Joseph Sparano
President

November 13, 2008

California Energy Commission
Dockets Office, MS-4
Re: Docket No. 08-OIR-1
1516 Ninth St
Sacramento, CA 95814-5512

Mr. Jack Kitowski – *jkitowski@arb.ca.gov*
Ms. Lucina Negrete- *lnegrete@arb.ca.gov*
Mr. Andrew Panson – *apanson@arb.ca.gov*
Mr. Joe Calavita – *jcalavit@arb.ca.gov*

Mr. Peter Ward and Ms Aleecia Macias
CEC AB 118 staff
AB118@energy.state.ca.us

CARB AB 118 staff

Re: AB 118 - WSPA Comments on Revised CEC Regulatory Language and CARB's Air Quality Improvement Program

Dear CEC and CARB staff:

In the attachment to this cover letter, the Western States Petroleum Association (WSPA) provides our comments on the CEC's AB 118 proposed revised draft regulatory language, and on CARB's November 5th and 6th public workshops on the AB 118 AQIP.

WSPA is a non-profit trade organization representing twenty-seven companies that explore for, produce, refine, distribute and market petroleum, petroleum products, natural gas and other energy products in California and five other western states.

As there is a high degree of overlap between the CEC and CARB efforts, we felt it most prudent and expedient to communicate our concerns to both agencies simultaneously. In addition, since both the CEC's and ARB's portions of the AB 118 Program are meant to work in unison, we believe our attempt at cross-fertilization of comments will be helpful to both CEC and ARB staff as refinements to the program continue.

Finally, while some of the comments have been made previously by WSPA, some are new and some include more expanded explanations of our positions. In particular, we have included requests for specific action by staff that we hope you will use..

If you have any questions please contact me at this office, or Gina Grey at (480) 595-7121. We look forward to further dialogue with you on this important California regulatory program.

Sincerely,

Joe Sparano

1415 L Street, Suite 600, Sacramento, CA 95814
(916) 498-7754 • FAX: (916) 444-5745 • jsparano@wspa.org • www.wspa.org

AB 118 Guidelines and Investment Plans: CEC's Proposed Draft Regulatory Language (10/30/08) and ARB's Nov 5-6 AB 118 Discussion Papers

Accounting for Emission Reductions

AB 118 allocates significant public funds to certain types of projects identified in the bill that are to help reduce GHG, criteria and toxic emissions from the transportation sector. To the extent ARB, CEC and BAR use public funds to subsidize the purchase or replacement of vehicles, or the production or delivery of lower carbon intensity fuels, the resulting GHG, criteria and toxic emission reductions need to be accounted for in the AB 32 Scoping Plan emissions inventory and the applicable State SIPs.

Since the enabling law disallows any project to be funded that is "... required to be undertaken pursuant to state or federal law, district rules or regulations, memoranda of understanding with a governmental entity, or legally binding agreements or documents.."(AB 109 4271(c)) it seems logical that most, if not all, of the emission reductions achieved from the expenditure of these funds should be surplus as it relates to California's State Implementation Plans and AB 32 Scoping Plan. Therefore we would expect:

1. The GHG emission reductions required under AB 32's Scoping Plan to be measurably reduced through the $200 million invested each year for the next several years.
    a. We ask that ARB revise the recent AB 32 Scoping Plan report to reflect their best estimates of the GHG emission reductions that will be achieved through this program.
2. The "black box" in the ozone and PM SIP would be reduced as well.
    a. We ask that as ARB move forward with the AQIP Funding Plan for 2008 -9, they identify how much of the "black box" will be reduced as a result of the annual Funding Plan and the "black boxes" updated as appropriate.

Eligible Projects

Funds used to promote the sale and purchase of certain vehicles and their associated fuels, or construction of refueling infrastructure would need to be in excess of what would be expected to comply with existing state, federal and local laws that have been adopted and are or will be implemented. Only projects that help the State exceed such laws are to be funded.

We ask ARB and CEC to clarify how they intend to only provide AB 118 money to vehicles and infrastructure that are in excess of what would normally be required under existing state and federal laws.

Oil and energy companies may wish to expand their business in renewable fuels in various sectors of the fuel's life cycle. We believe that California's efforts to diversify its transportation fuels business and promote renewable fuels, will require energy companies to be involved in a significant way. Under the current restrictions a new renewable fuels plant would be able to apply for AB 118 funds, but it would appear that if an oil or energy company is involved in that project in some way, the project would not be eligible to receive AB 118 funding since they are an obligated party under the LCFS. We believe the guidelines should be structured in a manner that allows AB 118 funds to be used in such situations without violating the fundamental principles.

Therefore, we encourage CEC and ARB to recognize that within an integrated energy company various business units may exist and an AB 118 funding approach could be set up whereby a company's renewable fuels business unit is not disqualified from AB 118 funding as long as the business segment or the parent company that is specifically obligated under AB 32 or LCFS does not benefit from that funding or use the proceeds to comply with the applicable laws. We therefore request that we meet to discuss this concept further to see if a mutually agreeable approach can be developed.

LCFS and AB 32 Emission Reduction Credits.

We question CEC's latest proposal to generate excess emission credits that in turn can be used or sold by the recipient of the AB 118 public funds as discussed in proposed Section 3103 - Funding Restrictions. We are interested in understanding how CEC intends to specifically implement this part of their proposal. To our knowledge, this is likely inconsistent with past ARB decisions but we would be interested in discussing this further.

We therefore would suggest that CEC provide some examples of how this particular provision would be implemented. In addition, we recommend further public discussion and comment on this important aspect of your proposal.

Likewise, if AB 118 funds are to be used to purchase or subsidize certain fuel specific vehicles or refueling infrastructure there should be LCFS or AB 32 GHG credits available to those selling and/or manufacturing the resulting vehicles and fuels (e.g. natural gas, electricity or hydrogen.) Further discussion is needed on this as well.

AB 118 Auditing

As with the Carl Moyer Program, we think it is important for several reasons that the AB 118 fund expenditures be audited by an independent agency. ARB has proposed in Section (e) Oversight and Accountability of its November 5/6 Preliminary Draft Guidelines Discussion Document that "ARB staff or its designees shall conduct program or fiscal audits of AQIP administration and implementation." We believe this provision is inadequate to oversee the significant expenditure of $200 MM of public funds annually.

As with the Carl Moyer Program we support fiscal **and** program audits of the program by an independent auditor that is not designated by the ARB. We also recommend CEC implement a similar provision in their AB 118 program.

Investment and Funding Plans

WSPA has several comments relative to this area:

- Both ARB and CEC have provisions to develop Funding or Investment Plans. As required by law CEC has proposed forming an Advisory Body to help in the development of its investment plan and its updates. We would encourage ARB to form a similar Advisory Board or possibly use the CEC Advisory Board in helping it to develop its Investment Plan.

- At ARB's recent November 5/6 AB 118 workshops staff proposed that 65-85% of the $100 MM is to be used to help subsidize the sale and purchase of "clean vehicles". "Clean vehicles" are identified as heavy duty natural gas vehicles/equipment, hybrid medium and heavy duty vehicles, hybrid off-road equipment, zero emitting light duty vehicles, nonplug-in hybrid light duty vehicles, fuel cell vehicles and fuel cell buses.

  We would ask ARB to revise its use of the term "clean vehicles" as it excludes other fuels/vehicles that may be as "clean" as some of the vehicles called "clean". We suggest "Eligible Vehicles" as an alternative term.

- The ARB presentation goes on to say the funds will be used to "Induce clean vehicle purchases that wouldn't otherwise have occurred".

  a. We ask how ARB will provide evidence that such vehicles are in excess of what is already anticipated when vehicle and equipment manufacturers comply with existing laws.
  b. Also, how will ARB ensure that AB 118 funds are not used to provide "metering devices" as provided for under Section 44272 (c)(9) for electricity or natural gas that may be required for LCFS credits?
  c. We also ask how ARB intends to comply with Section 44271(a)(4) that requires them to, "Ensure that the results of the reductions in emissions or benefits can be measured and quantified."

- There are several laws that were adopted with the stated intent to result in the introduction of "clean vehicles". These include ARB's new and existing diesel fleet control measures (e.g. on and off road rules, buses), ARB and EPA tougher vehicle emission standards, EPA's Renewable Fuels Standard, and ARB's AB 32 regulations including the LCFS where utilities are anticipated to be obligated parties providing significant quantities of natural gas and electricity to "clean

vehicles". ARB in its Scoping Plan claims that due to their Plan, by 2020 gasoline use will be reduced by 25% and diesel by 17% through the use presumably, of many of the clean vehicles they are proposing to subsidize. We therefore ask again how ARB will identify, measure and quantify "clean vehicles" and the fuels they are designed for that are not already anticipated to be purchased or sold in compliance with other existing laws?

- ARB has chosen to follow the SCAQMD Carl Moyer Funding Scheme where they designate how much money will be funded within a particular project type. Even though AB 118/109 identifies at least 8 broad project types, "ARB staff is considering directing most of the funding toward a few key project categories instead of spreading a small amount of funding across many categories." We would recommend ARB consider an alternative approach and present it as an alternative for the Board's consideration.

- We recommend, as has been done by other air districts for the Carl Moyer Program, that ARB establish AQIP project eligibility criteria (e.g. project is not mandated by an existing law, the project is sustainable) and that for those projects that meet those criteria and are therefore eligible for funding they be ranked on their estimated cost effectiveness in achieving air quality improvements – including GHG improvements. It may be appropriate to rank projects using additional criteria beyond cost effectiveness. Projects that are most cost effective would therefore be funded first thereby ensuring the best use of public funds.

- Some of the AB 118 categories allowed to be funded such as "Research projects to determine the air quality impacts of alternative fuels" and "Projects that augment the University of California agricultural experiment station and cooperative extension programs" and "Workforce training" would likely not be able to qualify given the above approach. Therefore, ARB should designate such categories to receive a certain % of the available funds. We would point out there is nothing in the enabling law that suggests ARB should or has the authority to prohibit the funding of a project that is specifically listed in the law as a potentially eligible project. Both AB 118 and AB 109 specifically require that both CEC and ARB are to provide a "public competitive process for the allocation of funds." If certain project categories are prohibited from receiving funds for one or more funding years it is impossible for them to be involved in a "competitive process".