



DOCKET

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November 10, 2008

James Boyd
Vice Chair; Presiding Member, Transportation Committee
California Energy Commission
Dockets Office, MS-4
1516 Ninth Street
Sacramento, CA 95814-5512

Karen Douglas
Commissioner; Associate Member, Transportation Committee
California Energy Commission
Dockets Office, MS-4
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Re: Docket No. 08-OIR-1 Comments on Revised Regulatory Language

Dear Vice Chair Boyd, Commissioner Douglas and Members of the Commission,

On behalf of the New Fuels Alliance and the California Renewable Fuels Partnership, we are writing in response to CEC's request for comments relative to revised language that was proposed by CEC on October 30, 2008 (Docket Number 08-OIR-1) for the Alternative and Renewable Fuel and Vehicle Technology Program, as established by Assembly Bill 118 (Chapter 750, Statutes of 2007) and AB 109 (Chapter 313, Statutes of 2008).

The New Fuels Alliance and the California Renewable Fuels Partnership are not-for-profit organizations dedicated to the production and use of environmentally sustainable and clean-burning alternative fuels. The New Fuels Alliance along with its affiliate, the California Renewable Fuels Partnership, played an active role along with other stakeholders in supporting AB 118 and AB 109. We believe now, as we did then, that the legislation struck the proper balance between encouraging recipients of the AB 118 funds to be bold and innovative while also requiring strong environmental standards and protections, including sustainability goals.

We believe that it is critically important for the CEC and all stakeholders to follow the language of the statute and the original intent of AB 118 and AB 109. In that vein, we are concerned that some of the proposed amendments to the draft regulations appear to re-legislate the program and go beyond the scope and plain language of the statute.

Section 44271 of the Health and Safety Code, which establishes the Alternative and Renewable Fuel and Vehicle Technology Program and the Air Quality Improvement Programs, makes clear in plain language the roles and responsibilities of the CEC and the state board in fulfilling the requirements of the AB 118 and its clean-up measure, AB 109. Section 44271 clearly and unambiguously requires the following:

(1) Establish sustainability goals to ensure that alternative and renewable fuel and vehicle deployment projects, on a full fuel-cycle assessment basis, will not adversely impact natural resources, especially state and federal lands.

(2) Establish a competitive process for the allocation of funds for projects funded pursuant to this chapter.

(3) Identify additional federal and private funding opportunities to augment or complement the programs created pursuant to this chapter.

(4) Ensure that the results of the reductions in emissions or benefits can be measured and quantified.

In addition, Section 44272 lays out 11 preferences that the commission shall consider in order to maximize the goals of the Alternative and Renewable Fuel and Vehicle Technology Program. In doing so, the section explicitly states that preference shall be granted to projects that demonstrate a range of benefits including:

(1) The project's ability to provide a measurable transition from the nearly exclusive use of petroleum fuels to a diverse portfolio of viable alternative fuels that meet petroleum reduction and alternative fuel use goals.

(2) The project's consistency with existing and future state climate change policy and low-carbon fuel standards.

(3) The project's ability to reduce criteria air pollutants and air toxics and reduce or avoid multimedia environmental impacts.

(4) The project's ability to decrease, on a life-cycle basis, the discharge of water pollutants or any other substances known to damage human health or the environment, in comparison to the production and use of California Phase 2 Reformulated Gasoline or diesel fuel produced and sold pursuant to California diesel fuel regulations set forth in Article 2 (commencing with Section 2280) of Chapter 5 of Division 3 of Title 13 of the California Code of Regulations.

(5) The project does not adversely impact the sustainability of the state's natural resources, especially state and federal lands.

(6) The project provides nonstate matching funds.

(7) The project provides economic benefits for California by promoting California-based technology firms, jobs, and businesses.

(8) The project uses existing or proposed fueling infrastructure to maximize the outcome of the project.

(9) The project's ability to reduce on a life-cycle assessment greenhouse gas emissions by at least 10 percent, and higher percentages in the future, from current reformulated gasoline and diesel fuel standards established by the state board.

(10) The project's use of alternative fuel blends of at least 20 percent, and higher blend ratios in the future, with a preference for projects with higher blends.

(11) The project drives new technology advancement for vehicles, vessels, engines, and other equipment, and promotes the deployment of that technology in the marketplace.

It is clear from the language of the statute that the legislature's intent was to balance California's economic, climate change, petroleum dependence and environmental goals,

as opposed to one set of goals at the exclusion of the other. We strongly support efforts to ensure that alternative fuels protect the environment, enhance public health and stimulate local economies. However, we believe it is important to trust the original intent of the legislation, including providing the appropriate state agencies and advisors with some level of deference, so that alternative fuel producers and innovators are not discouraged from submitting proposals and/or investing resources in the program.

It is troubling that the draft regulations include additional eligibility requirements and hurdles that are beyond what the legislature enacted when it passed AB 118 and AB 109. If the legislature had intended to go beyond sustainability goals and require "screening thresholds," as the draft regulation does in Section 3101 (b)(2), then surely it would have clearly stated so in AB 109, which further defined and amended AB 118.

Listed below are several areas of concern that we hope CEC will recognize and take under advisement:

Section 3101 Subsection (b)(1):

Section 44271 of the Health and Safety Code requires among other things the establishment of "sustainability goals to ensure that alternative and renewable fuel and vehicle deployment projects, on a full fuel-cycle assessment basis, will not adversely impact natural resources, especially state and federal lands."

We support judging prospective projects on a sustainability metric. But the statute does not order the commission to create environmental performance measures that are to serve as screening thresholds for project eligibility. Section 44271 clearly states that the commission is to establish "sustainability goals" as a guiding principle to ensure that projects will not adversely impact "natural resources, especially state and federal lands." If the legislature had intended for the creation of environmental performance measures "as a screening threshold" prior to entertaining the preferences required in Section 44272 (b) they would have made that clear. Instead, CEC should create "sustainability goals" to be followed in concert with the preferences outlined in Section 44272 (b) to ensure that only the projects that score well on environmental metrics as well as other metrics (such as the ability to reduce petroleum dependence and provide economic benefits for the California economy) are awarded state assistance.

Notwithstanding the issues outlined above, we are also concerned that the "environmental performance measures" that are to serve as screening thresholds for project eligibility are vague and may be difficult to administer. For example, the definition of "environmental performance" is subjective. While this term may be useful as a guiding principle after submission of a proposal, it is more difficult to imagine a regulatory body rendering a proposal ineligible based on this metric.

We urge CEC to reconsider this approach and develop "sustainability goals" as outlined by the statute, and apply the requirements of 44272 (b) to ensure that the commission is choosing from the outlined criteria set forth in the statute.

Section 3101 Subsection (d):

The use of the words "substantial" or "meaningful" are not defined and therefore can be interpreted in a range of contexts. We urge CEC to delete the word "substantial" so that the clause reads "...best potential for reductions in transportation..."

Section 3101 Subsection (e)(2):

The proposed use of the word “enhance” is problematic. Every form of energy production has some degree of impact on the larger environment, and to require that alternative and renewable fuel production actually “*enhance* the resiliency of natural ecosystems” is very difficult to measure and accomplish absent a publicly-reviewed set of criteria. We urge CEC to strike the words “and enhance” from the draft regulation.

Section 3101 Subsection (f)(2):

The proposed use of the word “leading” is subjective and does not create a guidepost for potential or ongoing participants. We urge CEC to delete the word “leading”.

Section 3101 Subsection (g):

We urge CEC to delete the word “social” from the list of potential unintended consequences under subsection (g). We are aware of the significance of protecting social welfare. However, as drafted, the clause would be very difficult to measure or define. Existing law provides substantial social welfare protections. As such, we recommend that clause (g) reads, “... causing unanticipated environmental and economic consequences.”

Section 3101 Subsection (g)(1):

We continue to work closely with the Air Resources Board on matters related to the Low Carbon Fuel Standard and the agency’s definition of “full fuel cycle modeling.” Along with 29 leaders in the biofuels industry, NFA submitted a [letter](#) to ARB on October 23, 2008 about this issue, and we encourage CEC to consider the very real implications of including indirect, market-mediated impacts in a research, development and deployment program. In addition, 28 PhDs expressed similar concerns in a June 24, 2008 [letter](#) to ARB. While this matter remains unresolved at this point, we urge CEC to ensure that full fuel cycle modeling is workable and supported by science, and not premature in definition.

Section 3101 Subsection (g)(2):

As noted above, we are concerned that the word “social” is difficult to measure in the context of this program. Further, we question the need to monitor impacts on food supplies. This is clearly a concern stemming from biofuel production, but the argument that biofuels are a major cause of food price inflation or world grain price increases has fallen apart as oil, wheat, soybean and corn prices have all fallen in lock step over the past several months. Several articles have noted the mistaken correlation between grain-based biofuels and food prices.

In any case, the federal energy bill (Energy Independence and Security Act of 2007) requires U.S. EPA to fully investigate any impacts on food supplies that result from the federal renewable fuel standard (RFS) (fuels benefiting from the CA Alternative and Renewable Fuel and Vehicle Technology Program will be participating in the RFS). And food price increases would be encompassed by “economic consequences” above. We urge CEC to delete the phrase “food supplies, and social welfare” from this section.

Conclusion

Over the last several years we have worked with various stakeholders to push for greater use and acceptance of renewable fuels in the California marketplace. It is an industry with great potential to catalyze real economic and environmental change in rural economies. It is an industry that is using less energy, water and fertilizer every year with significant

potential climate change benefits as feedstocks become more diversified. The Alternative and Renewable Fuel and Vehicle Technology Program could accelerate the evolution of the renewable fuels industry in California, but only if the program encourages participation, is not overly cumbersome with regard to eligibility requirements, and has reasonable and clear guideposts for participation.

We generally agree with the notion that proposals should be judged across the full suite of California environmental and economic goals, and the state should not support a proposal that rolls back or inhibits progress on any of those fronts. But we encourage the CEC to trust the framework as it was laid out by the legislature, and not put overly cumbersome restrictions in places where they are unnecessary, or covering areas that are otherwise protected by state law. Infrastructure assistance programs can spark clean fuel development by easing access to the marketplace, but overly restrictive eligibility requirements can discourage the marketplace from making infrastructure investments and participating in the program, which can set back clean fuel investment.

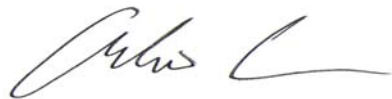
To that end, we reiterate that AB 118 struck the appropriate and proper balance between ensuring strong environmental protections and the flexibility to allow for innovation and ingenuity to be fostered by the recipients of AB 118 funding. We urge you to take that into account as you craft and update this important program.

We appreciate your time and consideration, and would be happy to discuss any questions that you or your staff may have in considering these comments.

Sincerely,



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New Fuels Alliance



Andrew Schuyler
New Fuels Alliance



Duncan McFetridge
California Renewable Fuels Partnership