



Western States Petroleum Association
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Joe Sparano
President

February 17, 2009

California Energy Commission
Dockets Unit
Docket No. 08-OIR-1
1516 9th St., MS-4
Sacramento, CA 95814-5512
Via electronic mail to Dockets Unit

DOCKET	
08-OIR-1	
DATE	FEB 17 2009
RECD.	FEB 17 2009

Re: Docket No. 08-OIR-1
WSPA Comments on CEC Proposed Adoption of Regulations to Define the Administration of the Alternative and Renewable Fuel and Vehicle Technology Program

Dear Docket:

The Western States Petroleum Association (WSPA) has provided in the attachment, our comments on the above-referenced regulatory documents to be submitted for adoption by the California Energy Commission (CEC) on February 25. We have submitted comments at numerous stages in the public process but find most have not been addressed. We are highlighting once again several key concerns and requests for additional consideration by the CEC.

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

WSPA supports diversification of California's transportation fuels portfolio. We continue to advocate for the efficient and abundant use of cleaner-burning petroleum-based products, augmented by renewable and alternative fuels that are scientifically sound, technologically feasible and cost-effective.

We also want to express our concerns about the CEC's stance on funding restrictions relative to the LCFS program. We request that this issue receive more careful review than has been applied to date.

If you have any questions, please contact me or Gina Grey at 480-595-7121.

Sincerely,

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- c.c. James Boyd, Presiding Member of the Transportation Committee – CEC
 Karen Douglas, Associate Member of the Transportation Committee – CEC
 Peter Ward, AB118 Project Manager – CEC
 Aleecia Macias, Emerging Fuels and Technology Office – CEC

Docket No. 08-OIR-1

CEC Hearing on Proposed Regulations to Define the Administration of the Alternative and Renewable Fuel and Vehicle Technology Program

General Comments

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 the CEC uses 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.

WSPA requests the CEC work on an ongoing basis with CARB and the air districts to track the GHG and criteria emissions reductions gained from the AB118 monies invested each year, and then determine if these can be counted towards attainment.

Economic Impact on Businesses

The Initial Statement of Reasons (ISOR) includes a section on the economic impact on businesses. The section claims adoption of the regulations would not have a significant, statewide adverse economic impact directly affecting business. This includes the ability of California businesses to compete with businesses in other states.

It then goes on to explain that this determination is based on four reasons: 1) it is a grant program, 2) it is a voluntary program, 3) there is no mandate, and 4) there will be minimal administrative costs.

Amazingly, there is absolutely no recognition in this section of the potential adverse economic impact to a business that is in a competitive position with other similar businesses in the state and that does not receive AB118 funds – either due to the fact the business did not apply or was an unsuccessful bidder. Either way, businesses will be disadvantaged by the program providing what could be substantial funds to competitors.

Is it the CEC's intention to pick winning and losing businesses as part of this process? We recommend that not be the case.

In addition, the section only seems to address the competitiveness with businesses in other states rather than including intra state impacts. We believe both issues need to be examined fully.

The same comment applies to the next section entitled, “Assessment Regarding Jobs and Businesses” that claims a total positive benefit to the state. The section ignores competitive market and economic forces that may result, because one business receives AB118 funds and a certain number of jobs may be created, in a competitor being put out of business with jobs lost.

WSPA requests that an appropriate and thorough economic analysis be conducted for the program, since we believe the analyses in these brief sections of the ISOR are inadequate.

Compliance & Enforcement

The Energy Commission needs to ensure there are compliance and enforcement requirements for those entities receiving funds. The program needs to be audited and annual reports given by recipients to the CEC (similar to the MSRC program at the SCAQMD).

The CEC needs to publish its own annual reports on the results of the audits and the progress of the program, and the process needs to allow public and legislative review and comment on the report.

In terms of any fuel-related projects to be funded under the program, we recommend for currently known fuels the CEC wants to deploy, that compliance with all applicable laws and regulations regarding fuel specifications and standards be required in order to ensure compliant fuel.

In cases where the state does not have specifications/standards for a fuel, the applicant must specify the properties of the fuel for which it is receiving funding. An applicant should not be provided funding if that applicant has, or subsequently obtains, any state waivers from ASTM standards.

Specific Comments on Sections of the Regulation

Section 3101 – Criteria for Project Funding

(a)(5) Use alternative fuel blends of at least 20 percent, with additional preference for projects with higher blends.

Although on initial read this criterion sounds logical, in practice it may not be. There are several reasons why the state should not necessarily select projects involving fuel blends of 20 percent or more.

These include: the current prohibition by EPA against selling gasoline blends with greater than 10% ethanol for use in gasoline-only vehicles and engines; the lack of specifications on the gasoline-side for anything above E10 other than for E85; the warranty issues associated with various levels of biodiesel above B5; and, the potential issues associated with distributing these fuels in the existing infrastructure system.

Subsection 3101.5 Sustainability Goals and Evaluation Criteria

In general, WSPA supports the sustainability goals in ISOR; however, we note the lack of specificity on how exactly these goals will be accomplished. We also have comments on specific portions of this section of the regulation.

Part (a)(2) The second sustainability goal shall be to protect the environment, including all natural resources, from the effects of alternative and renewable fuel development and *promote the superior environmental performance of alternative and renewable fuels*, infrastructure and vehicle technologies.

WSPA believes the presumption that alternative/renewable fuels have superior environmental performance is premature. The state needs to conduct appropriate life-cycle analyses on each of the fuels as well as multi-media assessments before a determination can be made by the state. We request the language be revised to reflect this fact.

Part (b)(1) Strong preference will be given to projects that can best contribute to meeting California's climate change policy goals as described in Health and Safety Code Section 38550, the Governor's Executive Order S-03-05, and the Low Carbon Fuel Standard, and that demonstrate the best potential for substantial reduction of greenhouse gas emissions associated with California's transportation system.

WSPA applauds this criterion, but we want to point out the significant inconsistency in the Energy Commission's approach. The program will give preference to projects that contribute to compliance with the LCFS; however, it also restricts funding from going to projects that are tied to the LCFS.

While we have indicated clearly our position previously and in this comment letter that we would like the LCFS program projects to be considered for funding, we believe the blatant inconsistency in the regulation needs to be resolved.

Part (b)(1)(A) Applicants must provide sufficient information to determine the greenhouse gas emissions profile of the proposed project on a full fuel-cycle basis, including an estimate for greenhouse gas emissions from indirect land use changes, in accordance with the methodologies described in the Low Carbon Fuel Standard, or an alternative methodology approved by the Commission.

WSPA supports the use of a full fuel-cycle methodology. Subsection 3101.5(b)(1) of the ISOR states the information on a proposed project's full fuel-cycle GHG emissions must be provided to the CEC and information must meet standards defined in draft regulations by CARB for the LCFS.

We agree with this approach; however, we are concerned by the rest of the statement which says, "...or an alternative methodology acceptable to the Energy Commission." WSPA believes this portion of the statement should be deleted since it provides too much uncertainty and potential inconsistency in the program.

WSPA supports the proposed inclusion of indirect land use change factors both now as well as in the future, in order to assure the new fuels will be sustainable. Consistent with our position during the ARB's LCFS workshops, our industry wants the state to avoid misdirecting resources at fuel technologies that may possibly not achieve the carbon intensity goals, and may also worsen the overall global warming situation.

This outcome is possible if the state encourages the use of fuels that are carbon intensive. In addition, the Commission might want to consider directing some of the program resources to projects that have no or limited land use change impacts, compared with others that do.

Section 3103 – Funding Restrictions

LCFS Inclusion under AB118

While WSPA acknowledges the Commission's desire to restrict funding to those entities that aren't required by law to already perform a certain act, we do not agree with the explanation provided in the Scoping Plan relative to the LCFS. The LCFS will become an ARB regulation in 2009, and is very much unlike a traditional regulation under which a specific type of fuel, fuel reformulation, or set of graduated standards is specified.

Instead, since the LCFS is a carbon intensity reduction target, there is no specific fuel or standards but rather a recognition that significant technology innovation will be required in order to bring online one or more new fuels to reduce the impacts of climate change. It is this innovative fuel advancement activity that is perfectly matched with the intent of the AB118 funds.

WSPA requests that project investments addressing the LCFS be recognized as viable candidates for AB118 funding.

Excess Provision

The CEC has included a new provision whereby 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 request that CEC clarify how it intends to provide AB 118 funds only to vehicles and infrastructure that are in excess of what would normally be required under existing state and federal law. The methodology for this must be clearly explained since it appears intuitively impossible to achieve.

Obligated Party Restriction

As stated numerous times during meetings, petroleum and energy companies may wish to expand their businesses 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 a petroleum 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.

WSPA believes 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 to recognize that various business units may exist within an integrated energy company. 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.

WSPA/
February 17, 2009