Kern Oil & Refining Co.

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Mr. Jon Costantino
Manager, Climate Change
Planning Section
Air Resources Board
1001 I Street
P.O. Box 2815
Sacramento, CA 95812

SUBJECT: Proposed AB 32 Cost of Implementation Fee Regulation – Comments

Dear Mr. Costantino:

Kern Oil & Refining Co. (Kern) is one of only two remaining small refiners in California producing transportation fuels. Kern is the <u>only</u> small refiner in California producing CARB reformulated gasoline and Ultra Low Sulfur Diesel. Kern is on record with the Board, and continues to advocate for consideration for small refiners.

The two remaining small refiners producing transportation fuels are "family owned" and are not owned or operated by publically traded integrated oil companies and do not have upstream oil and gas production or downstream marketing and retail stations. Small refiners are clearly being disproportionally economically impacted by the AB 32 regulations.

In follow up to the information staff presented at the August 25, 2009 public workshop, and for the record, Kern is providing the following comments relating to the proposed AB 32 Cost of Implementation Fee Regulation.

CARB estimates $63.1 million dollars is needed for the FY 2009/10 collection to administer the AB 32 Program and for debt repayment. Based on CARB's fee allocation proposal, the refiner sector is expected to pay $33.8 million or 53.4% of the total $63.1 FY2009/10 program fees. However, based on CARB's GHG Scoping Plan emissions inventory **<u>refineries only represent 6% of the total GHG emissions, yet refineries are being assessed 53.4% of the total annual fees to fund the program</u>**. This is clearly an unfair, inequitable and disproportional economic impact to refiners. Kern recommends the fees for refineries be assessed in a way that more fairly reflects the proportionality of refinery emissions as compared to the total GHG inventory.

Kern is opposed to payment of a fee on gasoline and diesel production. Refiners are already required under the Scoping Plan to implement stationary source controls and in addition, refineries must also meet the costly challenges of the Low Carbon Fuel Standard (LCFS). It is, however, reasonable to assess a fee based on the actual facility GHG emissions from refineries and other sectors subject to AB 32. However, Kern is strongly opposed to staff's proposal that refiners also pay additional fees for every gallon of transportation fuel delivered to the market.

Kern has recommended the fee "tax" be placed at the retail sales pump and full disclosure be made at the pump so the public clearly understands why each gallon of fuel purchased has increased in cost. Unfortunately, CARB has indicated they do not have the manpower to collect the fees from such a large population of retail stations throughout the State.

CARB wrongly assumes that refiners can "pass-through" the fee. This is a misconception since the ability to pass-through costs are controlled by market forces beyond the control of any one individual refiner. However, refiners do have the ability to pass-through costs of fees or taxes if the fees or taxes are known in advance and are assessed by the governmental agency, and equitably applied to all refiners. Currently, it appears the AB 32 fee (cost/gallon) will not be known until the fiscal year ends and CARB then determines how much was spent during that year, at which time the fee will then be calculated and communicated to refiners. This process will not provide refiners with the ability to pass on the fee for that prior year.

Kern offers the following suggestion that would help the ability of refiners to pass-through the fees.

- CARB must create a budget in advance, divide that by the estimated gallons to be assessed (historical data and information is available) and publish a rate (cost/gallon) to be in effect for that fiscal period. This published rate needs to be provided to refiners in advance of the annual fiscal cycle.

- Refiners would then include the fee as a line item on the invoice generated at the fuel transfer rack. This would be consistent with the method of pass-through for State Board of Equalization (BOE) fees and taxes (e.g., Supplier of Motor Vehicle Fuel Fee, Supplier of Diesel Fuel Fee, and Prepayment of Sales Tax), all of which are computed as a cost per gallon to facilitate their inclusion on an invoice.

- Industry payments could be made to CARB monthly, quarterly, or annually based on sales volumes for the related period. This would be consistent with the payment of BOE fees and taxes.

- If AB 32 Program costs are more or less than budget estimate, the differences can then be rolled into the subsequent year's rate calculation.

In summary, pass-through costs of the fee can only be accomplished if CARB estimates a budget for the fiscal year, establishes a fixed rate, and communicates the rate to refiners in advance of the fiscal cycle. This process will allow refiners the ability to legally include the fee as a line item on the sales invoice to the customer. Refiners would then make payments to CARB on a periodic schedule.

Kern appreciates this opportunity to provide comment and we are committed to continue working with Staff throughout this regulatory process.

Sincerely,

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Robert Richards
EHS Manager

cc: Jeannie Blakeslee, CARB
Bruce Tuter, CARB