

February 16, 2016

VIA WEBSITE (COMMENT SUBMITTAL)

California Air Resources Board Staff
California Air Resources Board
1001 "I" Street
Sacramento, CA 95814

Re: Comments of Day Carter Murphy LLP Re: Revised Draft Regulation for Greenhouse Gas Emission Standards for Crude Oil and Natural Gas Facilities

Dear ARB Staff:

We have reviewed the February 1st version of the Proposed Regulation Order ("Proposed Order") and offer comments on two issues:

- the redline changes to Section 95674 Enforcement, and
- the proposed use of the 20-year global warming potential (GWP) instead of the 100-year GWP for methane.

We thank California Air Resources Board Staff ("ARB Staff") for their presentation of the changes to the draft regulations and the summary of how ARB Staff intends to calculate Emissions, Reductions and Costs in the Workshop on February 4, 2016.

Section 95674 Enforcement

We understand the scale of the Aliso Canyon leak is the driver for the addition of new subsection (c) to 95674. The Health and Safety Code already allows, as does this regulation, for each day to be a separate violation and for each individual piece of equipment to be a separate violation. In addition, the severity of the violation including impacts on public health are already, included in the Health and Safety Code. And, the civil penalty calculation already takes into account the nature of the harm, the persistence of the violation and the length of time over which the violation occurs. (See Health and Safety Code Section 42403.) Finally, the penalty amounts specified in the code are not insignificant, especially when applied over time. Therefore, the addition of yet another individual violation based upon each metric ton emitted is unnecessary to provide the proper incentive to industry to comply with ARB's regulations. We note further that ARB will not be the only entity seeking damages and/or penalties from the leak at Aliso Canyon,

thus, ARB's enforcement action will be a significant part but only one part of the of the damages and penalties Aliso Canyon will face.

If ARB were to require Aliso Canyon to provide allowances for the excess emissions, the cost would be significant. Using publicly available estimated emissions to date of 2,720,000 metric tons of CO₂e and an allowance price of \$12.50/MT, the cost would be approximately \$32,000,000. Using ARB's proposed new violation for every ton emitted and a \$25,000 penalty per violation would result in a penalty of \$65,331,000,000. This simple calculation demonstrates why we feel the additional per ton violation is unnecessary to incent emitters to avoid excess emissions.

New subsection (f) combines falsifying information and producing inaccurate information into the same subsection. While we understand ARB's interest in obtaining accurate information, we ask that these violations be split into two subsections. In our experience mistakes such as data entry errors are usually penalized differently from intentional actions to falsify information. We believe that combining the two could create the impression that the two types of violations would be penalized similarly. Therefore, we request this provision be split into two provisions.

Emissions, Reductions, and Costs

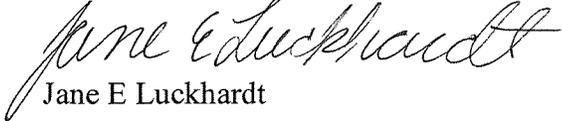
ARB's presentation from the February 4, 2016 Public Workshop, Revised Draft Regulation for Greenhouse Gas Emission Standards for Crude Oil and Natural Gas Facilities, slide 30 proposes to use a 20-year CO₂e global warming potential (GWP) for methane. We are concerned about using the 20-year factor here to justify a regulation when methane emissions covered under cap-and-trade are valued consistent with other GHGs at the 100-year GWP values. From a policy perspective using different values in different parts of the overall GHG reduction strategy leaves us with the impression that ARB is picking and choosing the value to use in an effort to justify various aspects of the regulation.

From our perspective, consistency across all programs would be the preferred approach. All of these various programs need to work together to obtain the goals California has set for itself in 2030 and beyond. Inconsistencies in how the numbers and impacts are calculated makes comparisons and accounting across the various programs unnecessarily complex. It also makes the calculation of the most cost-effective reductions more difficult because the benefits and costs cannot be directly compared.

In closing, we ask that ARB make the changes to the enforcement section of the regulations discussed above and use the 100-year GWP throughout all of ARB's GHG reduction programs.

Respectfully yours,

DAY CARTER & MURPHY LLP



Jane E Luckhardt

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