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**VIA ELECTRONIC POSTING**

<https://carb.commentinput.com/?id=pNeRj64MA>

March 9, 2026

Clerk of the Board  
California Air Resources Board  
1001 I Street  
Sacramento CA, 95814

Dear Sir or Madam:

Kern Energy (Kern) is providing comments on the California Air Resources Board's (CARB) January 20, 2026, Proposed Amendments to the Regulation for the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms (Cap-and-Invest Regulation). We acknowledge CARB's effort to balance climate ambition with affordability and reliability for Californians. Kern offers the following recommendations to provide counterweight to California's climate policies, which are already the most stringent in the country and present significant operational challenges for providers of reliable and affordable transportation fuels. Kern is specifically commenting on the following aspects: (1) Support for Improved Refining Sector Allocation Benchmarking and Additional Recommendations; (2) Assistance Factors Must Accurately Reflect Industry Leakage Risk; (3) Decarbonization Incentives are Essential to Filling Critical Funding Gaps and Must Be More Inclusive; (4) Cap Adjustment Factors Should be Adjusted for Small Refiners; and (5) One Time Product Allocation Appropriately Supports New Production.

Kern operates a 27,000 barrel per day refinery in California's San Joaquin Valley that has been in continuous operation for more than 90 years. A family-owned and operated company employing approximately 200 people, Kern plays a vital role in stabilizing the supply and price for transportation fuels in the region by supplying critical transportation fuels to agricultural operations, major transportation corridors, local industry, and the public. Kern is now the last small refinery producing California's unique reformulated gasoline and diesel in California, and the only refinery located between the major complexes in Los Angeles and the Bay Area, both of which underscore the significant challenge of operating a small refinery in the state.

**1. Support for Improved Refining Sector Allocation Benchmarking and Additional Recommendations**

Kern broadly supports Staff’s proposal to establish new product-based benchmarks for the refining sector industrial allocation, specifically the Liquid Hydrocarbon Fuels (LHF) methodology as a replacement for the existing Complexity Weighted Barrel benchmark. The existing program’s industrial allocations create a compliance obligation that is not sustainable and set an arbitrary pace to meet emission reduction targets that are not technologically feasible. The LHF approach, based on the total production volume, better aligns allocations on the basis of emissions per unit of output and offers some mitigation for structural disadvantages for lower complexity refinery configurations.

Kern and other small refiners face several intrinsic and market-based challenges that make their operations uniquely disadvantaged relative to other California refiners. Kern’s refinery is “low complexity,” meaning it cannot convert crude oil as effectively as more complex refineries that can maximize conversion to gasoline and diesel. Kern urges Staff to expand the proposed definition of “Liquid Hydrocarbon Fuel” or “LHF” in Section 95802 to specifically include residual oils (EIA code 511) in recognition of this key difference. The explicit exclusion of residual oils from Staff’s proposed refinery products list comprising the LHF is unnecessarily restrictive and punitive to low complexity refineries that do not employ energy intensive processing units to achieve full conversion of this product. These unique disadvantages have been repeatedly revealed every time CARB has approached benchmarking over the life of the Cap and Invest program. This rulemaking is the opportunity to fully align benchmarking methodologies and eliminate this defect that results in lower allowance allocations for small refiners.

Kern acknowledges Staff’s positioning of LHF within the Initial Statement of Reasons as being technology-agnostic and a means to provide consistency across the sector, and asks that Staff view this request to include residual oils within those same intentions. While residual oils are sold into non-highway fuel markets, Staff’s emphasis on “finished fuels” within the LHF definition places unnecessary limitations on the broad slate of products that contribute to a refinery’s emissions profile.

Staff presented comparative analysis during the workshop phase of this rulemaking highlighting a wide gap between how marginal California’s industrial allocations have been compared to other jurisdictions. The data strongly indicate California has not been adequately protecting industrial businesses from leakage. California’s refining sector has always contained a diverse set of facilities with unique configurations, capabilities, and product slates. Modifying the LHF proposal to include residual oil can help close that gap - appropriately recognizing the value of this product within the refining sector, validating the

unique attributes of California's smallest refineries, and appropriately providing emissions leakage protection where most needed.

Lastly, Kern supports the optionality in Staff's proposal for facilities to transition to the LHF method earlier than the sector-wide mandatory implementation in 2031. This ability to opt in early or advantage the longer runway to 2031 is a key recognition of the certainty that businesses require when planning compliance strategies and adjusting to regulatory changes.

## **2. Assistance Factors Must Accurately Reflect Industry Leakage Risk**

Kern is encouraged by Staff's proposal to revise Section 95871, Table 8-1, confirming an extension of a 100% Assistance Factor for the petroleum refining sector through budget year 2035. Maintaining this maximum assistance is an important and appropriate recognition of the leakage risk facing California refiners. Kern supports CARB's action to extend the Assistance Factor in recognition of current and future economic pressures that will continue to affect emissions leakage, and as further means to close the identified gap on a historically stringent approach to industrial allocations.

Additionally, Kern solicits CARB to revisit the refining sector's underlying leakage risk classification as "medium" within Table 8-1 in favor of a "high-risk" classification. The medium-risk designation does not reflect market realities, the accelerated pace of refinery closures in California, or the increased competitive pressures the sector faces from imported fuels. Maintaining effective protections against emissions leakage is critical as allowance supply declines. Given these industry trends, Kern encourages CARB to update the refining sector classification to a high-leakage risk sector in alignment with the 100% Assistance Factor, eliminating any room for ambiguity or mixed signals about the state of the refining industry.

## **3. Decarbonization Incentives are Essential to Filling Critical Funding Gaps and Must Be More Inclusive**

Kern was simultaneously encouraged and dismayed by Staff's proposed Manufacturing Decarbonization Incentive (Incentive Allocation) in Section 95891(g), a new provision that would provide an additional allowance allocation mechanism for facilities as incentive to implement specified emissions reduction strategies. In general, Kern supports the concept behind this Incentive Allocation and is pleased to see CARB take additional action to minimize emissions leakage and support compliance through actual decarbonization efforts within the manufacturing sector. Such incentives by the State are keen recognition that the loss of federal funding puts decarbonization in jeopardy. However, the limitations

on project types and ineligible industries unnecessarily constrain industry's ability to fully leverage the incentive in meaningful ways.

Specifically, refineries represent 40% of all industrial sector emissions<sup>1</sup> and should be eligible for the Incentive Allocation. This is even more true for small refineries, which have well-established barriers to investment and can benefit most from incentives like this that are structured to provide an upfront source of funding rather than subsequent reimbursement years later. Kern acknowledges that CARB's other regulatory programs contain incentive programs with avenues available to the energy and fuel sectors and encourages CARB to see that providing such opportunities additionally within Cap & Invest serves to provide optionality. Each program contains unique provisions and limitations, such as the 2025 sunset on crediting for novel efficiency improvements under the Refinery Investment Credit Provision of the Low Carbon Fuel Standard. Furthermore, CARB can build protections into program requirements to assure an entity could not receive an incentive simultaneously under more than one program.

Kern also urges CARB to revisit the list of eligible project types in favor of making the list less finite and restrictive. By listing only project types that involve electrification, low-carbon hydrogen, and energy replacements that must reduce or avoid fossil fuel combustion, CARB is picking winners and losers. These limitations stifle innovation and ignore other means of achieving industrial decarbonization. If the true goal is on-site emissions reductions, it seems appropriate that an incentive program should seek to fuel opportunity for any and all emission reductions – including incremental benefits from industrial efficiency projects that don't involve fuel or power switching.

Finally, Kern encourages CARB to further examine and incorporate mechanisms into the Cap-and-Invest program that give industrial facilities credit toward their compliance obligation relative to investments made for onsite decarbonization initiatives as an alternative to simply purchasing compliance instruments. For example, CARB could allow a percentage of spend associated with executing a decarbonization project to count toward the entity's compliance obligation. All too often, companies with limited resources, like Kern, are forced to choose between compliance or facility investments, where compliance is the natural choice. Being able to apply the value of capital investments toward a compliance obligation is another means for small companies to overcome barriers that inhibit their ability to invest in the cleaner and innovative technologies that support climate goals. As noted above, Staff should take a broad and inclusive approach when considering what entities and activities are eligible, without limiting a regulatory

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<sup>1</sup> [California Greenhouse Gas Emissions from 2000 to 2023: Trends of Emissions and Other Indicators](#)

framework to only certain types of existing technologies. Framing with flexibility will allow acceleration of decarbonization by avoiding arbitrary constraints.

#### **4. Cap Adjustment Factors Should be Adjusted for Small Refiners**

Kern strongly urges Staff to consider an alternative cap adjustment factor for small refineries given the disproportionate weight of their compliance burden. The existing annual decline of four percent in the cap adjustment factor already creates an immense compliance burden and is exacerbating observed leakage in the refining sector. And yet, Staff is proposing amendments that amplify this decline to a new “normal” of seven percent with a massive 30% decline between 2031 and 2032. The California Energy Commission’s August 2025 Staff Report on Maximum Gross Gasoline Refining Margin and Penalty observed a notable disparity between the 30% decline in-state gasoline production and a mere 15% decline in gasoline demand in recent years, specifically attributed to the loss of California-based refineries. This rapid loss of refining capacity clearly evidences the need for additional mitigation for the refining sector. California’s small refineries, including Kern, cannot bear the intensity of these new cap adjustment factors proposed through 2035. Kern acknowledges the difficult path Staff must navigate to incorporate program provisions for achieving 2045 climate goals, and requests that at a minimum, CARB reexamine how to smooth the effects of the sharp decline between 2031 and 2032.

#### **5. One Time Product Allocation Appropriately Supports New Production**

Kern supports CARB’s proposal to provide product-based allowance allocation retroactively to the start of manufacturing a newly covered product in consideration of the time necessary to add new products to the regulatory framework. This mechanism will further help minimize risk of emissions leakage during periods when a new product does not yet have an established benchmark and cannot receive product-based allocations until regulatory action is taken. The five-year span offered for an entity to seek retroactive allocation for a new product appropriately recognizes the extended time it can take to navigate the necessary rulemaking for official inclusion into the regulation. This approach ensures manufacturers are not unduly penalized when bringing new low-carbon or transitional products to market ahead of CARB’s regulatory cycle and creates a framework that makes them whole on allocations at the earliest opportunity.

Kern understands the significance and complexity associated with developing the breadth of program changes under consideration and appreciates Staff’s efforts to explore and propose a suite of strategies to address leakage, as directed by the legislature in AB 1207. While leakage is typically considered the moving of an industrial operation to another region – in this case, outside of California – CARB must consider the closure of California

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refineries in the same light. While Kern cannot move its operation out of state, the burdensome compliance costs associated with the Low Carbon Fuel Standard and Cap-and-Invest regulations cannot be overstated. We call on CARB to wholly consider the breadth of comments and layer on additional safeguards that adequately protect the refining sector, and particularly the unique situation inherent to Kern's small refinery.

As always, Kern is committed to working with Staff throughout this regulatory process. Please do not hesitate to reach out to me at (661) 845-0761 with any questions.

Sincerely,



Melinda Palmer  
VP – Regulatory & Public Affairs  
Kern Energy