TESTIMONY OF
BRIAN T. TURNER
ASSISTANT EXECUTIVE OFFICER,
CALIFORNIA AIR RESOURCES BOARD

Submitted to the
Subcommittee on Energy and Power,
Committee on Energy and Commerce
U.S. House of Representatives

Hearing On
"Jobs and Energy Permitting Act of 2011"

May 13, 2011

Chairman Whitfield, Ranking Member Rush, and members of the Subcommittee, thank you for the opportunity to testify today on this draft legislation. My name is Brian Turner, and I represent the California Air Resources Board (CARB) on federal issues here in Washington DC. CARB is the primary body charged with protecting the air quality and air-related public health in California, and charged with speaking for the state on air quality issues. We also oversee the air quality permitting programs of local air quality control districts (Districts), and my testimony today has benefitted from the input of staff at Districts adjacent to oil and gas development on the Outer Continental Shelf (OCS) in Southern California.

As you know, California is one of the nation's largest producers of oil and gas and at the same time California, especially in regions with significant oil and gas production, endures some of the worst air quality in the nation. CARB and our local air quality partners have over five decades of experience in regulating the air quality of impacts from oil and gas production.

CARB and our local partners have significant concerns with the discussion draft. We understand that this bill is intended to legislatively address perceived shortcomings in two specific

permitting decisions in Alaska; however it proposes to do so by broadly changing the established implementation of the Clean Air Act in offshore areas that has been successfully used for almost 20 years. CARB feels the legislation could have far-reaching unintended consequences on existing effective protections for public health in California. These include:

- By changing the definition of OCS source, the discussion draft artificially limits the timeframe for considering emissions from a project. Excluding these emissions from analysis will result in some entire projects falling beneath regulatory applicability thresholds, thus avoiding control requirements and significantly increasing air pollution.

- The draft prohibits BACT and other PSD requirements on vessels, which could preempt existing state and local regulations on a variety of nonroad sources that would continue to apply onshore, further increasing emissions. This prohibition also complicates and undermines the enforceability and applicability of CARB's statewide maritime regulations.

- The draft's requirement to measure the impacts of an OCS source solely with respect to the impact at an onshore location both increases regulatory burden for industry and government and decreases public health protections for offshore users, including oil production crews, commercial fishermen, and recreational users.

- The draft completely preempts the existing local administrative review and state court appellate process, instead removing appeals to Washington DC. This would quash local control, impose tremendous new costs on state and local government and taxpayers, and disenfranchise community groups and local stakeholders.

CARB believes that, in California, the amendments made by this draft are unnecessary and will do more harm than good. We encourage the Committee to strongly consider whether such broad legislation is even necessary, or whether the two specific permitting decisions in dispute can be resolved without such problematic changes to an otherwise successful program. If the Committee decides to go forward with proposing fundamental statutory changes, we request that the draft bill be revised to avoid the unintended consequences we discuss below.

Background on air quality regulation of OCS oil and gas development in California

Offshore oil and gas facilities have been operating in California since the late 1800's, and state and local regulators have been working with the oil industry on environmentally responsible resource development on the OCS for just as long.

OCS oil and gas development in California has almost exclusively occurred off the coast of South Coast Air Basin and the South Central Coast Air Basin adjacent to the counties of Orange, Los Angeles, Ventura, and Santa Barbara. The majority of the development has occurred in the Santa Barbara Channel, which contains 18 drilling platforms, 15 of which are adjacent to Santa Barbara County. The air emissions from these sources, especially in these heavily impacted air basins, are significant. For example, current emissions associated with OCS sources adjacent to Santa Barbara account for over 2,000 tons per year of ozone precursors and represent about 4% of Santa Barbara County's entire emissions inventory. Meanwhile, the South Coast Air Basin and Ventura County are designated as non-attainment of the federal ambient air quality health standard for ozone, and Santa Barbara County is non-attainment for the State ozone standard.

California state and local officials and the California Congressional delegation were leading champions in the effort that led to the passage of Section 328 as part of the Clean Air Act Amendments of 1990, the Section that is the object of this draft legislation. Section 328 moved the regulation of air emissions from oil and gas development on the OCS from the Mineral Management Service to the US Environmental Protection Agency (US EPA). US EPA, in turn, was authorized to delegate its enforcement authority to the Corresponding Onshore Area (COA). In California, the COAs are the Air Pollution Control District adjacent to the OCS source.

Section 328 requires that for OCS sources located within 25 miles of a State's seaward boundary (an area which contains virtually all California OCS oil and gas activity), the air pollution control requirements shall be "the same as requirements that would be applicable if the source were located in the [District]." Thus, the Districts are empowered to implement all applicable federal, state, and local air pollution requirements to "OCS sources" that apply to stationary sources in corresponding onshore areas, including Prevention of Significant Deterioration (PSD) preconstruction permits, Best Available Control Technology (BACT) determinations, Title V

operating permits, and state and local air emission standards and operating rules that may be incorporated into PSD or Title V permits.

The adoption of Section 328 represented a dramatic improvement in OCS regulation that continues to work well in California today. Section 328 ended the complicated "consistency determinations" under the federal Coastal Management Act (which required OCS sources to be consistent with the requirements of the adjacent state coastal management program), and so brought to an end years of litigation and frequent standoffs with local jurisdictions and other local entities that sought to prevent any OCS development that was going to exasperate the already serious air quality problems in California.

The resolution in Section 328 was simple, fair, and has worked very well since EPA adopted its OCS rule in 1992. The basic, but powerful, concept is that the requirements for OCS sources shall be "the same" as if these sources are located in the adjacent state. No state can subject any OCS source to any requirements that does not also apply equally to onshore and offshore industry, as well as onshore businesses, citizens, universities, and even U.S. military installations. This principle is fair to both onshore and offshore sources.

When the rules for OCS sources are more lenient that those within the State, California's experience is that the tension between better-controlled onshore industry and stakeholders and the more lax federal OCS regulation will lead to *increased* disputes, project delays and expense, and permit denials. Since Section 328 went into effect, air quality-related issues associated with OCS development have ceased to be significant barriers to oil and gas exploration and development in OCS waters. Industry can and has complied with the state requirements for over 17 years, and they continue to do so every day off of California's Central and South Coasts.

The delegation to Districts under Section 328 of the authority to regulate OCS sources and the applicability of onshore requirements such as BACT and other rules has resulted in significant decreases in air pollution emissions throughout the region. Meanwhile, dozens of OCS exploration and development permits are issued each year.

California Concerns with Draft Legislation

Potential impacts on air quality permitting

California and our local partners have several basic concerns with the proposed CAA revisions. These include:

- By changing the definition of OCS source, the discussion draft artificially limits the timeframe for considering emissions from a project. Excluding these emissions from analysis will result in some entire projects falling beneath regulatory applicability thresholds, thus avoiding control requirements and significantly increasing air pollution.

- The draft prohibits BACT and other PSD requirements on vessels, which could preempt existing state and local regulations on a variety of nonroad sources that would continue to apply onshore, further increasing emissions. This prohibition also complicates and undermines the enforceability and applicability of CARB's statewide maritime regulations.

- The draft's requirement to measure the impacts of an OCS source solely with respect to the impact at an onshore location both increases regulatory burden for industry and government and decreases public health protections for offshore users, including oil production crews, commercial fishermen, and recreational users.

- The draft completely preempts the existing local administrative review and state court appellate process, instead removing appeals to Washington DC, imposing tremendous new costs on state and local government and disenfranchising community groups and local stakeholders.

Change in definition of OCS source and permitting timeframe

The discussion draft proposes to modify the timeframe for which emissions are estimated. The current definition initiates the project at the first attachment to the seafloor and ends the project timeframe when this connection is removed. The discussion draft alters this definition to "…the point in time when drilling activity commences… [to] when drilling ends…" We believe this

change could fail to count substantial pre- and post-drilling OCS activity from the vessels and equipment.

Change of permitting timeframe could exempt entire projects from regulation:

This proposed change to the permitting timeframe would allow days or even weeks of support vessel emissions prior to the commencement of drilling activity and after drilling ends to be excluded from analysis. The result could be that the emissions considered as part of the project are artificially limited in such a way as to bring the project's emissions profile below the applicable PSD regulatory thresholds for BACT, offsets, or both. Since application of BACT has the potential to reduce emissions by up to a factor of ten, and offsets prevent a net decrease in air quality, this change could significantly increase pollution from these projects.

For example, in 2001 a proposed OCS project in the Santa Barbara Channel proposed drilling 2 wells over a 90 day period. The drilling phase of the 90-day project would only be 23 days. The rest of the project included site preparation, casing setting, casing removal, well abandonment, and other set up and take-down activities, during which most of the support vessel trips would occur. This project was estimated to potentially produce 70 tons of nitrogen oxides (NOx). Of that amount 22 tons (31% of the total) would have been attributed to support vessel emissions. It is reasonable to assume that ignoring the non-drilling related support vessel emissions from this project would artificially reduce the emissions by at least 23% (31% of project emissions X 75% of project duration), if not by more given that a greater proportion of vessel activity would occur in set-up and take-down. A reduction in counted emissions of 25% could easily be enough to lower the emissions profile of many projects below applicability thresholds and allow the project to escape the mitigation of BACT and/or offsets, and so to substantially increase total emissions.

Prohibitions on control of vessel emissions

Section 3 of the discussion draft prohibits control of associated vessel emissions under the Clean Air Act PSD program.

Vessel exemption could preempt multiple existing engine standards: Because the draft bill exempts "...emissions from any vessel servicing or associated with an OCS source..." from emission control requirements under the PSD program of the Clean Air Act, California is

concerned the bill could be used to exempt many engines and other emissions sources located on those vessels (other than the engines that move the vessel – the motive engine), from emissions standards that have been incorporated into the PSD program by reference.

Currently, while the motive engines of marine vessels are subject to Section 209 of the Act and therefore not subject to BACT, other engines on marine vessels that service OCS sources may be subject to local district rules and PSD. An example would be crane engines located on a marine vessel associated with an OCS source. Crane engines are regulated as stationary engines under Santa Barbara County Air Pollution Control District Rule 333 and the CARB Stationary Internal Combustion Engine Air Toxics Control Measure. Such engines are subject to permit requirements under PSD and are therefore subject to BACT if their potential to emit exceeds certain thresholds. If it could be interpreted that the emissions from such engines would be considered "emissions from any vessel servicing or associated with and OCS source," then the proposed amendments could have the effect of exempting these engines from BACT and local and state emission limitations, significantly increasing emissions.

Undermines and complicates enforcement of existing statewide regulation: Because of the exemption from BACT and PSD permitting requirements, Districts would not be permitted to incorporate CARB's statewide maritime rules, the Commercial Harbor Craft (CHC) and Ocean-Going Vessel (OGV) regulations, into PSD permits. This could effectively prevent enforcement of these rules for OCS sources beyond state regulatory waters. The unregulated emissions from these excluded vessels and equipment may continue unabated for a long time.

In addition, the bill would preclude more effective and efficient enforcement of CARB's CHC and OGV rules at the District permitting level. CARB can enforce its CHC and OGV regulation only through separate record-keeping and reporting, while currently – i.e., without the bill's restriction – a District can provide a more thorough programmatic review of the OCS source's emissions, incorporate controls into the PSD or Title V permit, and reduce sources' total compliance cost.

Shift in location and method of emissions calculation.

Section 2 of the discussion draft moves the geographic point at which emissions are calculated from the current practice of calculating impacts offshore, near the drilling location, to an onshore point many miles away.

Public health impacts between OCS and shoreline: Shifting the impact measurement to solely consider impacts at an onshore location so disperses the projected impacts that increases in ambient air pollution in the OCS that would normally require offsets would escape detection and mitigation. This procedural change does not remove any of the pollution from actually reaching California and the associated decrement to our ambient air quality, but it does remove the Districts' ability to protect recreational, fishing, and other ocean users from OCS emissions.

The Santa Barbara Channel is widely used for both commercial fishing and recreation. There are large commercial fishing fleets in Santa Barbara, Ventura, and Oxnard harbors, and many of the fishermen harbored in Morro Bay also fish the Santa Barbara Channel. All three harbors contain many recreational boats whose owners primarily sail in the Santa Barbara Channel. Whale watching tours and tours to the Channel Islands leave regularly from the harbors. There are no fewer than 50 recognized surf spots between Point Mugu and Point Conception. Furthermore, the Santa Barbara Channel is a major migratory route for endangered species of whales, the Gray and the Humpback, who must also breathe the air of the OCS. Finally, there are the drilling rig and support vessel crew themselves, as well as other industrial and transient users in the Channel, including shipping and military vessels. Shifting the point of calculation of emissions effectively removes the protection of the Clean Air Act from these populations.

Onshore emissions measurement complicates permitting and increases expense: Currently, District permitting entails relatively simple calculation of emissions attributed to and aggregated at the OCS source – its "potential to emit." For example, Santa Barbara aggregates those emissions and models them for the highest impact off a drilling platform, which is usually somewhere in the ocean not too far from the platform. This calculation methodology is basically the same as is applied onshore – a consistency between onshore and offshore permitting that is precisely the spirit of Section 328.

This bill would complicate those emissions calculations by requiring that emissions be "measured" miles away onshore. This not only reduces the pollution attributed to the source, it will require more time and expense to properly model onshore emissions impacts. Districts may incur added cost and delay to deploy an adequate onshore monitoring network and obtain data sufficient to establish a baseline – costs that would be passed on to permit applicants.

Preemption of local administrative review and shift in appellate venue

Section 4 of the discussion draft preempts all local administrative review of permit decisions, except as requested by the applicant, and moves judicial review to the U.S. Court of Appeals in Washington DC.

Preemption of local review: In California, permit decision appeals are heard entirely within the local and state system – not by EPA or the Environmental Appeals Board. The first appeal is heard by the District's Hearing Board and judicial appeals by the Superior Court of California. The court of final appeal is the Supreme Court of California.

This local permit review is fundamentally consistent with the delegation to state authority and equal treatment of on- and off-shore pollution which is at the heart of Section 328 of the Clean Air Act. It recognizes that the intent of the program is to integrate federal, state, and local air quality requirements, to leverage local environmental, technical, and legal expertise, and to build local relationships and capacity between industry, government, and stakeholders in the region. This intent and these benefits are quashed by preempting local administrative review and removing all appellate action to Washington DC.

Removal of appellate venue: The negative policy effects of this local preemption are exacerbated by removing the venue for judicial appeals to the U.S. Court of Appeals in Washington DC, requiring local Districts to pay significant logistical costs to defend any number of appeals – whether from applicants, community groups, or any other appellant. Forcing cash-strapped state and local governments to travel 3,000 miles to defend their federally-delegated permitting decisions is a serious unfunded federal imposition. It impairs the ability of these governments to conduct the people's business, increases the burden on taxpayers, and takes precious resources from other pressing priorities.

Perhaps more troubling from a democratic perspective, this change in venue presents a major barrier to meaningful participation in basic public decision-making by local citizens. Requiring local businesses, community groups, and other stakeholders to file suit in the U.S. Court of Appeals in DC is tantamount to closing the courthouse door to many otherwise worthy complaints.

Conclusion

The California Air Resources Board appreciates the opportunity to address this draft legislation. California's carefully balanced oil and gas production and air quality regulation is working – dozens of new and modified OCS drilling operations receive permits each year within reasonable time and expense, while the 15 million Californians living in the affected air basins are protected from undue health and safety risks.

The discussion draft short-circuits this process, preempting local control over fundamental issues of health and safety. It increases the administrative burden on the state while decreasing the environmental benefits – certainly the wrong direction for "reform" of the law.

We feel the discussion draft takes a hammer to a pushpin. While we do not comment on the specifics of the permit decisions in Alaska, it is clear to us that the process in California is not broken. Instead, the proposed "reforms" will likely cause more problems than they solve. We urge the Committee to take a strong look at whether legislation is required at all in this case or whether more targeted and case-specific agency actions can resolve the issue. If the Committee does move forward with legislation, we ask that you take a hard look at the concerns that we have raised and take care to ensure that California's existing, effective system of OCS air quality management is not undermined.