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March 21, 2025

California Corporate Greenhouse Gas (GHG) Reporting and Climate Related Financial Risk Disclosure Programs
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Submitted via the Workshop Comment Submittal Form and by email to climatedisclosure@arb.ca.gov

Re: WSPA Comments on the Information Solicitation to Inform Implementation of California Climate Disclosure Legislation: Senate Bills 253 and 261

The Western States Petroleum Association (WSPA) appreciates the opportunity to comment on the California Air Resources Board's (CARB) Information Solicitation to Inform Implementation of California Climate-Disclosure Legislation: Senate Bills (SB) 253 and 261 (2023), released on December 16, 2024.[1] WSPA is a non-profit trade association that represents companies involved in various aspects of the energy sector, such as importing and exporting, producing, refining, transporting and marketing petroleum, petroleum products, natural gas and other energy supplies in California and four other western states, and has been an active participant in air quality and climate planning issues for over 30 years.

The U.S. Chamber of Commerce and other groups representing businesses have filed a lawsuit in federal court to have SB 253 and 261 declared unconstitutional.[2] WSPA supports that lawsuit and believes the laws should be declared unconstitutional and their enforcement enjoined.

Because SB 253 and 261 are unconstitutional, CARB should not implement or enforce them. The laws violate core First Amendment rights by compelling speech through blanket disclosure obligations on any companies that satisfy their revenue thresholds, instead of focusing on California-based GHG emissions thresholds, and even if the company has never made advertisements regarding greenhouse-gas emissions, climate change, or being a "green" company, without connections to a commercial transaction.[3] These laws also impose significant burdens on interstate and foreign commerce with slim to non-existent benefits in addressing climate change, and are therefore precluded under the Supremacy Clause by the Clean Air Act. Further, these laws violate constitutional limits on extraterritorial regulation by purporting to subject companies to burdensome reporting requirements for their global emissions, regardless of what proportion of their revenue stems from California or what proportion of their emissions occurred in California. Companies will be caught up in regulated entities' efforts to report Scope 3 emissions, incurring burdensome compliance costs, regardless of their contacts with California, based on their position in the supply chain. No regulation can change the unconstitutional nature of either law. The collection of these extraordinary amounts of data and the implementation of these laws will cost millions of taxpayers' dollars to California, will be costly and detrimental to business prosperity, and will yield a disjointed collection of GHG emissions with no rationale of what the intent or use for such massive and collective reporting of GHG emissions really is.

[1] CARB. Information Solicitation to Inform Implementation of California Climate-Disclosure Legislation: Senate Bills 253 and 261, as amended by SB 219. 2024. Available at: https://ww2.arb.ca.gov/sites/default/files/2025-01/ClimateDisclosureQs_Dec2024_v2.pdf. Accessed: March 2025.
[2] See Chamber of Commerce of the United States of America v. Randolph, No. 2:24-cv-00801-ODW-PVC (C.D. Cal.)
[3] See, e.g., Nat'l Inst. of Family & Life Advocates v. Becerra, 585 U.S. 755, 766 (2018).

WSPA submits these comments to attempt to address some of the serious affordability and competitiveness issues, as well as other adverse impacts posed by these laws apart from their unconstitutionality, but WSPA iterates that the laws' core defects are impervious to any regulatory fixes.

CARB must ensure that its climate-disclosure regulations adequately assess "the potential for adverse economic impact on California business enterprises" and address competitive impacts for existing businesses, in accordance with the Board's rulemaking obligations under Cal. Gov. Code §§ 11346.3(a), (e) and 11340.1(a). California Government Code §11346.2(b)(4) also requires CARB to consider "reasonable alternatives to the regulation that would lessen any adverse impact on small business," and reasonable alternatives that are "less burdensome." To comply with these provisions, WSPA urges CARB to develop a more cost-effective reporting program that attempts to minimize compliance burdens for reporting entities.

As discussed in more detail below, WSPA emphasizes the following principles that must underlie any efforts to implement SB 253 and 261:

- **CARB should determine applicability for reporting requirements** based on a substantial portion of an entity's ordinary business being transacted in California based on the entity's GHG emissions levels, considering only direct emissions from operations within California and that are already being reported.
- **CARB should allow maximum flexibility** both by allowing reporting entities to choose which external standards and protocols to follow and in what methodology the reporting entities use**.**
- **CARB should minimize duplicative reporting requirements** by allowing companies to rely on substantially similar disclosures, consistent with CARB's duty to limit regulatory burdens.
- **CARB should not mandate compliance with the GHG Protocol**, which was not designed for regulatory compliance but rather as a voluntary reporting framework. Its methodologies present significant challenges when applied in a compliance setting.
- **Third-party assurance should function as an independent verification of data** – not a mechanism for determining regulatory compliance, enforcement, or policy interpretation.
- **WSPA believes these bills will be costly to implement and comply with**, which presents heightened legal risks for compliance reporting and will result in negative impacts to California's market competitiveness and economic development.

In response to the December 2024 information solicitation, WSPA offers the following comments:[4]

1. **SB 253 and 261 both require an entity that "does business in California" to provide specified information to CARB. This terminology is not defined in the statutes.**
   a. **Should CARB adopt the interpretation of "doing business in California" found in the Revenue and Tax Code section 23101?**
   No. Using Revenue and Tax Code Section 23101 will likely lead to further overreach and uncertainty for the regulated community – as well as for CARB – in determining scope. As the provision's thresholds are incredibly low and, in some instances, subjective, it is likely to be impossible for CARB to enforce efficiently and will likely lead to inconsistent enforcement.

   WSPA instead recommends that CARB adopt a comprehensive definition for entities based on the entity's GHG emissions levels from direct emissions in California and for entities "doing business in California" that encompass all entities that meet the total annual revenue thresholds specified in the legislation – $1 billion for SB 253 and $0.5

[4] Nothing in this submission should be considered an admission of lawfulness on the part of WSPA or its members. WSPA, and its members, reserve the right to challenge the underlying statute, or implementing regulations, as unconstitutional or otherwise unlawful.