



Western States Petroleum Association  
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**Catherine H. Reheis-Boyd**  
President

December 11, 2013

Clerk of the Board, Air Resources Board,  
1001 I Street,  
Sacramento, CA 95814  
<http://www.arb.ca.gov/lispub/comm/bclist.php>

Re. **Public Hearing to Consider the Proposed Regulation on the Commercialization of New Alternative Diesel Fuels**

The Western States Petroleum Association (WSPA) appreciates the opportunity to submit written comments for the record on the above proposed rulemaking. WSPA is a non-profit trade association representing twenty-seven companies that explore for, produce, refine, transport and market petroleum, petroleum products, natural gas and other energy supplies in California, and five other western states.

We understand the hearing has been postponed until March of 2014, however the record on this item is open for submittals through the December 12<sup>th</sup> hearing, and then will be reopened again in March for further comment on any staff proposed revisions. WSPA has provided comments on the 45 day package in the attachment, and would be happy to discuss these further with ARB if needed.

WSPA has worked with ARB over the past few years on this alternative diesel regulation and believes the approach outlined in the proposed regulation is the best based on the large number of issues and considerations. We are prepared to consider the anticipated additional proposals that will be discussed during a staff workshop in the New Year.

Sincerely,

A handwritten signature in blue ink that reads "Catherine H. Reheis-Boyd". The signature is fluid and cursive, with the first name being the most prominent.

## WSPA COMMENTS ON CARB'S PROPOSED REGULATION ON THE COMMERCIALIZATION OF NEW ALTERNATIVE DIESEL FUELS

- WSPA suggests ARB provide more details on how the factors in the regulation were calculated because it is not as straightforward as stated; especially if the reader doesn't know that ARB assumed that 5% biodiesel is neutral, and that ARB used B5 as the baseline rather than CARB Diesel.
  - The proposed regulation is missing a heading section on page A-21. There should be a section 2293.5(d) heading at the top of the page.
  - Appendix C: We believe there is an error in the regulation. ARB discusses NOx mitigation on page 174 under "Cost to use low NOx Diesel". ARB states it requires a 4:1 ratio of renewable diesel to CARB diesel to mitigate NOx for B20. The study shows a 2.75 to 1 ratio of renewable diesel to biodiesel will mitigate NOx, which turns the hydrocarbon ratio into a 2.2 to 1 ratio of renewable diesel to CARB diesel for B20 blends. This is confirmed in the ARB staff's September workshop slide pack on page 24.
  - We would like to ask ARB about a regional average compliance approach, and whether this would be acceptable.
- **2293.2 Definitions**  
Changes to definitions should be made as follows:

### **Biodiesel Blend**

A biodiesel blend may consist of biodiesel blended with petroleum based diesel, renewable diesel, GTL, and/or other Fischer-Tropsch fuels. Therefore, the term "petroleum based" within the definition of "Biodiesel Blend" should be replaced with the broader term "CARB diesel" as follows:

"Biodiesel Blend" means biodiesel blended with ~~petroleum-based~~ **CARB** diesel fuel."

We assume CARB diesel includes GTL, renewable diesel, etc.

### **"Diesel Substitute"**

"Diesel Substitute" is a circular term as defined in the proposed regulation, because renewable diesel is both CARB diesel and under this definition a "Diesel Substitute". We believe the term "Low Emission Diesel" or something similar conveys ARB's intent better than the term "Diesel Substitute". "Diesel Substitute" should be replaced with this updated term throughout the proposed regulation and have the following definition:

~~"Diesel Substitute~~ **Low Emission Diesel**" means ~~any liquid fuel that is intended for use with CARB diesel or CARB diesel blends in a compression ignition engine~~ **a type of CARB diesel fuel that can reduce emissions of one or more criteria or toxic air contaminants relative to reference CARB diesel.** ~~"Diesel substitute~~ **Low Emission Diesel**" includes, but is not limited to, renewable diesel; gas-to-liquid fuels; Fischer-Tropsch fuels; CARB diesel blended with additives specifically formulated to reduce emissions of one or more criteria or toxic air contaminants relative to reference CARB diesel; and CARB diesel specifically formulated to

reduce emissions of one or more criteria or toxic air contaminants relative to reference CARB diesel.

### **“Hydrocarbon”**

The definition of “Alternative diesel fuel” includes the phrase “...does not consist solely of hydrocarbons,…” as follows:

“Alternative diesel fuel” or “ADF” means any non-CARB diesel fuel used in a compression ignition engine that does not consist solely of hydrocarbons, and is not subject to a specification under title 13, CCR, section 2292. All ADFs that are substantially similar to an ADF subject to an approved Executive Order or MOU shall be deemed to fall within the class of ADFs subject to that same approved Executive Order or MOU.

Coupled literally with ARB’s proposed definition of “hydrocarbon” below, this creates a contradiction with the reality that even petroleum based CARB diesel (which would not otherwise be considered an ADF) contains low levels of other elements such as sulfur and nitrogen which are residual impurities from the refining process. To remove this contradiction and avoid potential confusion, we recommend ARB instead adopt the definition used in ASTM D975 for “hydrocarbon oil” as the definition for “hydrocarbon” in the ADF regulation as follows:

*hydrocarbon ~~oil, n~~*—homogeneous mixture or solution with elemental composition primarily of carbon and hydrogen and also containing sulfur, oxygen or nitrogen from residual impurities and contaminants and excluding added oxygenated materials.

- **Section 2293.3 Exemptions**

Paragraph 2293.3 (b) exempting CARB diesel from the ADF regulation states CARB diesel blends are comprised solely of CARB diesel and one or more diesel additives that comprise “in the aggregate” no more than 1.0 percent by volume of the CARB diesel blend. EPA limits additives in diesel fuel to 1 percent individually per 40 CFR80.521(b)(1) . We believe ARB should do the same for consistency. Therefore, section 2293.3 (b) should be modified as follows:

“CARB diesel blends comprised solely of CARB diesel and one or more diesel additives individually comprising ~~in the aggregate~~ no more than 1.0 percent by volume of the CARB diesel blend. This provision does not apply to additives used pursuant to the mitigation measures specified in Appendix 1;”

40CFR80.521 is accessible via the Electronic Code of Federal Regulations at:

<http://www.ecfr.gov/cgi-bin/text-idx?SID=ca97c6c0579783920cb5aab1e3ae3def&node=40:17.0.1.1.9.9.63.11&rgn=div8>

Paragraph 2293.3 (c) - With regard to ADF's used in fleets comprised of 95% or more NTDE vehicles, ARB should include the NTDEs when determining the Effective Blend Level as that volume is leading to emissions reductions. It should not be up to the Executive Officer as to if/whether it should or shouldn't be included. Is it included in the "VM" category? If so, it should be specified.

- **Section 2293.4 General Requirements Applicable to All ADFs**

ARB made no changes addressing the WSPA comment, “Part (b) discusses that an ADF must meet all of DMS’s regulatory requirements/standards. We can foresee a possible problem whereby the two agencies (ARB and DMS) adopt current ASTM versions at different times – thereby making it difficult if not impossible to comply with both versions for a period of time.”

- **Section 2293.5 (c) Regarding “Stage 3A: Commercial Sales Subject to Mitigation”**

Section 2293.5(c)(2) states,

“Based on the analysis in (c)(1), the Executive Officer shall estimate the year(s) in which the effective ADF blend level is projected to reach 25%, 50%, 75%, and 95% of the significance threshold.”

What action by ARB occurs if/when the 25% and 50% thresholds are reached? What, if any, requirements are placed on Stage 3A ADF “producers”, “importers” and “suppliers” before the 75% significance threshold is reached?

Section 2293.5(c)(3) states that,

“...Once the 75% level is reached, all suppliers of an affected ADF shall provide monthly reports to the Executive Officer, as specified in section 2293.8, additionally at this point all producers and importers of the affected ADF shall submit a mitigation plan in accordance with 2293.5(c)(5);...”

Please explain and define the word “suppliers”, as this term is not included within the Section 2293.2 definitions. An example using biodiesel would be helpful under scenarios where:

- One party imports B100 into the state under the LCFS importer definition,
- The importer sells some portion of the B100 to others within the state,
- Some portion of those in-state B100 buyers may use the biodiesel to make/sell B5 blends, while others may use the B100 to make/sell B10-B20 blends, and
- The original B100 importer will not necessarily know how the in-state buyers of the B100 used the B100 (B5 blends? B10? B20? Re-sold again as B100 to another party?)

Section 2293.5(c)(4) states that:

“Once the effective ADF blend level has reached 95% of the significance threshold, the requirement to apply mitigation becomes effective and any producer or importer of the affected ADF shall comply with the terms of the mitigation plan by which they are covered. Each mitigation plan shall apply mitigation on a proportion of their total fuel equal to difference between the projected effective blend level and 95 percent of the significance level for each year.”

Using biodiesel as an example, if the 95% significance threshold is reached all B100 producers/importers should not have to apply a mitigation plan. If mitigation is only required on B10

to B20 blends, the “suppliers” of these B10 to B20 blends should be the responsible parties and not necessarily the producers/importers of B100.

- **Section 2293.5 (c) Regarding “Stage 3B: Commercial Sales Subject to No Mitigation”**

If ARB has determined no significance level for an ADF (the fuel is a Stage 3B ADF) and no mitigation measures and/or sales restrictions are required for that ADF, why then does a “fuel provider” (term not defined) need to submit quarterly reports to the ARB Executive Officer? This reporting seems unnecessary and redundant as ARB implies the production/import volume information will already be captured within LCFS quarterly submittals. Please explain the purpose of this requirement.

- **2293.6 Significance Thresholds and Effective ADF Blend Levels.**

**Net Biodiesel Volume (NBV) is defined as:**

NBV = net volume of biodiesel used in compression-ignition engines in California, excluding gallons used in B5 or less, expressed in gallons.

Which parties will have to report what information to ARB in order for the Executive Officer to calculate this “NBV”? We do not believe “suppliers” and “fuel providers” blending/selling B0-B5 should have any reporting requirements. Rather, the EO should calculate this NBV via the reporting by the blenders/sellers of B6-B20.

**Volume of Animal-fats-based biodiesel (AB) is defined as:**

AB = volume of animal-fats-based biodiesel used in compression-ignition engines in California, excluding gallons used in B5 or less, expressed in gallons.

Since B5 blenders should not have any reporting requirements placed on them under the ADF regulation, please confirm ARB will obtain information on this AB volume from the blenders of B6-B20 who use animal-fats-based biodiesel in those blends. If the amount of animal fat based biodiesel is unknown to the B6-B20 blender, will the blender be able to report it as zero/unknown? This may trigger the significance threshold sooner, but it would provide the B6-B20 blender with a reporting compliance path.

**New Technology Diesel Equipment (NTDE) impact on the Effective Blend Equation:**

Why has ARB changed its approach from including an NTDE weighting factor in the effective blend calculation to instead propose no benefits from NTDE’s until they comprise 95% or more of the in-service heavy duty fleet?

- **Section 2293.8 (b)(2) states (highlighted emphasis added),**

“Except as provided in this paragraph, a person operating within Stage 3A must submit monthly reports to the Executive Officer. Each report shall include the following:

(A) The volume of ADF and ADF blend offered, supplied, or sold during each month;

(B) Results of a specified number of representative samples, for fuel properties by test methods specified in the MOU;

(C) The volume of other applicable quantity of the mitigation strategy used during each month;

(D) The blend rate of mitigation strategies used during each month, if applicable.

If the Executive Officer publishes notice that the effective ADF blend level has reached 75% of the significance threshold pursuant to section 2293.6(c)(2) and (3), any person subject to this provision shall report the information specified in (1)-(3) above for the affected ADF by the end of each month following the notice publication.”

Please define “a person operating within Stage 3A”. It may not necessarily be the ADF producer/importer. It might instead be a supplier of an ADF blend - correct? In the case of biodiesel blending, is the “supplier” of B6+? or B10+? the person who must submit reports? If a biodiesel producer/importer sells the B100 to others within California, or only uses the biodiesel in B5 blends, what is this producer/importer required to report? Please note that the biodiesel producer/importer will not necessarily know if subsequent purchasers intend to use the biodiesel in B5 blends, B6-10 blends, and/or B10+ blends.

Frequency of Reporting for Stage 3A ADF’s - In previous workshop drafts of the ADF regulation, quarterly reports were required until the effective ADF level reached 75% of the significance threshold. Only then would monthly reports be required. We do not see a reason for monthly reporting before the 75% significance threshold is reached. Also, section 2293.5(c) (3) as currently proposed by ARB only states that reporting shall begin on a monthly basis after the 75% significance level is reached. The frequency of reporting in Section 2283.8(b) should be revised to match that in 2293.5(c)(3).

Also in the proposed regulation, the Stage 3A reporting requirements are now listed as items 2293.8(b)(2)(A) through (D). Please correct the typographical error where these are referred to as items “(1)-(3)” in the last paragraph of Section 2293.8(b)(2).

- **Section 2293.8(b)(3) –Reporting for Stage 3B ADF’s**

Section 2293.8(b)(3) states that Stage 3B ADF reporting is required monthly. However, section 2293.5 states that for Stage 3B alternative diesel fuels, reporting shall be on a quarterly basis. Per our earlier comment we believe ARB will be able to obtain this information on a quarterly basis from LCFS quarterly submittal reports. The monthly reporting requirement in 2293.8(b)(3) should be removed.