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December 17, 2008

California Air Resources Board  
1001 I Street  
Sacramento, CA 95812-2815

Attn: Ms. Christina Zhang-Tillman  
*Via email to:* czhangti@arb.ca.gov

Re: Comments for Draft LCFS Regulation

ConocoPhillips appreciates the opportunity to comment on The California Low Carbon Fuel Standard Regulation draft proposal and materials provided at the December 2, 2008 workshop. The majority of our comments re-iterate the written comments which were submitted in response to the initial (October 2008) draft regulation because we feel that those comments have not yet been adequately addressed. ConocoPhillips is directly impacted by this regulation as we own and operate two refineries in the State of California. In addition, we have pipeline, terminal, and marketing assets in the State that distribute fuels produced at our refineries. ConocoPhillips is a member of the Western States Petroleum Association (WSPA) and support the comments submitted by WSPA. In addition to the WSPA comments, we offer the following.

#### **Section 95424 Compliance**

##### **(a) Regulated Parties**

ConocoPhillips supports the proposed compliance concept outlined in Section 95424 where the compliance obligation is the responsibility of the title holder of the product at the point where the fuel becomes finished for final distribution. ConocoPhillips believes that this approach is appropriate as it moves the point of compliance to where parties have control over how the fuel is finished. Refiners or importers of the fuel who do not retain title when it is blended with renewable fuel downstream, have limited control over what the downstream party will chose to blend. The downstream party may make choices based on the lowest cost option versus what is needed to meet the LCFS standard. ConocoPhillips also believes that a producer or importer of "finished fuel" should be able to retain the compliance obligation if the "finished fuel" from the production or import facility does or does not contain a renewable fuel with lower carbon intensity than the base fuel. The carbon intensity of the renewable fraction should be based upon the life cycle analysis for the individual renewable fuel pathway (examples include renewable gasoline, renewable diesel, etc).

ConocoPhillips supports the recent CARB clarification that the obligation relates to "title transfer" and not "custody transfer". This is consistent with market situations and responsibility association to those that have ownership of the product.

##### **(c) Compliance and Progress Reporting Requirements**

The proposed requirement for quarterly reporting is not warranted. CARB has not justified the benefit of this new reporting burden on industry. As the LCFS is an annual program, the Agency

should not require reporting more frequently than annually. CARB has proposed requiring the annual compliance reports to contain the same information as the proposed quarterly reports. This includes providing the Executive Officer with copies of product transfer documents (PTDs) when transfer of compliance obligation occurs. The Agency should not require physical copies of PTDs to be provided. Rather, the Agency should build reporting formats that would include information on who the transferee is and retain the right to request documentation if necessary.

In the October draft, the Agency asked for feedback on the feasibility of including a requirement for sustainability reporting and we provided the following comment

The LCFS implementation, including reporting, will be a very complex task for multiple industry segments. Inclusion of sustainability reporting would significantly increase the complexity of the reporting requirements and should not be considered at this time. In addition, the definition of “sustainability” is vague and uncertain. In the absence of a consensus definition of sustainability, it is premature to add reporting requirements for this undefined parameter at this time.

We support CARB’s removal of this reporting requirement in the December draft.

#### **(d) Recordkeeping and Auditing**

##### **(2) Evidence of Physical Pathway**

This section will require clarification as to what appropriate documentation is. It is unclear whether or not actual volumes of the alternative fuels must be blended in California. A demonstration of a physical pathway should be sufficient. If however, some volume of the alternative fuel must be blended into California fuels, this will lead to increased emissions associated with increased transportation to get the fuels to California (“shuffling”). The Federal EPA is currently working on rulemaking to implement the provisions of the Energy Independence and Security Act of 2007. Recordkeeping and auditing provisions of the California LCFS should synchronize with the Federal provisions in this area as much as possible to avoid multiple systems. For example, the current RFS uses Renewable Identification Numbers (RINs) to track volumes of renewable fuel used for compliance with the RFS. The RINs identify the production facility where the renewable fuel was produced and the type of renewable fuel. It would be advantageous for California to build upon that system rather than creating a need for new documentation for reporting purposes.

#### **Section 95425 LCFS Credits, Deficits, and Incremental Obligation**

##### **(c) Credit acquisition, banking, borrowing, and trading**

A commentary was provided in this section indicating that the Agency may place limits on credits generated in the early years of the program. ConocoPhillips is opposed to this. Any reductions achieved in the early part of the program, or any time in the program, should be allowed to be banked and used in later years toward compliance. This will help incentivize early action.

Another reason to not “discount” early year credits is that based upon input from the University of California at Berkeley, early reductions may be more valuable than later reductions. The December draft included a 20 percent credit rollover cap, which was not included in the October draft. This cap is unwarranted and should not be included. Companies should be allowed to utilize their credit bank and other available credits in the most cost effective manner.

The one-way limit on credit trading (LCFS credit may be exported for compliance with other greenhouse gas reduction initiatives, however, credits generated from outside the LCFS program cannot be used in the LCFS), may not be the most cost-effective approach. This concept is also counter to AB32 which requires “...the state board to adopt rules and regulations... to achieve the maximum technologically feasible and cost-effective greenhouse gas emission reductions...” The Bill also authorizes “... the state board to adopt market-based compliance mechanisms...”

Allowing exchange of credits between programs will result in reductions where they are the most cost-effective. Given the current economic situation and constraints, this is an important factor in minimizing the economic impact of these programs.

**Section 95426 Determination of Carbon Intensity Values  
Non-Conventional Crudes**

In assessing non-conventional crude production, CARB should consider other regulatory CO2 programs (current and future) in evaluating LCA pathways elements. If CARB fails to do this, the LCA will impose demerits on oil sands production even though other regulated areas (such as Canada) have already imposed controls (operational, offsets, fees, etc.) that have accounted for the production intensity of the crude in that region. The imbedded "deselect" for oil sands created by the absence of this consideration will lead to problematic trade considerations and will no doubt result in "crude shuffling".

**General  
LCA**

We continue to have concerns over the methodology and actual values used in the LCA modeling. These are specific and technical points that would best served in a face-to-face meeting to review, rather than trying to communicate them through written comments. In addition, ConocoPhillips urges CARB to work with the Federal EPA to the maximum extent possible in order to harmonize the modeling work associated with both the Federal RFS program and the California LCFS.

**Economic Analysis**

At CARB's December 2, 2008 public meeting, CARB presented a workplan for their economic analysis. ConocoPhillips believes that the economic analysis and associated technological feasibility should "drive the process". We believe these assessments should be the basis for policy and regulatory decisions and should be completed and reviewed before regulations are proposed and adopted. ConocoPhillips has serious concerns regarding CARB's current "Estimated Alternative Fuel Costs" presented in the 11/26/08 document and at the 12/2/08 workshop. We believe more comprehensive and peer reviewed assessments are needed with reconciliation against other federal and regional evaluations. We request and anticipate the ability to review and comment on CARB's future work in this area.

Thank you for the opportunity to comment on the draft proposal. We appreciate CARB's sharing of these early drafts. However, we remain extremely concerned about the promulgation timeline and allowance for due process in rulemaking while providing regulated parties an adequate timeline for compliance relative to the Early Action Process. Final provisions of the rule and front-end requirements will determine the workability of the program.

Please contact me at the above address or at (562) 290-1521 with any questions regarding these comments.

Regards,

<H. Daniel Sinks>

ecc: Bob Fletcher (CARB )  
Gary Schoonveld (Houston)  
Marla Benyshek (Ponca City)  
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