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Mr. Floyd Vergara  
California Air Resources Board  
Sent via Email Only

September 27, 2011

Dear Floyd,

Poet Ethanol Products submits the following commentary on the proposed LCFS regulatory amendments which were presented in the public workshop held on September 14, 2011. For now, we are focused on what appear to be the most significant issues for which we believe there are relatively simple possible adjustments.

**Section 95480.4 (a). Freezing of Disputed Credits.** This paragraph discusses locking down credits that may have been generated in error or where their ownership is in dispute. It also has the potential to draw in downstream parties that may have nothing to do with the credits or situation in question other than they have physical possession of a specific credit. The wording could also leave an offending party without any locked credits simply because they had transferred the ones in dispute to someone else. We would suggest a revision to the language that would initially freeze the credits in the accounts of the entities that are part of the dispute unless the Executive Officer feels the circumstances involved call for broader action.

- (a) [referenced paragraph replaced in its entirety] An equivalent amount of LCFS credits generated from the volume and type of fuel at issue shall be made inaccessible to the regulated parties and placed by the Executive Officer into a holding account. The Executive Officer may expand the holding action to other regulated parties if there is reason to believe those parties were complicit to the duplicate registration of fuel and its corresponding credits.

Additionally, we suggest removing the word 'inadvertently' from the second sentence of the first paragraph of 95480.4 to allow for intentional duplications as well.

**Section 95481 (a) 24 & 25 Importer and Import Facility Definition.** We greatly appreciate staff's willingness to accept the feedback from stakeholders requesting a broader definition of Importer and Import facility. We also recognize that other stakeholders view the proposed regulatory amendment wording as being too vague and creating unnecessary opportunity for confusion about who has the responsibility of importation. Poet Ethanol Products believes the possibility is remote for regulated parties to misconstrue or fail to declare who the party responsible for the importation is. But to the extent CARB feels it is necessary to further clarify this point, we propose the following language for Section 95481 (a) 24 that preserves our initial intent and may serve to address other stakeholders concerns:

- (24) "Importer" means the person who owns an imported product when it is ~~received~~ delivered at the Import Facility in California defined in Section 95481 (a) 25 B thru C or the person specifically identified as the "Importer" in a commercial agreement between the person who owns and the person receiving the alternative fuel at the point the product is being delivered at the Import Facility defined in Section 95481 (a) 25 A thru C.

We believe changes substantively of this nature would serve to define by default who the Importer is, but still allow for the Importer to be the Producer, Marketer, or other party that is introducing the fuel into commerce in the state if both parties to the transaction agree to it in writing. By requiring a consensual arrangement that is explicitly stated in writing, this should address concerns over ambiguity or desires to retain the 'original' definition of Importer.

**Section 95486 (f) 3 C. Certification of a Fuel Pathway** – Poet Ethanol Products appreciates CARB's desire to verify the accuracy of the information contained in Method 2A & B Pathways, but we still believe that setting the minimum requirements to include everything listed in sub paragraphs B & C is unnecessarily burdensome. We would strongly suggest that the requirements of sub paragraph C be scaled back from being a blanket requirement and that many of the more detailed items be submitted only upon the request of the Executive Officer. At least, the use of the word 'all' in Sections 95486 (f) 3 C 2 (a ii, iii, v, vi, viii), 3, and 8 should be replaced with 'all significant' or a similar phrase.

Paragraphs 3 and 4 in sub paragraph C are particularly detailed and will be very cumbersome to assemble. They would also seem to add little value to staff's evaluation of the pathways, especially in instances where a RFS2 3<sup>rd</sup> party engineering report is available and if all other elements of an application are consistent with one another and with CARB's understanding of fuel lifecycles.

We are able to see where this level of detail may be appropriate or warranted in certain situations, but that will primarily be in cases of new technology where the data will simply not be available anyway. Thus, these standards would apply predominantly to circumstances where it is not necessary. To saddle all of the existing producers with this onerous of a set of requirements seems to do little more than serve as a disincentive for an entity with a presumably lower carbon intensity fuel to offer it for sale into California.

**Section 95486 (f) 3 J c. Recordkeeping of co-products** – As above, the word 'all' as it relates to the tracking of co-products is unnecessarily specific. There are a host of co-products that can be produced by the ethanol facility that are either not of significant quantities so as to even be modeled by CA-GREET or may never be sold, such as in the case of carbon dioxide at many facilities. Additionally, the level of precision surrounding measurement of shrink loss (gains) varies by product and can even be significant as with the example of moisture levels in distiller's grains. Thus, we would suggest the following wording changes to this section:

c. The quantities of ~~all~~ co-products produced as a result of the production of the fuel covered by paragraph [?] that are critical to the qualification of the fuel pathway. Sales receipts and bills of lading for the sale of ~~all~~ such co-products must be available for presentation to the Executive Officer upon demand. If more than 20% of such co-product was produced ~~that~~ than was sold or held in inventory for sale, full documentation of the fate of the unsold fractions shall be maintained shall be available to the Executive Officer upon demand.

**Section 95488 Banking, Trading, and Purchase of Credits:**

(a) **2. - Credit ID's** – There still seems to be analysis taking place within CARB as to how and when unique credit identifiers may be applied. While there would be understandable value within the LRT to having record identifiers, we again urge CARB not to make these identifiers part of the information passed between regulated parties as credits are transferred. Moving down this path would require large scale changes to the LRT to allow for real-time and automated transfers of this information so it is available to be exchanged between counterparties on the existing product transfer document in the normal course of business. The wording of this paragraph, leaving the creation and use of the identifier in the hands of the Executive Officer is fine, as long as CARB fully appreciates the implications of triggering its use .

(b) **1 - Requirements for the Transfer of Credits.** - While the intent of this sub section appears to be aimed at the tracking of Transfers that occur outside the normal process of exchanging them with a corresponding volume of fuel, this paragraph does not say that. We suggest the following wording to clarify the credits governed by this section:

(1) A regulated party who wishes to sell or transfer credits without selling a related volume of fuel ("the Seller") and a regulated party who wishes to purchase or acquire a credit without purchasing a related volume of fuel ("the Buyer") may enter into an agreement to transfer credits ("Credit Transfer").

Additionally, references to this "Credit Transfer" would have to be made in the remainder of this sub section (b) to make clear that the requirements of the sub section pertain only to those Credit Transfers that are not accompanied by a related volume of fuel.

If the intent of this sub section was actually to regulate all transfers of credits, regardless of whether they are accompanied by fuel or not, then we would have issues with a number of the provisions. For instance, the timing could be a problem in paragraph (A) as Sellers could routinely contract to sell a higher quantity of credits than what is held in their accounts because the time of measurement for compliance is not specified. Also, more than half of the elements of paragraph (B) are not normally a part of commercial agreements used to exchange fuel and credits today. Items like the number of credits transferred and their price may not even be known until after a contract is fulfilled.

We may have additional comments on other portions of the staff's proposed revisions as the review process continues. In the meantime, please let me know if you have any questions or would like to discuss any of these topics at greater length.

Sincerely,



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CFO  
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