



H. Daniel Sinks
Fuels Issues Advisor

3900 Kilroy Airport Way Suite 210
Long Beach, CA. 90806
Phone 562-290-1521
e-mail h.daniel.sinks@conocophillips.com

December 15, 2011

Clerk of the Board, Air Resources Board
1001 I Street
Sacramento, CA 95814

Via electronic submittal to: <http://www.arb.ca.gov/lispup/comm/bclist.php>

Re: **Low Carbon Fuel Standard (LCFS) Regulatory Amendments (December 16, 2011 Hearing) - ConocoPhillips Company Comments**

Dear Clerk of the Board,

ConocoPhillips Company (ConocoPhillips) appreciates the opportunity to comment on this regulatory activity. ConocoPhillips owns and operates two refineries in the State of California, and therefore, is directly impacted by the LCFS as a "regulated party." In addition, we have pipeline, terminal, and marketing assets in the State that distribute fuels produced at our refineries as well as petroleum/biofuel mixtures. We are a member of the Western States Petroleum Association (WSPA) and support the written comments submitted by WSPA.

ConocoPhillips has been engaged throughout the LCFS regulatory development, modification, and implementation processes. Our staff has participated in the workshop and "workgroup" processes, served on the Program Review Advisory Panel, participated in trade association (WSPA) meetings with ARB staff, held individual private meetings with ARB staff, and provided written comments at every regulatory milestone.

Our comments regarding the proposed rule amendments focus on three areas: Treatment of Crude Oil; Credit Trading; and Reporting Requirements.

Treatment of Crude Oil:

- ConocoPhillips continues to support the "no crude differentiation" approach based on enforceability and "level playing field" aspects communicated in earlier testimony and comments.
- CARB staff convened a multi-stakeholder LCFS Advisory Panel (of which we were a member) to review this very issue over a 9 month period. The pros and cons of various approaches were discussed and examined. We view the California average approach as proposed by Staff an improvement to the existing regulation. In addition, CARB staff's proposed amendments more accurately account for crude carbon intensity and it is a simpler approach.

- With a CARB Board approval of Staff's recommendation (the California Average approach) we recommend the following enhancements for additional stability and equity in the program.
 1. Rather than calculating the annual carbon intensity of crude refined in California each year, calculate the California average crude carbon intensity on a rolling 3-year basis. This enhancement is intended to minimize the impacts of anomalous market conditions, refinery turnaround activity, supply interruptions, etc.
 2. As currently drafted, the proposed amendments only contain an "incremental deficit" if the California average goes up. If the California average goes down, there should also be an ability to generate an "incremental credit." Such an approach further encourages directional improvements on crude approaches with no compromise of the California LCFS target.
 3. Establish a de minimus level (e.g., 5%) where incremental deficits (and credits) would only apply if a change in the California average crude carbon intensity exceeds this threshold.

Credit Trading: One issue that needs to be addressed in the LCFS credit system relates to the generation and sale of invalid or fraudulent credits. Below are suggested revisions/additions to the proposed amendments.

- We propose some type of "statute of limitations" on the time CARB has to "review and adjust" credits. Without this type of provision, CARB could conceivably adjust or revoke credits outside a timeframe that exceeds reasonable business expectations and commercial requirements for finality. This problem would be compounded if past credits were carried forward, used to demonstrate compliance, and then later found to be invalid or fraudulent. We recommend a 1-year time limit in which credits can be revoked or otherwise adjusted by CARB because of deficiencies in credit generation and/or transfer.
- Regulated parties (such as refiners) who are the end-users of a fuel should not be subject to a violation if they purchased either a fuel or an LCFS credit that was represented as valid. To avoid liability for actual or perceived faulty credit purchases or transfers, the purchaser would need to demonstrate good faith and proper due diligence (considered to be good business practice).
- To maintain the reductions required by the program, the party that generated the invalid or fraudulent credit would be required to obtain and submit valid credits to offset the shortfall.

Reporting: The proposed amendments contain two new provisions that we suggest be eliminated.

- §95484(b)(4)(B); Requires refiners to report whether the crude oil was produced using Thermally Enhanced Oil Recovery (TEOR) or non-TEOR methods. Suppliers, however, may withhold the requested data as "confidential business information" in a crude oil transaction. The bottom line is that CARB is requesting refiners to report information that they do not know and to which they lack access.
- §95484(b)(3)(A); Requires refiners to report the volume of imported petroleum intermediates (as defined by CARB). CARB has not justified this additional requirement. In addition, some intermediates (or a fraction of a particular intermediate) may go into products that are not subject to the LCFS (e.g., jet fuel, etc).

Thank you again for the opportunity to comment. Please feel free to contact me if you have questions regarding these or previous ConocoPhillips comments.

Sincerely,

<H. Daniel Sinks>

ecc: Richard Corey (CARB)
Mike Waugh (CARB)