



Western States Petroleum Association
Credible Solutions • Responsive Service • Since 1907

Catherine H. Reheis-Boyd
President

August 24, 2012

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

Re. **WSPA Comments on Second 15 -Day Modified LCFS Regulation Order**

The Western States Petroleum Association (WSPA) submits below comments on the ARB's second 15-day package of modifications that were made available for public review on August 9th.

WSPA is a non-profit trade organization representing twenty-seven companies that explore for, produce, refine, distribute and market petroleum, petroleum products, natural gas and other energy supplies in California and five other western states.

WSPA continues to have concerns about the concept of permitting procedures and requirements which govern the manner in which out-of-state biofuel producers or marketer/distributors are given the ability to opt-in as regulated parties under the LCFS. WSPA submitted comments previously regarding this issue, since we regard it as critical to the proper functioning of the LCFS program, and a safeguard against potential fraudulent activity. We are unsure why our prior comments have not been fully addressed, so we are resubmitting them for consideration.

The problem with staff's proposal is that it would allow opt-ins for a producer or marketer/distributor under the LCFS without any specific ties to delivered product. This creates a potential disconnect between the opt-in parties and the regulated parties receiving the biofuel in California. Potential problems could arise where an opt-in party could claim credits for renewable fuel that was never delivered to California, or where credits could be generated for the same volume of fuel by both the opt-in party and also by a party who is acting as an importer of the fuel.

To help clarify, WSPA supports revisions that allow parties that opt-in to become the initial regulated party for the fuel under the following conditions and requirements:

- Opt-in parties must generate LCFS credits only through the act of bringing fuel into the state, not simply from producing it. This is vital to maintain the integrity of LCFS credit generation.

1415 L Street, Suite 600, Sacramento, California 95814
(916) 498-7752 • Fax: (916) 444-5745 • Cell: (916) 835-0450
cathy@wspa.org • www.wspa.org

- An opt-in party can only sell product to another party who is either another opt-in party outside of California or a regulated party inside of California. An opt-in party is not allowed to sell product to a company who has not opted-in or who is not a regulated party.
- Sales from the opt-in parties to other regulated parties would be treated like any other in-state fuel transaction.
- Opt-in parties should be the initial regulated party for all of the fuels they deliver to California, subject to all reporting and recordkeeping requirements, as long as no previous party in the ownership chain has opted-in as the initial regulated party for the fuel.
- An opt-in party must provide product transfer documentation that clearly states the product being delivered to California should not be subsequently “imported” by another party, since the original LCFS credits will be generated and claimed by the opt-in party as the initial regulated party.
- Such opt-ins should carry a requirement for mandatory registration of all production facilities used to supply product to California.
- ARB should publish a list of all parties that have elected to opt-in so that regulated parties in California are aware of their status.

WSPA can support provisions that reflect the principle that opt-ins carry all of the responsibilities of being a regulated party and not just the rights, and we believe that certainty is provided by: 1) clearly knowing who bears the initial responsibility for a specific quantity of fuel; and 2) knowing whether obligation for such product is being passed on as part of the transaction. We do not believe that the modifications being proposed adequately address WSPA’s concerns.

In addition, we have a comment that does not relate directly to the second 15 day comments, but WSPA would like to raise it with staff nonetheless relative to the LCFS since it bears on the comments above:

- If LCFS credits are determined to be invalid after purchase and/or use for compliance, the regulated parties should not be required to purchase additional credits to maintain compliance. WSPA will be providing ARB with a more formal and thorough discussion of this issue soon but wanted to raise it briefly in this package.

If you have any comments or questions, please contact my staff, Gina Grey (480-595-7121) for assistance.

Sincerely,



c.c. R. Corey – ARB
 M. Waugh – ARB
 F. Vergara - ARB