



BP America, Inc

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Via Email and Electronic Submittal

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Subject: BP America's Comments on California Air Resources Board's (CARB) fourth LCFS Advisory Panel meeting concerning the Outline for Assessment of the Need to Adjust Compliance Schedule

Dear Richard and Michelle:

We appreciated the discussion at the recent Advisory Panel meeting on the assessment of the need for adjusting the LCFS compliance schedule in the future. The need to consider adjustments to compliance schedules is closely tied to other Advisory Panel topics, most notably the assessment of the supply and availability of low carbon, alternative fuels. While we are early in the program and there is uncertainty as to whether sufficient low carbon fuels will be available to meet the LCFS compliance targets, we believe the time for this discussion to take place is now. We should not wait until actual compliance challenges begin to occur before we investigate sensible relief mechanisms should these fuels be commercially unavailable.

Our internal review of various alternatives to address changes to the LCFS, should the program prove to be infeasible or not cost effective, came to the conclusion that there is no simple, pain-free way to alter the LCFS once it has begun. In fact, the only way to avoid having to make difficult choices about whether or how to alter the program in the future is to set targets from the outset that are demonstrably feasible and cost effective.

Credible targets send a consistent market signal to obligated parties and to investors in low carbon fuels. As difficult as these decisions will be around how to alter a LCFS that proves to be infeasible – even more difficult and painful would be to avoid these discussions and later be forced to make last minute, abrupt, arbitrary decisions on how to alter the program.

We are concerned by what appears to be a focus, at the recent Advisory Panel meeting, on what has been described as an “Alternative Compliance Mechanism” (ACM). As we understand it, in the face of clear evidence of infeasibility, an ACM would not adjust the program or re-assess the validity of past assumptions – but would simply require regulated parties to buy out of infeasible compliance targets. We believe that consideration of an ACM is a way to avoid tough and necessary decisions around whether a regulation was properly designed, whether it is working, and whether it needs to be fixed, significantly changed or ended.

An ACM, as it has been discussed at recent Advisory Committee meetings, is also not advisable for several other reasons. First, because an ACM does not adjust targets or timelines, it results in a perverse outcome whereby the more infeasible the target of the regulation, the more revenue that is raised by policymakers through the buyout. This is hardly a signal we want to send to policymakers – i.e. that there are no consequences, only benefits by way of revenue, from designing policy that is costly and infeasible.

Second, though it is referred to as an “alternative compliance mechanism”, it is in reality an “alternative non-compliance mechanism” as regulated parties will pay not to comply. This means that the emission reductions will not be achieved – even though regulated entities and consumers will pay as if they are achieved. Further, if an ACM is adopted, there remains the likelihood that regulators will later have to adopt new, different policies in order to achieve the reductions that the LCFS was supposed to deliver. When this happens, it will result in consumers paying once for not achieving the emission reductions and again for actually achieving the reductions – i.e. paying twice for a single emission reduction.

An ACM, or buy-out, of an infeasible or costly program is essentially a complex form of a tax on conventional fuels to indirectly and ineffectively fund alternative fuels. If that is to be the ultimate outcome of the LCFS, then there should be a discussion of moving directly to a tax as a substitute for the LCFS – as the LCFS is an extremely complex method for implementing what is in reality simply a tax.

Finally, there was speculation in past LCFS Advisory Panel meetings that such an ACM buy out price would be required to be as high as \$200 – or even \$400 per ton of carbon. It should be noted that these buy-out costs would represent a wild departure from the LCFS compliance cost estimates contained in the 3/5/09 staff report - and which were used to support and adopt the LCFS. CARB’s original economic analysis, and general view of the feasibility of the LCFS, were based on an optimistic view that a robust advanced biofuels industry would exist early in the LCFS program – bringing large volumes of low cost, low carbon biofuels – such as cellulosic ethanol.

Conclusions from the 3/5/09 Staff Report include:

“Staff estimated that the displacement of petroleum-based fuels with lower-carbon intensity fuels will result in an overall savings in the State, as much as \$11 billion from 2010 -2020. These savings may be realized by the biofuel producers as profit, or some of the savings may be passed on to the consumers. Should the savings be entirely passed on to consumers, it would represent less than three percent of the total cost of a typical gallon of transportation fuel (\$0 - \$0.08/gal)” (p.239).

“For the five gasoline analyses, the cumulative net cost effectiveness ranged from (\$121) to (\$142)/MT CO₂E reduced, which, for the period of 2010 – 2020, is a cumulative savings of \$8 to \$9 billion” (p.272).

Given these past estimates by CARB about the cost of the LCFS - a buy-out price of \$200-\$400 per ton (or even \$50/ton) would represent a increased cost of the program of some \$171 - \$542 per ton of carbon. If past assessments of cost and feasibility prove to be this far off from actual costs, what is needed is a re-assessment of the targets, timelines and advisability of the program – not implementation of a tax in lieu of compliance.

If there is a wide-spread inability to comply with the LCFS, what is needed is a safeguard for consumers that acknowledges a miscalculation in feasibility by policymakers. Such a approach could include a step-wise process by which 1) compliance targets are frozen-giving time for technology/commercialization to advance, 2) if technology does not advance in a reasonable time, targets are reduced, and 3) if reduction of targets and/or adjustment of timelines does not substantially increase feasibility and cost-effectiveness within a reasonable period of time - policymakers should move to abrogate the LCFS and consider alternative policies to achieve necessary emission reductions.

We look forward to continuing to participate in the resolution of this vitally important issue. Please contact me should you have questions regarding this correspondence.

Sincerely,

Ralph J. Moran
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Cc Bob Fletcher
Virgil Welch