

## **COMMENTS FOR BIOREFINERY REGISTRATON**

- 1. BP America - 02/05/2010**
- 2. Renewable Fuels Association – 01/26/2010**
- 3. Environmental Defend Fund – 02/05/2010**
- 4. Western States Petroleum Association – 02/12/2010**



BP America, Inc

**Ralph J. Moran**  
**1201 K Street, Suite 1990**  
**Sacramento, CA 95814**  
**(916) 554-4504**

DATE: February 5, 2010

**Via Email**

Bob Fletcher  
Deputy Executive Officer  
California Air Resources Board

Re: January 20, 2010 LCFS Workshop

Dear Bob,

BP America, Inc. submits the following comments on the issues discussed at the January 20<sup>th</sup> California Air Resources Board (CARB) Low carbon Fuel Standard (LCFS) Workshop.

**Section I. Biofuel Registration**

**Registration Process**

CARB has indicated a widespread biofuel producer registration as their preferred approach to verifying lifecycle carbon performance of different biofuel volumes. The proposed registration process has been suggested by CARB as mandatory for biofuels producers despite the fact that most of these producers are not under the direct jurisdiction of CARB.

We believe the best mechanism to ensure that production facilities are registered is to require regulated parties to source all imported biofuels from CARB registered production facilities. With such an approach, the registration of the biofuel producers would be managed within contract language between the biofuel provider and the regulated entity. BP recommends that this requirement be phased in over several years.

Recognizing that the education and registration of a large numbers of industrial facilities may take time, BP also recommends that CARB formally establish a methodology for assigning default values that can be phased out as the supply chain restructures to accommodate additional information flows.

### **Physical Pathway**

The Draft Biofuel Producer Registration Form requires the initial demonstration of a physical pathway in addition to carbon intensity (CI) determination. Biofuel producers should not be the responsible party for this initial physical pathway demonstration. In many cases, biofuel producers are not aware of the final destination of their fuels, and therefore are not the party most capable of generating this information. Furthermore, many biofuel producers may view this requirement as a barrier and deterrent to the registration process.

The party who is most capable to demonstrate the fuel's initial physical pathway is the party that imports the fuel into the state. Because they are more likely to have awareness or control over the transport of the product that they buy, importers are better capable of gathering and supplying this information to CARB. The importer, who by definition is a regulated party, already has an obligation to report to CARB. The physical pathway demonstration should be the responsibility of the importer when the first transactional volume is logged with any registered producer.

### **Personal vs. Corporate Liability**

Language in the Legal Responsibility section of the biofuel registration form does not distinguish whether the liability incurred by the signing entity is personal or corporate. CARB should state explicitly that it is corporate liability. When CARB was designing the registration for regulated parties, a similar ambiguity emerged for compliance demonstration. At that time, CARB verbally clarified the language to specify that the liability incurred was corporate. BP requests similar treatment for the biofuel registration form.

## **Section II. New Fuels Pathway Registration**

### **Construct and publish a strategy for disclosure and protection of Intellectual Property (IP) for low carbon technologies**

The LCFS was designed to encourage innovation in low carbon fuels. In order for new technologies to be rewarded in the intended manner, those carbon benefits have to be substantiated to CARB. However CARB has not clarified how it will protect the IP of companies as they demonstrate these benefits.

BP requests that CARB issue a document clarifying specific processes and systems to protect commercially sensitive intellectual property. This strategy should address any type of commercially sensitive information which CARB anticipates might be required by a regulated party to substantiate carbon benefits as part of 2A or 2B Methodologies. This includes but is not limited to proprietary technology and commercially sensitive information related to commercial operations. CARB should anticipate potential vulnerabilities and propose how they envision addressing them.

### **Reversible Agricultural Practices**

In describing the Method 2A evaluation criteria, CARB indicated that the carbon benefits of improved agricultural practices will not be granted a sub-pathway if

Comments to California Air Resources Board on LCFS

they are deemed “easily reversible” from one planting season to the next. With this approach, CARB misses an opportunity to impact on-farm innovation. As an example, double cropping would be a way in which farmers could supply additional resources from the same acreage of land into commodity markets. These kinds of improvements in both direct and indirect CO<sub>2</sub> emissions will only be affected by the LCFS if you consistently reward practices that create those benefits, not only those that involve large capital investments.

BP recommends CARB consider and encourage 2A Methodology applications that are based upon improved agricultural practices. Processes for on-farm verification of reversible practices should be integrated into the Method 2A approval process.

**Additions to Core Pathways**

CARB has indicated that the pathways which they have developed to date comprise what they regard as the “Core Pathway” and that lifecycle carbon intensity scores for additional pathways will be the responsibility of fuel providers. BP offers the following recommendations for important additions to CARB’s core pathways.

1) **Include Caribbean Basin Initiative sub-pathways for all three existing sugarcane CI pathways**

Use of the Caribbean Basin Initiative (CBI) is an important consideration for imported sugarcane as most of the Brazilian Ethanol entering the state of California was under the CBI in 2009. At the January 20<sup>th</sup> Workshop, CARB staff stated that CBI sugarcane would need its own pathway which would need to be determined by CBI asset owners using Method 2B.

Due to its prevalence in the sugarcane market, BP believes that CBI sugarcane should be designated as a Core Pathway. Regulated parties or CBI dehydration facilities that believe that they are differential to the CBI average can initiate a 2B Methodology to distinguish their product if they are motivated to do so.

2) **Publish Carbon Intensities for Cellulosic Biofuel Pathways**

CARB indicated that for any carbon intensity pathway that is not included in the core lookup table, it will be the responsibility of the fuel producer to initiate a Method 2B application. BP believes that it should be a top priority for the CI values for cellulosic biofuels to be included in the core look-up table, and would request that CARB release a timeline for completion. We are happy to meet with CARB to discuss our concerns and learn of efforts CARB may have underway.

BP believes that the establishment of this pathways should be a critical priority for CARB for the following reasons:

- a. The LCFS was constructed with the assumption that 10% reduction could only be achieved with volumes of cellulosic

Comments to California Air Resources Board on LCFS

biofuels. The compliance scenarios constructed by staff all included large volumes of cellulosic biofuels.

- b. The publication of a value will also allow for more certainty to obligated parties in predicting the potential compliance requirements.
- c. The cellulosic industry needs regulatory certainty today to know how our product will be treated in the California fuels market. Many new pilot plants have been announced this year and BP's joint venture will break ground on its first commercial scale cellulosic plant before the end of 2010. CARB should acknowledge the emergence of this industry and anticipate that volumes of these low carbon fuels will begin coming into California in the short-term.

**3) Increase Core Pathways for Crop Based Biodiesel and Renewable Diesel**

CARB has proposed numerous pathways for renewable and biodiesel based on recycled material, but has released only one lifecycle pathway for a crop based feedstock (soy). CARB needs to develop pathways for renewable and biodiesel from crop based feedstocks that are commercially available today.

**Section III: LCFS Sustainability Work-plan**

The overall framework presented in this plan is very high level. BP looks forward to continuing in dialogue with CARB as more detail on this program is developed. We believe that it is possible for CARB to create a sustainability program that is balanced and credible.

**BP's Overall View on Sustainability Frameworks**

BP supports the idea that sustainability frameworks encourage better environmental performance over the long term by increasing awareness of the environmental impacts of industry and rewarding better performance. In order to do this effectively, sustainability systems need to be:

- practical and clear in the benefits that are sought
- explicit about how they can be demonstrated
- flexible as to how they can be achieved.

**Importance of Performance Based Approach to Sustainability**

In a manner consistent with the overall LCFS program, CARB should ensure that any sustainability program avoids reliance on specific agricultural or operational practice-based approaches. Such an approach misses the opportunity to cultivate innovation on-farm or within the industry. CARB should consider defining quantitative objective measurements by which sustainability should be accounted for. For example, in order to account for soil carbon, farmers could measure actual levels rather than specifying agricultural practices that would improve those practices. With a performance based approach, farmers who develop new

BP America, Inc

Comments to California Air Resources Board on LCFS

practices will be able to objectively demonstrate the same outcome using innovative methods.

**Chain of Custody**

BP believes that any system to track sustainability attributes should avoid adding additional significant complexity to the compliance reporting tool which CARB is developing.

**Include US Agricultural Groups within the California Workgroup**

BP suggests that CARB actively solicit input and participation from agricultural stakeholders who will be key to supplying biomass for low carbon biofuels. Although important to monitor global efforts around sustainability, we believe that alignment with the USDA as well as General Farm Organizations at the federal level will be the best way to create a program that can both serve as leading model and maintain compatibility with federal efforts.

**Benchmarking and Certification**

Within the scope of workgroup activities CARB should distinguish more clearly between baseline measurements and benchmarking requirements within the overall sustainability program, including:

- What baseline measurements (the initial measurement against which improved performance will be compared) are meaningful?
- What value benchmarking (comparing California criteria and indicators against another set of criteria and indicators) would provide to the program.

The CARB Sustainability Workplan appeared to group these two concepts together in a way that made it difficult to tell how each would be employed within the scope of workgroup activity.

Please feel free to contact me to discuss these issues in more detail.

Sincerely,

Ralph J. Moran  
BP America, Inc

Cc: Dean Simeroth

Susan Solarz  
Stationary Source Division  
California Air Resources Board  
1001 "I" Street  
Sacramento, CA 95812

January 26, 2010

Ms. Solarz,

As the nation's largest trade association representing U.S. ethanol producers, the Renewable Fuels Association (RFA) appreciates the opportunity to provide comments on the draft "Biofuel Producer Registration Form" released by the Air Resources Board (ARB) on January 12.

In general, we are concerned that the registration form may be soliciting information from biofuel producers that is unnecessary and/or redundant for the purposes of the Low Carbon Fuels Standard (LCFS) regulation. The LCFS regulation necessitates that biofuel producers disclose only (1) the carbon intensity (CI) value(s) of their biofuel(s); (2) the volume of biofuel(s) sold into California associated with the CI value(s); and (3) the physical pathways that those fuels follow to market. All requests for information that are unrelated to those three basic purposes are extraneous and should be removed from the form.

Further, we are concerned about the sensitive nature of the information that is being requested. ARB has not provided proper assurances that such information will be treated with the appropriate level of confidentiality. Who will have access to the information that is submitted via the registration forms? Will there be a "master registry" and will it be available to the public and competing biofuel producers, or only to the regulated parties responsible for reporting via the LCFS Reporting Tool? How will ARB safeguard the information that is submitted via the biofuel producer registration forms?

Notwithstanding our belief that the registration form is redundant in several places, we are offering specific comments and questions below on the individual elements of the proposed registration form.

### **Section 3. Facility Information**

Under section 3.2, biofuel producers are asked to enter information on "production capacity" and "annual production volume." What is the purpose of requesting this information? While the need for information on "annual sales volume to California" is logical (because reporting requirements apply to only the biofuels sold into California), information on a particular facility's capacity and production volume is not necessary and serves no purpose. We

recommend removal of “production capacity” and “annual production volume” from the form. Producers should only be required to report the volumes of biofuel that are sold, or could potentially be sold, into the California marketplace. If production capacity estimates are deemed necessary for informational purposes by ARB, they are already publicly available at <http://www.ethanolrfa.org/industry/locations/>.

#### **Section 4. Fuel Feedstock and Processing**

##### ***Feedstock Type***

It is not uncommon in certain geographies or under certain market conditions for grain ethanol producers to use grain sorghum as a feedstock in lieu of corn. An estimated 20 ethanol plants processed some amount of grain sorghum in 2009 and sorghum comprised 50% or more of the annual feedstock processed for at least eight of those plants. Nationally, 3-5% of grain ethanol is produced using sorghum as a feedstock annually. Yet, grain sorghum is not offered as an option under “feedstock type” in the registration form. We recommend that the form either offer grain sorghum as an option under “feedstock type” or, in the alternative, the form should expressly state that processors of grain sorghum should select “corn” as the “feedstock type.”

##### ***Feedstock Origin***

For corn ethanol, the form offers only two options for feedstock origin: “corn from U.S. Mid-West” or “others.” We recommend that ARB define what states comprise the “Mid-West” for the purposes of this regulation. Feed corn is grown commercially in many states outside the region traditionally referred to as the Midwest. Similarly, grain ethanol is produced in 29 states, many of which fall outside of the Midwest region. As such, a clear distinction of what states are part of the “Mid-West” for the purposes of this regulation is necessary. Also, it appears redundant to provide an option of “*corn from U.S. Mid-West*” under “feedstock origin” when the feedstock type was already specified in the field for “feedstock type.” In other words, the options for “feedstock origin” should simply state “U.S. Mid-West” or “Other.”

##### ***Type of Energy Used in Processing***

The registration form offers only two options that include the use of biomass for combustion. This is likely because ARB analyzed only one possible combination of biomass and natural gas use (80% natural gas/20% biomass) for the purposes of developing the Look-Up Table. What option should a producer select if the ethanol he sells into California was produced using more than 20%, but less than 100%, biomass for combustion? Would a producer using biomass for 50% of process heat requirements be required to fill out two forms (i.e. one form selecting 100% biomass for half the production volume and one form selecting 100% natural gas for the other half of production)?

##### ***Co-products***

Every grain ethanol process results in co-products. Therefore, the option for “none” should be removed so that biofuel producers don’t inadvertently select that option. Also, the wet mill ethanol process results in corn gluten feed, corn gluten meal, and corn oil—not distillers grains. Are wet mill producers required to select “other” and enter this information in the “Please Describe Co-Products Below” field? Or will wet mill co-products be added to the list of options?

Further, an increasing number of dry mills are now removing corn oil from distillers grains. An estimated 25-30 dry mill ethanol plants are practicing corn oil removal, so it is not proper to characterize this practice as unique or novel. As such, ARB should add “corn oil” to the list of co-product options.

As we have discussed with ARB staff, very few dry mill ethanol plants produce exclusively dried distillers grains or exclusively wet distillers grains. Further, the mix of WDGS versus DDGS a plant produces can change dramatically from year-to-year and even season-to-season based on market conditions. We are assuming that a plant that produces both wet and dried distillers grains would be required to fill out two forms (i.e., one sheet selecting “Dry DGS” for the corresponding volume of ethanol sold into California that resulted in DDGS production and one sheet selecting “Wet DGS” for the corresponding volume of ethanol sold into California that resulted in WDGS production). Is this assumption correct?

#### ***Redundancy of Section 4 and Section 5***

It appears that Section 4 and Section 5 are redundant. Why is the fuel and feedstock processing information required when that same information is provided implicitly when the producer selects the appropriate carbon intensity value in Section 5? We recommend that ARB consider removing Section 4 from the form, as the same information is provided via selection of a specific CI value in Section 5.

#### **Section 5. Carbon Intensity Value**

The instructions require producers to select the CA-GREET pathway that “most closely corresponds with the information provided in section 4...” What is the threshold for determining whether a producer’s fuel is “close enough” to a default pathway or whether he must complete a Method 2 application? Further, the instructions require producers to “...select the fuel pathway with the higher CI value if your facility’s process would yield a CI value between those identified on the form.” What is the rationale for this and why shouldn’t the producer be able to select the lower CI value?

#### **Section 6. Physical Pathway**

The physical pathway options listed in Field 6.1 under Section 6 offer only single modes of transportation. In some cases, a combination of delivery modes is used to deliver ethanol to the California marketplace. If ethanol is shipped to California via a combination of truck and rail, does that mean two forms must be filled out (i.e. one sheet selecting “PHY08” for the segment

of the pathway over which truck transportation was used and one sheet selecting “PHY02” for the segment using rail)?

What is the termination point of the physical pathway: the California border, the actual delivery point within the state, the point at which ownership is transferred, or some other point? Please clarify.

Under section 6.3 (supporting material for physical pathway), producers are required to present (1) a map showing the physical pathway and (2) documentation confirming the introduction to and removal from the pathway. While the latter requirement is logical, what is the purpose of providing a map? The requirement to provide a map showing the pathway is redundant to the requirements of section 6.2, which asks the producer to describe the pathway route including “highway number, railway company, and route.” We strongly recommend removal of the requirement to provide a map under section 6.3.

### **Conclusion**

Thank you again for the opportunity to comment on the draft “Biofuel Producer Registration Form.” We are open to discussing the contents of this letter in more detail with ARB staff should you have any questions or require additional clarification. Finally, we would greatly appreciate written responses to the questions we have raised in this letter, so that we may share those responses with the RFA member producers who raised the questions.

Sincerely,

Geoff Cooper  
Vice President, Research



February 5, 2010

Robert Fletcher  
California Air Resources Board  
1001 "I" Street  
Sacramento, CA 95812

Mr. Fletcher,

Please accept this letter as comment related to the materials released at the January 20, 2010 public workshop for the LCFS related to biofuel production and fuel pathway development.

As you know, (and as shown below), EDF has been an active advocate for the development of a framework that facilitates the collection and use of on-the-ground (field level) data to account for emissions associated with biofuel feedstock production and utilization. Our recommendations have been delivered in both the LCFS and the cap-and-trade regulatory development processes. There are several reasons why we pursue this endpoint, with probably the most substantial reason being the desire to create a durable system that facilitates environmentally beneficial feedstock production (thereby leading to accurate GHG accounting, overall GHG emissions reductions and environmental co-benefits). In this thread, EDF views 1) the release of the Biorefinery registration / reporting tool, 2) the LCFS compliance reporting tool, (LRT) and 3) the Guidelines for establishing new pathways under Method 2A/2B ("2A/2B Guidelines") as valuable opportunities to advance this goal.

EDF therefore respectfully requests CARB staff consider the comments below as it finalizes these three tools / documents in the upcoming weeks and months. By allowing for the reporting of local conditions (occurring at the feedstock, or field, production level), CARB can move toward a more comprehensive emissions reporting program, one which can have usable benefits outside the LCFS as California seeks to implement a multi-sector cap-and-trade program that incorporates emissions from biofuels.

I. **Brief overview of EDF's past comments on reporting of field level conditions and the importance of providing opportunities to demonstrate reduced emissions during feedstock production**

- a. Letter dated January 17, 2008 (Related to the then proposed LCFS concept)

"A default and opt in system for the carbon intensity of fuels- The [then] proposed LCFS takes into account emissions from biofuel feedstocks production by using pessimistic default values and encouraging farmers and producers to provide their own field level data. In addition, the proposed standard leaves it to CARB to establish specific values using regional per-

crop averages. We support this approach as a conservative method to avoid widespread utilization of environmentally unfriendly fuels. Further, we believe that a default system allows CARB to go forward with the standard while allowing for better data and quantification methods to be developed over time.”

b. Letter dated November 14, 2008 (Related to the then proposed LCFS outline)

“Regardless of the emissions, direct or indirect, CARB should strive to develop and utilize the most accurate emissions accounting possible within the Low Carbon Fuel Standard. Further ... CARB should use the LCFS as a tool to develop a broader understanding of how various fuel feedstocks and finished products are manufactured and distributed throughout the region, and how fuel providers can be held accountable for tracking the fuel. However, the desire to incentivize data reporting must be tempered by a need to prevent fuel providers from being able to pick the most economically advantageous time to report valuable fuel production information. Rather, the LCFS should strive to have fuel providers capture and report fuel production data as promptly as possible.”

c. Letter dated March 5, 2009 (Related to biofuel emissions reporting in the mandatory reporting regulation)

“Principle: Accurate, verified data is essential - California should strive towards the most accurate data possible, and away from using broad assumptions and emission factors. Although programs like the LCFS may use emissions factors and look-up tables, they also strive to improve emissions data with accurate, localized, field level reporting. ...CARB should strive to develop an accurate and robust data set for biomass emissions, including lifecycle emissions associated with the production and transportation of the biomass energy production. Although emissions factors and emissions modeling may be necessary for some aspects of the biomass pathway, CARB should strive to develop data that uses actual measurement and field level data. Although some of this data may not be incorporated into cap-and-trade programs, development of lifecycle emissions information for bioenergy production will allow fuel producers to seek emissions reduction opportunities.

d. Letter dated January 11, 2010 (Related to Cap-and-trade PDR)

“Biomass and biofuel combustion emissions should not be treated as zero carbon simply because the feedstock is of biological origin. Rather, sound science requires an accounting of the direct combustion emissions and the net carbon flux (atmospheric and terrestrial) associated with feedstock production depending on the site specific conditions and practices. Such a framework is capable of differentiating among feedstock production activities, rewarding reductions in net emissions to the atmosphere proportionally to what happens on the ground....

To acquire the needed data, EDF recommends CARB utilize data from on the ground measurements to accurately develop carbon flux values for bioenergy emissions accounting....

EDF encourages CARB to develop an estimation method based on aggregated empirical data for each biomass feedstock based on the particular types of production system to account for carbon values from various biomass production activities for each crop and forestry feedstock. This method must account for differences in the same feedstock produced under different conditions, and should include estimations of leakage or indirect land use change. One alternative could be to develop look-up tables similar to those developed in the LCFS and would allow CARB to deduct the net emissions reductions from the quantity of emissions released due to product combustion. Biofuel or biomass producers could be given the option of providing real data if they believe they are performing better than the values selected in the look-up tables. Crediting could be at the level of the energy producer, contingent on a certification system or other means of demonstrating the production systems on the sites from which feedstocks are sourced...”

## **II. Importance of the opportunities before CARB and connection to the AB 32 cap-and-trade program**

At this point in the development of the tools and guidelines that implement the LCFS, EDF recognizes that CARB has the necessary focus of reducing the overall regulatory complexity, ensuring regulated parties understand and are able to comply the provisions that impact them, and creating opportunities to allow the development of new fuel pathways to document and facilitate reduced GHG emissions. At the same time however, CARB staff in the Office of Climate Change are developing the construct for a cap-and-trade program that may incorporate emissions from biofuel combustion. As recommended in our comment letter on the cap-and-trade PDR, (and as generally discussed in Options 2 and 3 of the PDR) one method for including biofuels emissions would be to account for direct combustion while allowing producers to document field level practices that facilitate overall fuel emissions reductions. (See excerpt from Jan. 11, 2010 letter above). Therefore, EDF strongly recommends CARB develop the Biorefinery registration tool, LRT and 2A/2B Guidelines with full regard towards creating the opportunity for biofuel feedstock suppliers to document and report the local conditions within which their feedstock was produced.

### **a. Biorefinery registration / reporting tool**

It is our understanding that the purpose of the Biorefinery registration tool is to provide an up-front assessment (and verification) of the carbon intensity assigned to certain fuels being produced at individual facilities. By qualifying individual facilities, CARB will create a useable database from which to pull values into look-up tables for documenting and assigning fuel carbon intensity. However, as designed and released on February 2, 2010, this tool underperforms because it lacks the ability to allow biorefineries to document and report any field level characteristics other than feedstock type (i.e. corn, sugarcane, Midwest soybeans, tallow, used cooking oil, etc.)

If the biorefinery registration tool had the capability of allowing facilities to report items related to feedstock production at the field level, it would become immediately helpful in the effort to develop a framework that allows farmers to document their production practices and report them

to feedstock processing plants. Such a capability would allow for the development of a more robust LRT and also generate more information related to upstream emissions in general. Examples of the type of information that could be reported at the biorefinery level include those identified in the Method 2A/2b guidelines document - whether the feedstock was in whole or part composed of waste materials, whether feedstock was biomass grown on degraded land or between row crops, whether biomass resulted from increased crop yields or perennial grasses, what tilling and soil cultivation practices were used, what the prior land use was, etc.

By allowing for reporting of local conditions (and more specific delineation of feedstock type), the biorefinery registration tool would be a helpful start for creating a tracking and reporting framework able to reward production methods and processes that reduce GHG emissions at the field level. This will also be important to support Method 2A/2B fuel pathway development. Further, by allowing for reporting of field conditions, the tool could accommodate technological breakthroughs occurring at biorefineries that are beginning to allow (at the production scale level) the development of biofuels using blends of purpose grown energy crops and gathered waste materials. Finally, allowing field level conditions to be reported at the biorefinery level would allow CARB to develop information necessary to accurately account for carbon flux values associated with biofuel use in the state cap-and-trade program for transportation fuels.

Of course, a potential concern of farmers and landowners to an approach that facilitates field level data collection is whether the information will be retained in a confidential by the regulatory agency. EDF recognizes this as a valid concern and recommends CARB work with landowners to ensure issues and concerns regarding data confidentiality do not undermine the effort to achieve the reporting structure necessary to facilitate and reward reductions of GHG at the field level.

#### b. LCFS compliance reporting tool (LRT)

Under the currently proposed LCFS, fuel providers are responsible for reporting various characteristics of the fuel they sell, including blendstock type, blendstock feedstock, amount of each blendstock sold (MJ), feedstock origin and production process. These characteristics are linked to look-up tables that were developed using GREET modeling runs and determine fuel provider compliance obligations under the standard. What is missing from this set of required reporting parameters is field or farm level characteristics.

Although the set of parameters required to be reported by fuel providers is set forth in the regulation, there is no reason why CARB could not allow for voluntary reporting of field level conditions at the outset of the LRT use (as listed above and as potentially to be recommended by the LCFS expert workgroup on land use emissions). By allowing fuel producers to report local information that is documented coincident with feedstock production and reported along with the other information submitted to biorefineries, the CARB LRT can begin to create a platform that facilitates the valuation of land use practices that show which biofuels have negative or neutral carbon flux values. This is the approach that is generally envisioned in the Guidelines for Method 2A/2B, and an LRT that supports it would be highly valuable. Additionally, when

combined with an expanded biorefinery registration program that takes in this information, the LCFS can help document which fuels coming into California are made from feedstocks produced in an environmentally preferable manner as determined by carbon intensity values.

Although the Method 2A/2B process for documenting improvements in the fuel production pathway attempts to achieve reporting of conditions that can lead to reduced lifecycle GHG emissions, to date there hasn't been a robust discussion of how the LRT will allow for information collection at a much smaller scale with more rigorous carbon accounting. To assist the development of new pathways for Method 2A/2B, EDF recommends CARB ensure the LRT is able to accept this information and provides guidance for submitting product transfer documents and feedstock delivery pathway documentation.

c. Guidelines for establishing new pathways under Method 2A/2B

In general EDF is very supportive of CARB's effort to allow fuel producers to document and report additional pathways for LCFS compliance. As accurate field level information is developed that can help identify carbon flux values associated with biofuel feedstock development, that state will get closer to being able to reward fuel producers who implement the least GHG emissive cultivation practices.

In addition to adopting guidelines for fuel providers to submit new fuel pathways, EDF also encourages CARB to request from the recently formed expert workgroup - information (in the form of links to peer reviewed and ongoing research) related to emissions associated with various field level production characteristics. By creating look-up table values for emissions associated with various field level practices for use by applicants attempting to certify Method 2A sub-pathways, (and embedding those values into the Guidance document) CARB can streamline the pathway development process as well as facilitate reduced GHG emissions. Further, since field level values are an essential aspect of determining carbon flux values, such a system would be helpful for determining biofuel emissions obligations under the proposed cap-and-trade program.

Thank you for your time and consideration of these points.



Tim O'Connor  
Attorney, Environmental Defense Fund

cc:  
Dean Simeroth, dsimerot@arb.ca.gov  
John Courtis, jcourtis@arb.ca.gov  
Susan Solarz, ssolarz@arb.ca.gov  
Renee Littaua, rlittaua@arb.ca.gov  
Wes Inghram, winghram@arb.ca.gov  
Christina Zhang-Tillman, czhangti@arb.ca.gov



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

**Catherine H. Reheis-Boyd**

President

February 12, 2010

Mr. Dean Simeroth, Chief  
Criteria Pollutants Branch, Stationary Source Division  
California Air Resources Board  
1001 "I" St.  
P.O. Box 2815  
Sacramento, CA 95812  
Via electronic mailto [dsimerot@arb.ca.gov](mailto:dsimerot@arb.ca.gov)

Re. Western States Petroleum Association's Comments on LCFS – January 20 Public Workshop

Dear Mr. Simeroth:

The Western States Petroleum Association (WSPA) is a non-profit trade association representing twenty-eight companies that explore for, produce, transport, refine, and market petroleum, petroleum products, natural gas and other energy products in California and five other western states.

WSPA is submitting the attached comments on the LCFS issues discussed during staff's January 20 public workshop.

As always, WSPA welcomes any feedback or questions relative to our comments. Please contact me or Gina Grey (480-595-7121) of my staff, if you have any questions or comments on the information that is attached. Thank you.

Sincerely,

A handwritten signature in blue ink that reads "Catherine H. Reheis-Boyd". The signature is fluid and cursive, with the first name being the most prominent.

c.c. B. Fletcher, ARB  
F. Vergara, ARB  
M. Singh, ARB  
W. Ingram, ARB  
J. Duffy, ARB  
J. Curtis, ARB  
R. Littaua, ARB  
C. Zhang-Tillman, ARB  
C. Lozo, ARB  
J. Yuan, ARB

## WSPA Comments on January 20, 2010 Public Workshop Issues

### Regulatory Advisory, LRT

In addition to our longer term concerns regarding the LCFS program, WSPA member companies have immediate concerns regarding the timing and specificity of 2010 compliance reports.

Our concerns are expressed below:

- WSPA learned at the January 20 public workshop that ARB's contract for development of the LCFS electronic reporting tool has expired. ARB staff indicated they will be soliciting open bids and will award a new contract to a software vendor in order to issue a version of the mandatory reporting tool for review and subsequent use. In light of this potential additional delay in delivery of the electronic reporting tool for testing and use, WSPA requests an updated and realistic schedule regarding the requirement to use the electronic reporting tool.
- Regarding timing, the Advisory states the reporting requirements are relaxed for the first quarter of 2010. This would imply that beginning at the start of the second quarter (April 1, 2010) the actual carbon intensity (CI) must be captured in order to be reported in the second quarterly report. It is unrealistic to expect biofuels providers to be registered and have unique CI values by that time. WSPA requests an updated and realistic schedule regarding CI value assignment and reporting.
- A similar situation exists for high carbon intensity crude oil (HCICO). The Advisory states that CARB will not enforce the CI of a fuel or blendstock derived from HCICO until after July 1, 2010. It is unrealistic to expect completion of a 2B process (hearing, associated public notice, etc.) within the time frame proposed. WSPA requests an updated and realistic schedule regarding HCICO value determination and reporting.
- Regarding reporting of CI values for the first quarter of 2010, the Regulatory Advisory issued December 31, 2009 (Advisory 10-01) indicates that reporting parties may report "Unable to Determine" or "Data Unavailable". However, at the 1/20 workshop staff indicated that "default values" should be reported. WSPA seeks clarification regarding what will be required in the reporting tool.

Further, concerning the use of default values vs. using "Unable to Determine" or "Data Unavailable", we have concerns that the LRT (when it is available) will calculate debits and credits and summarize them in an overall compliance determination that individual regulated parties are in or out of compliance; even though there is no carbon intensity reduction standard for 2010. These determinations will not be accurate because they are based on arbitrarily defined defaults. As a result, we support the use of "Unable to Determine" or "Data Unavailable."

- We understand ARB might want to use the default process to continuously field test the LRT, but we assert that work (beta testing) should be done outside the quarterly or annual rule reporting requirements. We note that many WSPA members have volunteered to beta test the draft LRT and provide comments to ARB staff prior to releasing the LRT for general use.

### Product Transfer Documents (PTDs)

The Regulatory Advisory states in the Q&A that regulated parties are required to maintain and keep records containing the information specified in section 95484(c) "subject to the technical "work-arounds" and provisions for reporting unavailable data, as described below, and any subsequent guidance that ARB may issue." WSPA believes that more specific work-arounds or provisions need to be outlined specifically for the recordkeeping requirements of the regulation (carbon intensities and transfer of obligations).

It should be recognized that the product transfer documents (PTD's) used for recordkeeping are already being generated now, at the time of the transactions, not months later during the reporting. We urge CARB to provide "work-arounds" or provisions for 1Q recordkeeping and beyond as needed, so that requirements are consistent with the preexisting data contained in PTD's, which include transaction counterparties, transaction date, material name (fuel), and fuel volume. This will provide sufficient data to substantiate the reporting requirements with the existing "work-arounds" until the necessary data is available.

The LCFS regulation has numerous recordkeeping requirements for information in the PTD's. However, this is not a defined term in the regulation, which leads to some potential misunderstandings as to which documents can be used to satisfy recordkeeping requirements.

WSPA believes that the interpretation of a PTD is general enough to include more than the obvious examples of pipeline meter tickets, rail manifests, inspection reports, in-tank custody statements and bill of ladings. The PTD should encompass other associated documents including but not limited to material specification sheets or contracts, provided they are traceable to the transaction and are available and reviewable by both counterparties in the transaction. Within the universe of documents that could be considered PTDs, a regulated party should be able to identify which document it will use to satisfy the regulatory requirements (i.e., one document per transaction).

WSPA requests that CARB provide written concurrence with this interpretation of the term PTD that includes the above mentioned comments.

### Handling of Inventory

ARB needs to ensure the LCFS regulation and reporting requirements do not interfere with the normal dynamics of the market at the beginning of each reporting period (quarter) and especially at the beginning of each year. This issue impacts all transportation fuels but is especially critical for those fuels such as ethanol and biodiesel that have multiple CI values.

The LCFS regulation requires that the CI of the fuel be reported on the PTD when title transfer occurs. The LRT does not account for physical inventory. For a given quarter, a party's balance is comprised of production plus imports, plus purchases (where the LCFS obligation transfers), less exports and sales (where the LCFS obligation transfers). This balance or virtual inventory however has a fixed start and end date (the beginning and end of each quarter).

Although a party always has actual physical inventory in California, at the beginning they do not have any barrels in their balance until production, imports or purchases occur. Similarly, at the end of the quarter, a party submits the balance and turns in all of the barrels remaining in its balance.

During the second and third months of a given quarter, a seller can look at its balance and identify barrels of a known CI to sell to someone. However, at the beginning of each quarter, a party will not have any barrels in its balance until production, imports or purchases occur. In this case, the party has no barrels with a specific CI to sell in its balance but the party does have physical inventory to sell. This situation could bring fuel transactions, especially ethanol and biodiesel, to a halt at the beginning of each quarter.

A possible solution WSPA would like to propose, is to allow parties to sell barrels from their previous quarter balances in the following quarter. Such sales should not require adjustment of already reported quantities.

### Guidelines for New Pathways

Page 1 (and elsewhere) – Determination of carbon intensity values (including Method 2A or 2B applications) is not limited to regulated parties. Suggest use of the term “fuel providers” instead.

Page 1 – It should be clarified that Section 95486(a) prohibits the use of Method 2A or 2B for CARBOB, gasoline or diesel except in the case of a HCICO that does not have a lookup table value.

Page 2 – The first step in the 5-step process outlined on this page should be merged into the second step, and language should be added clarifying that running CA-GREET could help a fuel provider make a determination as to whether to use Method 1 or Method 2. As currently written, the first step gives the appearance that running CA-GREET is a requirement, which it is not.

Page 4 – In the green parallelograms in the flowchart, we suggest clarifying that only new or revised indirect effects will be considered.

Page 4 – The 30 day public comment period between the determination of completeness and the issuance of staff’s preliminary findings (pages 11 and 19) is missing from the flowchart.

Page 5 (and elsewhere) – Is treatment of co-product credits considered a direct effect evaluated by the applicant, or is it considered an indirect effect that would be evaluated by CARB staff?

Page 6 – Minor point, but LHV should be reported in units of MJ per gallon.

Page 8 – As part of the review criteria, the guidelines indicate that if too much information is classified as trade secret, the application will not proceed. How is this criterion to be objectively enforced? Same question on page 17.

Pages 13 and 21 – The OAL review period should be clarified to state it is 30 *business* days.

Page 26 – WSPA provided comments to ARB on the LCFS on August 28, 2008 (see italicized section below). In our comments was a section on a future certification program. We believe it is worthwhile to include these comments again at this juncture.

### ***Future Certification Program***

*WSPA agrees that streamlining the process for making Method 2A and 2B changes will be beneficial to the program. However, such streamlining should involve enhancements to the procedures as outlined in the guidelines document, rather than eventual replacement of the guidelines document with some other process.*

*Under no circumstances should adoption of a certification program include the removal of the lookup table carbon intensity values from the LCFS regulations, as was suggested by staff at the August 5, 2009 Workshop. WSPA believes that the lookup table carbon intensity values must be an integral part of the regulations. The carbon intensity values of fuels and fuel components are the currency of the LCFS: all compliance determinations are based on these values. Investment decisions will be made based on these values, and changes to them will create the risk of stranded capital. Therefore, these values should be explicitly included in the regulation, the same way that the Predictive Model equations are included in the CaRFG regulations. Any permanent changes to these values should only be possible through a public rulemaking process.*

*In furtherance of the technology innovation goals of the LCFS, it is also important to recognize the need for flexibility, especially in the determination of carbon intensity values for novel fuel pathways that are critical to the success of the program. Such cases could perhaps be accommodated by either an expedited rulemaking process or a provision to grant temporary approval until the rulemaking process can be completed.*

#### Page 27-29 –Crude Oil Screening

WSPA supports the principle of using an efficient process for dealing with crude oils that were not included in the 2006 California baseline crude mix. Developing an efficient process that will not be overly restrictive and have the unintended consequence of further promoting crude oil shuffling will be challenging as new information and systems will likely be needed. Currently, information readily available for crude oils consists primarily of the physical and chemical characteristics of the oil, not the characteristics of the reservoir from which the crude was produced. This is a result of the need for the crude oils chemical and physical characteristics as inputs to economic models used by industry to assist in making crude oil purchasing decisions. We would like to work with ARB's proposed Working Group to develop an efficient process that supports the goals of the LCFS while balanced with a process that is not overly restrictive and inappropriately limits the crude oil flexibility of in-state refineries.

#### Credits for Off-Road Electric Vehicles

WSPA requests more information on the eligibility requirements for this area of the regulation.

#### Rulemakings for Fuels Specifications

WSPA will be providing more detailed comments on all of the individual specification regulatory proceedings; however, in general we'd like to emphasize the need to harmonize any California action with ASTM.

We also believe there may be unintended consequences that arise as a result of ARB's fuel specifications efforts. An example is the recently proposed approach on biodiesel and renewable diesel whereby there is a connection between the fuel specification approach selected by ARB, and the LCFS program. This is one of the issues that need to be addressed during the first revisitation of the LCFS regulation this year.