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July 25, 2014

VIA EMAIL and US MAIL

Ms. Katrina Sideco
Low Carbon Fuel Standard Amendments
California Air Resources Board
1001 I Street
P.O. Box 2815
Sacramento, California 95814
ksideco@arb.ca.gov

Re: Comments on the Low Carbon Fuel Standard Rulemaking July 10, 2014 Workshop Draft (the "Draft")

Dear Ms. Sideco:

Thank you for the opportunity to provide written comments on the California Air Resources Board's (ARB's) Low Carbon Fuel Standard (LCFS) July 10, 2014 Workshop Draft (the "Draft"). Alston & Bird LLP is submitting this letter on behalf of our client, Idemitsu Apollo.

We wish to provide constructive comment on one proposed LCFS amendment and to submit an alternative amendment for consideration. The amendment at issue is in section 95483(a)(2)(E), Regulated Parties.

We have previously provided comments on the issue of transfer of the reporting obligation in response to the LCFS Re-Adoption Concept Paper. (See Exhibit B, Letter to Mr. Mike Waugh dated March 10, 2014.) At that time, we provided three possible language options that would address our concern. We are disappointed that the Draft declined to include any of those language options, and instead proposes language that merely reinforces the status quo.

Unfortunately, the language proposed in section 95483(a)(2)(E) would still allow refiners and sellers of fuel to pass along the LCFS reporting obligation to buyers who have no ability to negotiate away this obligation.

Below and attached as Exhibit A we propose some amendments (see double-underlined text) that would ensure that buyers of finished diesel fuel are not forced to take on the LCFS reporting obligation.

Suggested revisions to Discussion Draft, Released for LCFS Workshop on July 10, 2014

§ 95483 ~~(1)(B)(5)~~ (a)(2)(E) Regulated Parties

a) *Regulated Parties for Gasoline and Diesel.*

* * * * *

2) *Effect of Transfer of CARBOB, Diesel Fuel or Diesel Fuel Blends by Regulated Party*

* * * * *

E) *Conditions Under Which a Non-Producer and Non-Importer Acquiring Ownership of CARBOB, Diesel Fuel or Diesel Fuel Blends Becomes the Regulated Party.* A person, who is neither a producer nor an importer and who acquires ownership of CARBOB from the regulated party, becomes the regulated party for the CARBOB if, by the time ownership is transferred, the two parties agree by written contract that the person acquiring ownership accepts the LCFS compliance obligation as the regulated party. Whereas Diesel Fuel and Diesel Fuel Blends are finished products, a person, who is neither a producer nor an importer and who acquires ownership of Diesel Fuel or Diesel Fuel Blends from the regulated party at or above the rack and for which LCFS credits will be generated by blending, becomes the regulated party for the Diesel Fuel or Diesel Fuel Blends if, by the time ownership is transferred, the two parties agree by written contract that the person acquiring ownership accepts the LCFS compliance obligation as the regulated party. Transfer may not occur where the buyer intends to sell the Diesel Fuel or Diesel Fuel Blends as finished fuel only. For the transfer of regulated party obligations to be effective, the transferor must also provide the recipient a product transfer document that prominently states the information specified in section 95491(c) paragraphs a. and b. below, and the transferor and recipient must meet the requirements specified in the paragraph c., as set forth below:

Our proposal is consistent with ARB's goal in the LCFS regulations "to place the compliance obligations as far upstream of the consumers, distributors, and marketers as possible."[1]

[1] ARB, *LCFS Question and Answer Guidance Document (Version 1.0)* 3 (June 10, 2011).

We hope this proposed amendment is acceptable, but if it falls short of meeting ARB's goals, we look forward to collaborating with ARB and stakeholder groups to crafting alternative language.

Sincerely,

ALSTON & BIRD LLP

Maureen F. Gorsen

Exhibits

A – Draft LCFS Amendments for Regulated Party Provisions
B – Letter to Mr. Waugh dated March 10, 2014 (w/ attachments)

cc. Mr. Mike Waugh, Chief, Transportation Fuels Branch
Mr. Manisha Singh, Manager, Fuels Section
Mr. Stephen d'Esterhazy, Regulated Party Provisions Lead

Exhibit A

Draft LCFS Amendments for Regulated Party Provisions

Suggested revisions to Discussion Draft, Released for LCFS Workshop on July 10, 2014

§ 95483 ~~(1)(B)(5)~~ (a)(2)(E) Regulated Parties

a) *Regulated Parties for Gasoline and Diesel.*

* * * * *

2) *Effect of Transfer of CARBOB, Diesel Fuel or Diesel Fuel Blends by Regulated Party*

* * * * *

E) *Conditions Under Which a Non-Producer and Non-Importer Acquiring Ownership of CARBOB, Diesel Fuel or Diesel Fuel Blends Becomes the Regulated Party.* A person, who is neither a producer nor an importer and who acquires ownership of CARBOB from the regulated party, becomes the regulated party for the CARBOB if, by the time ownership is transferred, the two parties agree by written contract that the person acquiring ownership accepts the LCFS compliance obligation as the regulated party. Whereas Diesel Fuel and Diesel Fuel Blends are finished products, a person, who is neither a producer nor an importer and who acquires ownership of Diesel Fuel or Diesel Fuel Blends from the regulated party at or above the rack and for which LCFS credits will be generated by blending, becomes the regulated party for the Diesel Fuel or Diesel Fuel Blends if, by the time ownership is transferred, the two parties agree by written contract that the person acquiring ownership accepts the LCFS compliance obligation as the regulated party. Transfer may not occur where the buyer intends to sell the Diesel Fuel or Diesel Fuel Blends as finished fuel only. For the transfer of regulated party obligations to be effective, the transferor must also provide the recipient a product transfer document that prominently states the information specified in section 95491(c) paragraphs a. and b. below, and the transferor and recipient must meet the requirements specified in the paragraph c., as set forth below:

Exhibit B

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March 10, 2014

Mr. Michael Waugh
Chief, Transportation Fuels Branch
California Air Resources Board
1001 I Street
P.O. Box 2815
Sacramento, California 95814

Re: Comments on the Low Carbon Fuel Standard Re-Adoption Concept Paper (the "Paper")

Dear Mr. Waugh:

Thank you for the opportunity to provide written comments on the California Air Resources Board's (ARB's) Low Carbon Fuel Standard (LCFS) Re-Adoption Concept Paper. Alston & Bird LLP is submitting this letter on behalf of our client, Idemitsu Apollo.

We wholeheartedly support the Paper's goals and appreciate ARB's willingness to involve stakeholders in the amendment process. At this juncture, we wish to provide constructive comment on one proposed LCFS amendment and to submit an alternative amendment for consideration.

The amendment that we wish to comment on appears in the Paper's "Enhancements to Reporting and Recordkeeping Requirements" section. In this section, ARB proposed to "add a provision that requires reporting of all Transaction Types identified in the regulation, including transactions without obligation transfer."[1] Although we agree that this amendment may improve traceability of fuels to the source, we suspect that it may impede the achievement of many other express goals of the Paper and the LCFS, itself.

Perhaps most noticeably, this proposed amendment seems to run contrary to the LCFS's stated intent "to place the compliance obligations as far upstream of the consumers, distributors, and marketers as possible."[2] Indeed, by requiring every entity on

[1] ARB, *Low Carbon Fuel Standard Re-Adoption Paper* 10 (March 7, 2014).

[2] ARB, *LCFS Question and Answer Guidance Document (Version 1.0)* 3 (June 10, 2011).

the supply chain to report every transaction, CARB will place an additional burden on non-producers and non-importers far down the supply chain. We think that, through discussion and collaboration, we will be able to develop a better approach that both improves ARB's ability to trace fuels to the source of production and places compliance and reporting obligations as far upstream as possible.

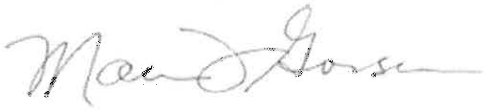
To begin this collaborative process, we submit "Attachment 1," a proposed amendment to LCFS § 95484. Attachment 1 offers three options for placing the reporting and compliance obligations on upstream entities. Option A bars the transfer of the compliance obligation for gasoline or diesel onto non-producers or non-importers. Option B adds another step to the obligation transfer to level the bargaining power between parties on the supply chain. And Option C is a hybrid approach. We believe that any of these three options will promote the Paper's and LCFS's stated goals: signal for investment in production of the cleanest fuels, provide flexibility for compliance, increase clarity, and enhance enforcement efforts.

As the process of amending the LCFS moves forward, we need hope that ARB and various stakeholders will consider measures to improve the reporting system and change how the compliance obligation is transferred along the supply chain. Since our options achieve many of the LCFS's goals, we believe Attachment 1 would be a great place to start.

We look forward to collaborating with ARB and stakeholder groups over the next several months.

Sincerely,

ALSTON & BIRD LLP



Maureen F. Gorsen

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ATTACHMENT 1

OPTIONS FOR AMENDING THE LCFS REPORTING OBLIGATION

OPTION A: Remove Ability of Producer or Importer to Transfer LCFS Reporting Obligation Downstream (Revisions to Sections 95484)

Section 95484

(a)(1)(B)

. . .

4. *If Recipient Is Not a Producer or Importer, Regulated Party Transferring CARBOB Remains Regulated Party* ~~*Unless Specified Conditions Are Met*~~. When a person who is the regulated party for CARBOB transfers ownership of the CARBOB to a person who is not a producer or importer, the transferor remains the regulated party ~~unless the conditions of section 95484(a)(1)(B)5. are met~~.

5. ~~*Conditions Under Which a Non-Producer and Non-Importer Acquiring Ownership of CARBOB Becomes the Regulated Party*. A person, who is neither a producer nor an importer and who acquires ownership of CARBOB from the regulated party, becomes the regulated party for the CARBOB if, by the time ownership is transferred, the two parties agree by written contract that the person acquiring ownership accepts the LCFS compliance obligation as the regulated party. For the transfer of regulated party obligations to be effective, the transferor must also provide the recipient a product transfer document that prominently states the information specified in paragraphs a. and b. below, and the transferor and recipient must meet the requirements specified in paragraph c., as set forth below:~~

   ~~a. the volume and average carbon intensity of the transferred CARBOB. The transferor of CARBOB may report as the "average carbon intensity" on the product transfer document the total carbon intensity value for CARBOB as shown in the Carbon Intensity Lookup Table; and~~

   ~~b. the recipient is now the regulated party for the acquired CARBOB and accordingly is responsible for meeting the requirements of the LCFS regulation with respect to the CARBOB.~~

   ~~c. For purposes of section 95485(a), except as provided in paragraph c.iii. of this provision:~~

      ~~i. the transferor under a. above must include the *Deficits*^{XD} *Incremendtal20XX*, as defined and set forth in section 95486(b)(2)(A)1, in the transferor's annual credits and deficits balance calculation set forth in section 95485(a)(2); and~~

~~ii. the recipient under b. above must include *Deficits*$^{XD}_{Base}$, as defined and set forth in section 95486(b)(2)(A)1., in the recipient's annual credits and deficits balance calculation set forth in section 95485(a)(2).~~

~~iii. Paragraphs c.i and c.ii. above notwithstanding, the transferor and recipient of CARBOB may, by the time the ownership is transferred, specify by written contract which party is responsible for accounting for the base deficit and incremental deficit In the annual credits and deficits balance calculation set forth in section 95485(a)(2).~~

(a)(2)(B)

. . .

4. *If Recipient Is Not a Producer or Importer, Regulated Party Transferring Diesel Fuel or Diesel Fuel Blend Remains Regulated Party* ~~*Unless Specified Conditions Are Met*~~. When a person who is the regulated party for diesel fuel or a diesel fuel blend transfers ownership of the diesel fuel or diesel fuel blend to a person who is not a producer or importer, the transferor remains the regulated party~~ unless the conditions of section 95484(a)(2)(B)5. are met~~.

5. ~~*Conditions Under Which a Non-Producer and Non-Importer Acquiring Ownership of Diesel Fuel or Diesel Fuel Blend Becomes the Regulated Party*. A person, who is neither a producer nor an importer and who acquires ownership of diesel fuel or a diesel fuel blend from the regulated party, becomes the regulated party for the diesel fuel or diesel fuel blend if, by the time ownership is transferred, the two parties agree by written contract that the person acquiring ownership accepts the LCFS compliance obligation as the regulated party. For the transfer of regulated party obligations to be effective, the transferor must also provide the recipient a product transfer document that prominently states the information specified in paragraphs a. and b. below, and the transferor and recipient must meet the requirements specified in paragraph c., as set forth below:~~

~~a. the volume and average carbon intensity of the transferred diesel fuel or diesel fuel blend. The transferor of diesel fuel or diesel fuel blend may report as the "average carbon intensity" on the product transfer document the total carbon intensity value for "diesel" (ULSD) as shown in the Carbon Intensity Lookup Table; and~~

~~b. the recipient is now the regulated party for the acquired diesel fuel or diesel fuel blend and accordingly is responsible for meeting the requirements of the LCFS regulation with respect to the diesel fuel or diesel fuel blend.~~

~~c. For purposes of section 95485(a), except as provided in paragraph c.iii. of this provision:~~

~~i. the transferor under a. above must include the~~ $\cancel{Deficits^{XD}_{Incremental20XX}}$~~, as defined and set forth in section 95486(b)(2)(A)1., in the transferor's annual credits and deficits balance calculation set forth in section 95485(a)(2); and~~

~~iii. the recipient under b. above must include~~ $\cancel{Deficits^{XD}_{Base}}$~~, as defined and set forth in section 95486(b)(2)(A)1., in the recipient's annual credits and deficits balance calculation set forth in section 95485(a)(2).~~

~~iii. Paragraphs c.i and c.ii. above notwithstanding, the transferor and recipient of diesel fuel or diesel fuel blend may, by the time the ownership is transferred, specify by written contract which party is responsible for accounting for the base deficit and incremental deficit In the annual credits and deficits balance calculation set forth in section 95485(a)(2).~~

OPTION B: Require that Request in Writing be Made by Recipient Before Any Transfer of Obligation Can Occur

Section 95484(a)(1)(B)(5)

Conditions Under Which a Non-Producer and Non-Importer Acquiring Ownership of CARBOB Becomes the Regulated Party. A person, who is neither a producer nor an importer and who acquires ownership of CARBOB from the regulated party, does not become~~s~~ the regulated party unless ~~for the CARBOB if, by~~ at the time ownership is transferred, (i) it requests in writing that the regulated party transfer the LCFS compliance obligation onto it, and (ii) ~~the two parties agree by written contract that the person acquiring ownership accepts the LCFS compliance obligation as the regulated party. For the transfer of regulated party obligations to be effective,~~ the transferor provides ~~must also provide~~ the recipient a product transfer document that prominently states the information specified in paragraphs a. and b. below, and the transferor and recipient must meet the requirements specified in paragraph c., as set forth below:

. . .

Section 95484(a)(2)(B)(5)

Conditions Under Which a Non-Producer and Non-Importer Acquiring Ownership of Diesel Fuel or Diesel Fuel Blend Becomes the Regulated Party. A person, who is neither a producer nor an importer and who acquires ownership of diesel fuel or a diesel fuel blend from the regulated party, does not become~~s~~ the regulated party for the diesel fuel or diesel fuel blend unless, at ~~if, by~~ the time ownership is transferred, (i) it requests in writing that the regulated party transfer ~~the two parties agree by written contract that the person acquiring ownership accepts~~ the LCFS compliance obligation onto it and (ii) ~~as the regulated party. For the transfer of regulated party obligations to be effective,~~ the transferor ~~must also~~ provides the recipient a product transfer document that prominently states the information specified in paragraphs a. and b. below, and the transferor and recipient must meet the requirements specified in paragraph c., as set forth below:

OPTION C: Require that Request in Writing be Made by Recipient Before Any Transfer of Obligation Can Occur and Remove Ability of Producer or Importer to Transfer LCFS Reporting Obligation for Diesel Fuel Downstream

Section 95484(a)(1)(B)(5)

Conditions Under Which a Non-Producer and Non-Importer Acquiring Ownership of CARBOB Becomes the Regulated Party. A person, who is neither a producer nor an importer and who acquires ownership of CARBOB from the regulated party, does not becomes the regulated party unless ~~for the CARBOB if, by~~ at the time ownership is transferred, (i) it requests in writing that the regulated party transfer the LCFS compliance obligation onto it, and (ii) ~~the two parties agree by written contract that the person acquiring ownership accepts the LCFS compliance obligation as the regulated party. For the transfer of regulated party obligations to be effective,~~ the transferor provides ~~must also provide~~ the recipient a product transfer document that prominently states the information specified in paragraphs a. and b. below, and the transferor and recipient must meet the requirements specified in paragraph c., as set forth below:

...

Section 95484(a)(2)(B)

. . .

4. *If Recipient Is Not a Producer or Importer, Regulated Party Transferring Diesel Fuel or Diesel Fuel Blend Remains Regulated Party* ~~*Unless Specified Conditions Are Met*~~. When a person who is the regulated party for diesel fuel or a diesel fuel blend transfers ownership of the diesel fuel or diesel fuel blend to a person who is not a producer or importer, the transferor remains the regulated party ~~unless the conditions of section 95484(a)(2)(B)5. are met~~.

5. ~~*Conditions Under Which a Non-Producer and Non-Importer Acquiring Ownership of Diesel Fuel or Diesel Fuel Blend Becomes the Regulated Party*. A person, who is neither a producer nor an importer and who acquires ownership of diesel fuel or a diesel fuel blend from the regulated party, becomes the regulated party for the diesel fuel or diesel fuel blend if, by the time ownership is transferred, the two parties agree by written contract that the person acquiring ownership accepts the LCFS compliance obligation as the regulated party. For the transfer of regulated party obligations to be effective, the transferor must also provide the recipient a product transfer document that prominently states the information specified in paragraphs a. and b. below, and the transferor and recipient must meet the requirements specified in paragraph c., as set forth below:~~

~~a. the volume and average carbon intensity of the transferred diesel fuel or diesel fuel blend. The transferor of diesel fuel or diesel fuel blend may report as the "average carbon intensity" on the product transfer document the total carbon intensity value for "diesel" (ULSD) as shown in the Carbon Intensity Lookup Table; and~~

~~b. the recipient is now the regulated party for the acquired diesel fuel or diesel fuel blend and accordingly is responsible for meeting the requirements of the LCFS regulation with respect to the diesel fuel or diesel fuel blend.~~

~~c. For purposes of section 95485(a), except as provided in paragraph c.iii. of this provision:~~

~~i. the transferor under a. above must include the~~ $\cancel{Deficits^{XD}_{Incremendtal20XX}}$~~, as defined and set forth in section 95486(b)(2)(A)1., in the transferor's annual credits and deficits balance calculation set forth in section 95485(a)(2); and~~

~~iii. the recipient under b. above must include~~ $\cancel{Deficits^{XD}_{Base}}$~~, as defined and set forth in section 95486(b)(2)(A)1., in the recipient's annual credits and deficits balance calculation set forth in section 95485(a)(2).~~

~~iii. Paragraphs c.i and c.ii. above notwithstanding, the transferor and recipient of diesel fuel or diesel fuel blend may, by the time the ownership is transferred, specify by written contract which party is responsible for accounting for the base deficit and incremental deficit In the annual credits and deficits balance calculation set forth in section 95485(a)(2).~~