The California Association Representing Independent Fuel, Lubes and Convenience Store Interests

September 9, 2014

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

Subject: LCFS Obligations/Pass-down to Marketers

Dear Mike:

I realize this is after the posted comment deadline, but this letter contains commentary that is very pertinent to the revisions being suggested to LCFS regulations regarding the "pass-down" of LCFS obligations from fuel producers and importers to wholesalers.

We have reviewed the comments provided by Maureen Gorsen, dated July 25, 2014, Alston & Bird, suggesting changes to the LCFS obligated parties regulations.

These suggested changes (including the options contained in earlier recommendations from Alston & Bird) are totally consistent with the history of discussions CIOMA has undertaken with CARB regarding obligation under the Low Carbon Fuel Standard. Since the earliest time of LCFS inception in discussions with Dean Simeroth, and others, we have communicated the difficulties fuel wholesalers encounter with mandatory obligation under LCFS. For the most part CARB has been attentive to these concerns. However, for the last few years we have alerted CARB to a problem some of our members have encountered in the LCFS transfer of obligations. This problem is particularly related to diesel fuels.

The problem we have commented upon relates specifically to above-the-rack transactions where some of our members purchase fuel from fuel producers or importers. Many times (my instinct is most of the time but I do not have good statistics on these transactions) the wholesaler is purchasing the fuel as a "neat" fuel transaction. In other words no blending by the purchasing party is intended. However, the selling party provides the fuel as a "take it or leave it" proposition, requiring the obligation to be assumed by the purchasing party. So the marketer must take the obligation although there is no intent to blend or otherwise modify the content of the fuel.

The amendments proposed by Alston & Bird attempt to correct this problem by requiring that the fuel be offered with voluntary acceptance of the obligation. Fuel wholesalers that

wish to purchase fuel for further blending would accept the obligation; those that are merely passing along the "neat" fuel would not have to accept the obligation.

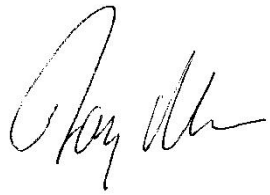
But, more importantly, the fuels market should be structured so that fuel manufacturers can sell unencumbered fuel to a wholesaler who is, in turn, going to sell that as a "neat" diesel.

Underlying this concern is the limited financial ability of fuel wholesalers to comply with CARB's expensive and cumbersome GHG requirements as they relate to transportation fuels. We are undergoing an extensive discussion currently with CARB on the Fuels under the Cap regulations, and have outlined the unique and precarious position those regulations place above-the-rack fuel wholesalers. Due to very slim margins fuel wholesalers receive for these transactions, there is little or no room for error in estimating price of fuel, especially if the obligation cost is rendered after the fuel is sold.

Many of these same problems exist with LCFS as it requires rendering of credits after fuels have been sold. Our grave concern is that due to the extra complications with reporting under these fuel programs (and with no streamlining between separate reporting obligations) and the high risk/financial consequence of pricing error, we will see a significant departure of competition for wholesale fuels above the rack. This erosion of competition has a significant likelihood of causing price creep at the wholesale level, especially for unbranded fuels, which will have a ripple-effect on other California fuel prices. This will create even further upward price pressure, along with Fuels Under the Cap and LCFS obligation costs, directly attributable to CARB GHG programs.

We hope that you find the ability to adopt changes to the regulations as suggested by Ms. Gorsen. Small changes in CARB regulations in the near future will help the California fuels market adapt to unprecedented changes and challenges, while maintaining vigorous competition amongst the current fuel suppliers and distributors. At the very least we hope to have further, constructive discussions with you about the necessity of allowing continued participation of our members and other small independents in above-the-rack markets.

Sincerely,



Jay McKeeman, Vice President Government Relations & Communications

cc: Richard Corey, CARB Executive Officer
CIOMA Board of Directors