



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

Catherine H. Reheis-Boyd
President

April 11, 2014

Katrina Sideco, LCFS Re-adoption Lead Staff
California Air Resources Board
1001 I St.
Sacramento, CA 95812
Via electronic mail to ksideco@arb.ca.gov

Re: Western States Petroleum Association (WSPA) Comments on ARB's March 11th LCFS Workshop on the Re-Adoption of the LCFS Program

Dear Ms. Sideco:

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

WSPA members hold the compliance obligation under the Low Carbon Fuel Standard (LCFS) and are responsible for producing the vast majority of the transportation fuels used daily in California. WSPA has continually asked for ARB's immediate attention to the impending infeasibility and possible consequences of staying the course with the LCFS.

WSPA has been engaged in the rulemaking process to develop and implement the LCFS since 2007. We have continued to make technical comments on updated regulatory packages and changes to the program despite our concerns about the overall feasibility of the LCFS program. The fundamental problem with the LCFS remains that it is not good public policy and is incorrectly structured in its reliance on the emergence of a significant low carbon fuels market. We heard nothing from staff at the workshop, and saw nothing in the general proposed revisions contained in staff's Concept paper, to change our assessment that the LCFS program and compliance schedule will remain infeasible when reauthorized.

A government agency such as ARB should not be setting goals that are aspirational and unrealistic, and then following up with band aid measures that make compliance easier while the market waits for low carbon intensity (CI) fuels to be produced at commercial volumes. The fact that a multitude of cost containment provisions are being proposed for inclusion in the program is a signal/reflective of the need for a fundamental program fix.

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

In our view, holding the current 1% CI reduction level has given all stakeholders and ARB an opportunity to reflect on what has worked, and particularly what has not worked within the LCFS. As ARB has admitted frequently, the development of commercial-scale low CI fuels, such as cellulosic ethanol, has been much slower than originally envisioned. We must take this re-adoption effort as an opportunity to assess the true status of low CI fuel production, infrastructure, vehicle availability, and consumer acceptance (not aspirational projected or nameplate capacity estimates) and make the changes necessary for an effective program. Additional research and development needs to occur before we can transform to a low CI fuel system.

The LCFS, as envisioned by Governor Schwarzenegger in his original Executive Order and as currently designed, is infeasible. Although there will continue to be a slow shift in the transportation fuels market, staying the course with the current design of the program could result in disruptions in the transportation fuels markets including potential fuel shortages in the very near future. There needs to be recognition that while ARB is focused on ensuring clear market signals for new market participants, Californians still need to be mobile with a reliable, useable, and scalable fuel source based on the vehicle population and fuels infrastructure in existence now.

A successful climate-oriented fuels policy must protect against fuel supply disruptions, severe job losses in the state's refining industry and unacceptable economic harm to California and its citizens. WSPA and its members are committed to engaging with ARB to find better, achievable ways of reducing carbon emissions from transportation fuels.

Four WSPA Requests

Below, there are four overarching requests WSPA makes of ARB relative to the staff's effort to reauthorize the program. We also have a number of more specific comments to make on the concepts provided during the March 11th workshop that follow.

1. Full Periodic Review and No Post-2020 Program Extension
 - **Request full Program Review in 2014**
 - **Request no further efforts to create post-2020 LCFS reduction targets until the pre-2020 program is a proven, feasible program**

WSPA requests ARB perform a full Periodic Review in 2014 rather than the minimal review being proposed by staff. As indicated more fully below, we are very concerned about not only the program's feasibility but also the resulting impacts to the California fuels markets including consumers and refiners. Rather than concentrating staff time on administrative and technical changes plus numerous compliance assistance measures, WSPA strongly recommends staff and stakeholders initiate a full review of the program this year for a report to the Board and the Legislature.

In terms of the multitude of LCFS regulatory amendments discussed at the workshop being developed for recommended action to the Board this fall, it is clear many are very complex, controversial and challenging such as revised iLUC values, refinery GHG emission reduction credits, two-tiered fuel pathways, cost containment provisions (CCP), electricity credits, etc. If ARB insists on moving forward with amendments without any review of the program's overall health and core principles,

these regulatory issues will all be in a state of flux until the regulation's changes are adopted, they go through any 15 day packages, and then get approved. This will make 2014 and 2015 very difficult years for the regulated parties to plan for, so we assume and request implementation dates for the issues in 2016 rather than 2015.

Moreover, since the feasibility of the current program out to 2020 is still very much in question, all efforts by ARB to work on an extension of the program beyond 2020 should stop. Staff focus must be maintained on the immediate and near term changes necessary to ensure the program's viability. Since ARB has indicated no intention of revising the 10% by 2020 reduction goal, and there is very little time to "smooth" the compliance schedule to a lower, more feasible level from 2016 to 2020, we believe selecting new targets beyond 2020 to be a fanciful, if not dangerous, exercise at this point in time.

AB32 specifically directs ARB to "make recommendations to the Governor and the Legislature on how to continue reductions of GHG emissions beyond 2020" (Health & Safety Code 38551(c)) so it does not direct ARB to proceed on its own in regulating beyond 2020. Therefore, ARB's work on proposing regulatory extension beyond 2020 is outside ARB's statutorily-defined authority in this area.

2. Compliance Schedule/Program Feasibility Update

- **Request credible assessment of projections of low CI fuel availability using WSPA criteria, fuel cost competitiveness, plus an assessment of infrastructure and vehicle availability to match with the fuels.**

In recent venues ARB staff has indicated they are performing ongoing analyses of the LCFS program's feasibility. Overall, WSPA's greatest concern continues to be the lack of a credible ARB assessment and forecast of the availability and costs of low carbon fuels and credits that ARB has assumed will be available. We note that multiple caveats are included in ARB's earlier analyses indicating the illustrative scenarios are not forecasts or predictions.

It is imperative that ARB complete a credible and balanced determination of the availability of low carbon gasoline and diesel blending components and substitutes that would be necessary for LCFS compliance over the next couple of years in particular, as well as out to the 2020 10% CI reduction deadline. WSPA cautions staff not to engage in a "paper shifting" exercise as part of an ongoing assessment of current and future market capabilities to supply low "CI inputs." Unrealistic market production potential estimates are invariably going to lead to correspondingly high overall program CI reduction targets, contributing little to addressing overall program feasibility and necessitating repeated reevaluations of program "status" such as the one we are currently engaged in. What is needed is a real program structural "fix", not a paper gloss over to "kick the can" to 2016.

In addition, ARB staff must justify why assumptions that the bulk of the nationwide supply will be delivered to and used in California, are reasonable in light of current and proposed competing programs (i.e., RFS2 and LCFS initiatives in the Pacific Northwest states). It is also imperative that this analysis include the expected added costs for compliance, including those associated with fuel distribution and refueling infrastructure, and specialized vehicles (e.g., battery electric vehicles).

Although no one can say with any degree of certainty what fuel/credit combinations may be used to attempt to comply with the program, there are a number of assumptions ARB staff has used in the past that are not believable based on EIA projections, historical experience with timing and volumes of new fuel/vehicle introductions, and future market economics.

ARB should provide an updated analysis based on technical criteria below prior to the Board hearing, so staff can provide the Board with an update on the compliance certainty of the program. The technical criteria relate to the three interrelated transportation system components: fuel (availability and cost), infrastructure and vehicles:

Fuel Volumes

The volume analysis should include the following items to assess the capability of the low CI fuel production facilities (current and proposed):

1. Design capacity in gallons per day
2. Date of construction completion
3. Date that feedstock first introduced to process
4. Date that on-specification product first produced
5. Highest utilization demonstrated in a consecutive three month period (utilization is defined as production rate divided by design capacity, inclusive of downtime)
6. Percent of product that was produced on-specification without reprocessing or blending during the period in Question #5.
7. Duration in days of longest continuous period of plant operation
8. Utilization during last calendar year (production rate divided by design capacity, inclusive of downtime)
9. Percent of product that was produced on-specification without reprocessing or blending during the period in Question #8. Qualified biofuels have to be able to replace a certain meaningful percentage of the previous year's demand for the on- ramp to be triggered.
10. Feedstock availability analysis including what percentage of available feedstock the actual production volume requires. Analysis of feedstock availability should be done separately for domestic and foreign supply sources.

Footnote: A definition of "success" could, for example, be once answers to questions #5 and #6 exceed 80%. Or, before a facility is deemed to be viable and included in a consideration of low CI fuels facilities to be in ARB's list of "available fuels" would be the answer to question #5 multiplied by the answer to question #1. Note that typical refinery processes exceed 98% utilization on an annual basis.

Fuel Cost-competitiveness

Not only is the availability of low CI fuels important, but those fuels must also be cost competitive if the LCFS is to be feasible in a real world market. Accordingly, a cost-competitive analysis must be performed. This analysis should assess how much greater the low CI fuels are in average market costs than petroleum products on a per-gallon basis, and the analysis should also evaluate the role or continued need for subsidies in the cost of the fuels.

Fuel Infrastructure

This analysis should also consider the capability of the distribution system infrastructure (including retail sites) to handle these volumes and types of fuels and what additional infrastructure would be needed, including costs, to support the assessed volumes.

Vehicle Availability

A mandate for further CI reduction should consider whether commercially produced vehicles are available in sufficient quantity to use the low CI fuels. Further, the compatibility of the existing vehicle fleet to use these higher volumes or types of fuels needs to be analyzed. Barriers like consumer acceptance should also be analyzed in an intellectually honest manner with sensitivity runs to bracket an appropriate range of consumer acceptance.

3. Economic Impact Analysis Update

- **Request full updated economic impact analysis of the LCFS program**

There has been minimal effort to update the 2009 economic impact analysis, and during the March 11th Workshop staff indicated there won't be a comprehensive update to the five year old economic impact analysis.

During the 2011 program updates ARB stated that much of the 2009 analysis remains valid, but acknowledged the need for an entirely new analysis. It was also stated that staff was considering using a contractor to conduct a more comprehensive economic analysis of the LCFS. We were told such an analysis would not be completed until sometime in 2012 or early 2013, but this seems to not have materialized.

WSPA requests that a new economic analysis be conducted well before the Board hearing, so stakeholders have an opportunity to review its assumptions and analysis.

4. Legal Issues Outstanding

- **Request ARB explain how the proposed amendments will comply with the applicable Health & Safety Code provisions**

The Legislature has written the Health & Safety Code ("HSC") to require that environmental regulations, such as the LCFS, be technologically and economically feasible to achieve. *See e.g.*, HSC § 41700 *et seq.* (limitations on air emissions; regulations must be "commercially and technologically

feasible...”); § 116365(b) (drinking water standards; must be “technologically and economically feasible”); § 26100 *et seq.* (toxic mold; the department shall “balance the protection of public health with technological and economic feasibility”).

Even more specifically, the Legislature generally requires fuels regulations to meet such requirements in HSC § 43013(f) (for any standard or regulation relating to motor vehicle fuel specifications, ARB must determine the cost-effectiveness and technological feasibility of the regulation)). The CI of any batch of fuel is clearly a “specification” that feeds into the annual average CI limitations of the LCFS. Specifically, California law requires LCFS provisions to be both feasible and cost-effective:

- An artificially high, infeasible CI compliance target does not comply with the law. *See* HSC § 38560 (ARB shall adopt rules and regulations to achieve the maximum “technologically feasible” and “cost-effective” greenhouse gas emissions reductions). Specifically, the statute calls for a program that is “feasible . . . complementary, non-duplicative, and can be implemented in an efficient and cost-effective manner” *Id.* § 38561(a). Infeasible CI targets conflict with the statutory requirements of AB 32.
- The AB 32 Scoping Plan “shall identify and make recommendations on direct emission reduction measures, alternative compliance mechanisms, market-based compliance mechanisms...to facilitate the achievement of maximum feasible and cost-effective reductions of greenhouse gas emissions by 2020.” *Id.* § 38561(b). However, the manner in which ARB characterizes the LCFS, it must meet these requirements in AB 32.
- AB 32 requires ARB to “rely upon the best available economic and scientific information and its assessment of existing and projected technological capacities” when adopting GHG reduction regulations. (*See* HSC § 38562(e)). In our view, the best information demonstrates that the LCFS targets cannot be met. The Cost Containment Provisions which may serve a purpose for short-term unforeseen supply availability issues instead are aimed entirely at filling the substantial gap between the reductions that can be achieved and the unjustified 10% CI target for 2020.
- By the same token, ARB has not made the required showing, “using the best available economic models, emission estimation techniques, and other scientific methods” that the LCFS target remains feasible. *See* § 38561(d).
- Similarly, ARB has not made the required showing that it has evaluated the “total potential costs and total potential economic and noneconomic benefits of the plan” of these proposed amendments “using the best available economic models, emission estimation techniques, and other scientific methods.” *See* § 38561(d).
- In the staff report for the original LCFS rulemaking, staff clearly understood and attempted to comply with these requirements. *See* Staff Report: Initial Statement of Reasons, Proposed Regulation to Implement the Low Carbon Fuel Standard, Vol. I (March 5, 2009), at ES-7 and III-1 through III-22; see also Final Statement of Reasons at 481 (“The compliance scenarios demonstrate that compliance is possible, given what is currently known about the future availability of alternative fuels and vehicles.”). Information that has become known since then shows only a small part of the 10% target can feasibly and cost-effectively be achieved by 2020. Further, ARB staff should not ignore and avoid the fuels requirements of HSC § 43013 regarding fuel specifications. ARB previously argued that the requirements of section 43830.8 do not apply because AB 32 does not affect existing fuel specifications. *See* Staff Report: Initial Statement of Reasons (March 5, 2009) at V-26-33; V-28 (“ARB interprets “specification” to mean “the

permissible ingredients that compromise a fuel (i.e., the fuel's 'composition'), and so presumes that the term specification in 43030.8 refers to a vehicular fuel's composition, not the production process for the fuel"). However, a mandate that carbon intensity must be reduced by specified percentages annually is based on individual CI "fuel specification" for each batch supplied during a year. Among other requirements that ARB endeavors to meet for all of its "traditional" fuels regulations, HSC § 43013 requires ARB to (1) consult public or private entities that would be significantly impacted, (2) determine the cost-effectiveness of the adoption of the standard or regulation, and (3) determine the technological feasibility of the adoption of the standard or regulation. These requirements apply to the LCFS as well and, in particular, to any new CCP provision added to the LCFS rules.

In December 2011, ARB acknowledged that "regulated parties may not be able to procure either enough fuel or credits to comply based on factors outside that parties control such as supply disruption or possibly credit hoarding or other unforeseen events." (CARB "Low Carbon Fuel Standard 2011 Program Review Report," December 2011). There are even more questions now – and data showing that the goal and timeline are not feasible.

WSPA has provided specific comments and questions regarding the March 11th Workshop in Attachment A.

If you have any questions regarding our comments, please contact me at this office, or Gina Grey of my staff at 480-595-7121 (gina@wspa.org).

Sincerely,



cc: ARB Board Members – arbboard@arb.ca.gov
Virgil Welch – vwelch@arb.ca.gov
Richard Corey – rcorey@arb.ca.gov
Mike Waugh – mwaugh@arb.ca.gov
Elizabeth Scheehle – escheehl@arb.ca.gov
Jim Aguila – jaguila@arb.ca.gov
Jim Nyarady – jnyarady@arb.ca.gov
John Courtis – jcourtis@arb.ca.gov
Manisha Singh – mansingh@arb.ca.gov
Wes Ingram – wingram@arb.ca.gov
Kirsten King – kking@arb.ca.gov
Anil Prabhu – aprabhu@arb.ca.gov
Carolyn Lozo – clozo@arb.ca.gov
Stephanie Detwiler – sdetwile@arb.ca.gov
Jim Duffy – jduffy@arb.ca.gov
Hafizur Chowdhury – hchowdhu@arb.ca.gov
Hurshbir Shahi – hshahi@arb.ca.gov
Stephen d'Esterhazy – sdesterh@arb.ca.gov

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

Attachment A

WSPA Comments on the March 11, 2014 Staff Workshop

WSPA representatives attended the ARB's March 11th workshop, and have provided below several initial general comments on the LCFS issues we believe should be addressed in 2014, as well as comments on the March 7th Concept Paper related to proposed staff regulatory amendments. Since there were very few details provided on potential regulatory revisions, it is difficult to comment in a meaningful way, but we look forward to providing additional input as the process moves towards the Board adoption hearing. WSPA has several general Workshop comments followed by comments on individual issues:

General:

- It is impossible to provide detailed feedback on the individual proposed revisions (except in the broadest terms) given the lack of detail in staff's material. Even in areas where WSPA can offer conceptual support, we must condition it upon review of the details of the final proposal.
- It is questionable whether staff, with limited resources, can complete adequate detailed work necessary to develop the individual proposed revisions and narrow down the scope of the proposal to a complete and workable set of changes in time for the Board Hearing in October 2014. WSPA appreciates staff's comments that they will seek input early and often as the work to refine the concepts presented at the workshop unfolds, however, if ARB wants to thoroughly develop all of the concepts considered in the Concept paper, WSPA suggests ARB propose a more realistic timeframe that very likely would culminate with an adoption hearing sometime in 2015.
- Many of ARB's amendments will introduce further complexity to an already complex regulation. Several of the new credit generation mechanisms contribute neither to lower GHG emissions nor to the CI reduction of road transportation fuels. There is also a significant risk of unverifiable or fraudulent credits being generated by some of ARB's proposals (e.g. crude accounting, fuel pathways, and electricity provisions). We encourage ARB to focus its efforts instead on promoting program feasibility by setting realistic, achievable CI reduction targets.

Specific:

New 2014 Concepts for LCFS Program Revisions

1. Modification of Compliance Curves for Gasoline and Diesel Standards:
 - WSPA supports ARB's proposal to freeze the LCFS CI target at 2013 levels through at least 2015, and recommend this be carried beyond 2015 until a thorough analysis is completed on low CI fuel/credits availability and costs be completed as discussed above.
 - We support ARB's proposal to re-visit the LCFS compliance schedule and revision of the CI reduction targets by basing an analysis on technical criteria such as those WSPA endorses (see detailed list above) including the fuel (availability and cost), the infrastructure and the vehicles.

- We are disappointed ARB continues to not recognize the infeasibility of a 10% target by 2020. While we are encouraged that the 1% target will remain unchanged through 2015, we are concerned that this only leaves five years to reach a 10% reduction if the 2020 target is not adjusted. WSPA urges staff to be realistic in its assessment of available supplies of low-CI fuels and adjust the CI requirements consistent with such an assessment. A large volume of low-CI cellulosic fuels would be required to meet a 10% target five years from now. For those volumes to materialize, construction of production facilities should be starting now or in the very near term and that is not the case. Moreover, as has been demonstrated with the first cellulosic biofuel facilities currently in operation, startups can be problematic especially for facilities using technology unproven at commercial scale. It should be no surprise that, in such applications, reaching nameplate capacity can take some time.
 - Any “smoothing” of the compliance curve between 2016 and 2020 must show that sufficient quantities of commercially viable, cost-competitive, low CI transportation fuels, infrastructure and vehicles are available to comply with the regulation. No matter what “curve smoothing” staff proposes to engage in for the 2016-2020 period, it should be apparent that the slope of that compliance curve will be steep (“hockey-stick”), making it even more infeasible for WSPA members to comply; barring a very unlikely step-change in the availability of ultra-low CI fuels.
 - We are equally disappointed by staff’s apparent urgency to adopt post-2020 reduction standard(s) in excess of 10% as part of this particular rulemaking. As stated above, it is premature to do so while the 2020 compliance target is yet infeasible.
 - As voiced by several stakeholders at the workshop, uncertainty is what hampers progress most under the LCFS. An artificially high, infeasible compliance target that clearly cannot be met in the timeframe considered undermines overall program standing and credibility and invites speculation of a potential future program collapse. This, in turn, makes it challenging for low-CI fuel producers to make investment decisions to help close the gap between the actual and needed volumes of low CI alternatives.
2. Refinery-Specific Crude Oil Incremental Deficit Accounting:
- We oppose this provision, as we have consistently opposed crude differentiation in the program. If crude slate changes are going to be accounted for, WSPA opposes the treatment of individual refinery carbon intensities separate from the statewide average, particularly where refineries are divided into separate classes.
 - Overall, WSPA continues to oppose a refinery specific approach – especially for a subset of refineries, and has the following concerns about this approach to crude oil treatment because:
 - The options are already overly complex for refiners and importers.
 - It continues to differentiate between crudes and disadvantage one over the other.

- It could reward a refinery for past high CI crude use while penalizing a refinery with historically low CI crudes. It is not sensitive to energy security concerns.
- It is not clear how ARB will utilize imported blend stocks and finished products in setting a refinery-specific baseline or compliance target. To start with, there is no definition of what “imported blend stocks or finished products” are that is specific enough for regulatory use or common to the marketplace. It will be very unlikely that ARB will be able to ascertain the CI value for these items with any certainty. ARB’s inability to do so is one of the major hurdles for the refinery-specific approach.
- Allowing some refiners to opt-out of the industry-wide average approach creates a bifurcated market and introduces the potential for fraud given the chain of custody for crude and feed stocks is immensely complex and there is no uniform, verifiable certification scheme. ARB’s LCFS regulatory requirements should be fraud resistant and apply equally to all fuel suppliers.

[To minimize repetition, note our additional comments in the Low Energy Use Refinery Provision section of our comments.]

3. Fuel Pathways & Producer Facility Registration:

- WSPA strongly supports ARB’s efforts to simplify the fuel pathway and registration processes. Given ARB’s limited resources, the existing process is untenable. A one-time, fair and even change to the process should be made to simplify the options available to first-generation fuels and allow ARB to focus on 2nd tier pathways.
- Although the proposed simplification is a positive step towards streamlining the number of pathways in the LCFS program, WSPA recommends ARB also consider quality assurance and fraud resistance as part of this effort. For example, how will ARB verify that the producer registered under a fuel pathway is truly producing fuel using that pathway?
- Also, given concerns from producers regarding uncertainty around investment decisions, careful consideration should be given to the structure of these changes, so that the revised process is fair to existing parties and can be sustained for the foreseeable future.

Previous 2013 Concepts for LCFS Program Revisions

1. Cost Containment Provision (“CCP”)

- We strongly believe the proposed cost containment provisions (“CCP”) simply penalize fuel suppliers for not meeting an infeasible mandate, and are not a substitute for a feasible standard.
- The staff workshop discussed two CCP options: the Credit Clearance Option and Credit Window. Again, WSPA does not support either of these measures as a substitute for a feasible standard. We are concerned about these measures because:
 - They may not achieve the LCFS goals and have no effect on the supply of low CI fuels, so the program will still be infeasible;
 - They would require ARB to become an active participant in the credit market;
 - Arbitrary price controls do not work;
 - There is little definition of the price-setting mechanism, administration and fund distribution;

- The first option, which includes “interest”, exacerbates the compliance gap and penalizes regulated parties once again for an infeasible program;
- The first option has no path to clearing carryover balances;
- The second option is essentially a tax.
- ARB staff has not yet described how the proposed CCPs result in GHG reductions as required by the Health & Safety Code. In general, the proposed CCPs are more appropriately classified as a penalty or fee, neither of which is effective in reducing GHGs at all, much less “cost-effectively.” Further, ARB staff do not explain how the penalties or fees currently proposed would “minimize costs” as required by the Act. § 38562(b). Indeed, the proposed CCP are designed to impose costs that exceed the costs of reducing the CI of fuels to the extent that is feasible and cost-effective.
- The LCFS program also must “minimize the administrative burden of implementing and complying . . .” § 38562(b)(7). Instead of minimizing the administrative burden of compliance, ARB’s CCP patches would only increase the costs of compliance with the LCFS. If every AB 32 program were designed like this, ARB could arbitrarily allocate millions of tons of GHG reductions to all industries and collect millions in penalties or fees annually despite the absence of feasible and cost-effective technology. There would be no need for ARB to evaluate, certify or monitor different fuels pathways at all. The penalties or fees would displace the technologies altogether.
- If there are willing sellers and buyers of LCFS credits in the free market, there is no need for ARB to introduce a “Credit Clearance” option. A “Credit Window” option which merely perpetuates an infeasible mandate by forcing fuel suppliers to purchase waiver credits, which are not linked to actual carbon intensity reductions, is unacceptable. We continue to object to being penalized directly or indirectly for the lack of availability of advanced cellulosic fuel blend stocks in the marketplace. Regardless of how the payments are described or classified, penalties for non-compliance with an infeasible regulation are unacceptable.
- WSPA also does not support the concept of Price floors and Price caps mentioned during the workshop, since it totally distorts a free market, and is inconsistent with the intent of the enabling statute.
- Specific comments/questions on the Credit Clearance Option:
 - a. When will ARB make the determination during the year that not enough credits are available and announce a credit clearance period?
 - b. Does the credit clearance period occur at the end of the calendar year or at the end of a compliance reporting cycle, like April of the following year before the annual report is due?
 - c. Is ARB going to set the price? How does ARB rationalize that anyone would sell credits at less than the price set? Won’t ARB setting a price for the credits drive the broader market to that price?
 - d. The Credit Clearance option preferred by ARB does nothing to close the gap on the lack of supply of low-CI fuels and will only serve to put a spotlight on the infeasibility of the program as deficit balances grow once the supply of low-CI options is exhausted.
 - e. Charging “interest” on deficit balances unfairly penalizes regulated parties for the fact that compliance targets have been set at an unreasonable level and will exacerbate the infeasibility of the program by further inflating the deficits.

- f. Deficits cannot be carried forward in perpetuity. There has to be a fair and equitable mechanism to retire the “carryover deficits” should there be no improvement in the market landscape (i.e., availability of low CI fuels).
- g. What if there are not enough credits in absolute terms to cover the deficits because there are not enough alternative fuels available to generate credits, how does this proposal fix anything when the deficits will be carried over to a subsequent year (with interest) where the reduction obligation grows exponentially and the biofuels are still not going to be in adequate supply. This proposal does not fix the underlying alternative fuel supply problem, it just allows obligated parties to carry over deficits, compounding the problems in future years.
- WSPA has several key legal and technical questions that need to be answered under the CCP proposal:
 - Does ARB anticipate that the CCP would produce GHG reductions? How? How much? When? Where?
 - Would the CCP produce more than a small fraction of the GHG reductions resulting from the revised LCFS rule during any year? What fraction during what compliance year of the LCFS program?
 - How does a particular CCP promote fuel innovation?
 - If ARB anticipates that a significant fraction of the GHG reductions from the LCFS rule will result from a CCP, wouldn't the revised LCFS require new legislative authorization? For example, wouldn't such a CCP require legislative authorization, such as for raising or spending revenue?
 - If the CCP would raise revenue, how much and when? How would the revenues be spent? By who? When? Staff suggests that some CCP revenues would be allocated to the “Air Pollution Control Fund.” If so, how will these funds be spent? Who will decide? How does collection of these payments advance the statutory goal of feasible and cost-effective reduction in greenhouse gases?
 - Under many of the currently proposed CCPs, ARB will become an active participant in the credit program. Does ARB require additional legislative authority for this provision? Wouldn't this state market participation further constrict and distort the market components of the LCFS program?
 - What are the administrative costs of the CCP? Who pays them?
 - How would ARB account for expenditures of revenues and GHG reductions resulting from the CCP?
 - What happens if the cost per ton from CCP reductions exceeds the current cost of LCFS credits or the cost of GHG allowances under the cap & trade program?
 - What happens to the CCP and the revenues raised if there is a breakthrough and it becomes feasible to reduce GHGs by new technologies that actually reduce GHGs?
 - The state board is required to evaluate the total potential costs of its plan on California's economy. How will ARB evaluate the effect of a CCP on California's economy and its fuel users?
 - What provisions would ARB include to prevent waste and fraud in the expenditure of CCP revenues?
 - While California has a legitimate interest in protecting its citizens against the effects of global warming, it may not do so in a manner that places an excessive burden on

interstate commerce. How does ARB anticipate the CCP will affect interstate commerce?

- What will happen under the CCP if the supply of low CI fuel is depressed even further, pursuant to unforeseen economic, agricultural or other forces?

2. Revised iLUC Values

- iLUC values or any other accounting changes must not be retroactively applied to biofuel transactions.
- WSPA supports ARB's continued efforts to use the best science available in determining appropriate iLUC values and strongly recommends ARB continue to involve subject matter experts and obligated stakeholders to ensure that their views are considered.

3. Electricity Credits for Fixed Guideway & Electric Forklifts

- As stated previously many times, we strongly oppose ARB's electricity provisions. Electricity used in fixed guideway transportation and forklifts do not contribute to carbon intensity reduction of on-road transportation fuels which is the stated goal of the LCFS program, and should therefore not be eligible to generate CI reduction credits. Most of the CI reduction provided by these sources pre-date the LCFS, and therefore will occur whether they are included in the program or not. Incremental contributions due to growth in these sources may be small compared to the LCFS-independent contribution. Therefore, the primary effect of staff's proposal is not to incent CI reductions, but rather to "reward" actions that have nothing to do with the LCFS.
- If ARB insists on pursuing credits for these off-road sources, the most straightforward approach that: avoids baseline complexities; avoids inequitable obligations on regulated parties; ensures that credits generated by alternative fuels are real and creditable against the baseline; and rewards the innovation intended by the LCFS, is to allow credit to be given only for prospective alternative fuel projects -occurring after 2010- where CI reductions can be properly verified.
- Estimated electricity use for non-metered EV charging is not acceptable. If credits cannot be verified, they should not be allowed in the program. After all, this regulation is about innovation and progression in the transportation fuel market, so we don't believe there should be any preferential treatment provided to the electricity sector.
- Staff should also consider alternatives to permitting LCFS credit generation using estimates. One possibility, for example, would be to allow only metered electricity to generate credits which have potential monetary value, but use the estimated electricity usage to determine the additional program benefits that could be used to modify the global CI requirements.
- WSPA will not include here all of our prior sets of comments, however we refer ARB staff to our extensive written comments since our positions have not changed.

4. Low Complexity and Energy-Use Refinery Provisions

- Although we realize that staff is progressing this revision at the request of the Board, our preliminary reaction is “opposed.” We believe it is inappropriate for ARB to be picking “winners and losers” among the refiners in the state and to effectively place those who have made the investments necessary to generate the volumes of refined product demanded by the market at a competitive disadvantage as far as LCFS compliance is concerned.
- WSPA understands from the Workshop that a conceptual metric has been proposed to define a low complexity/low energy use refinery. As we’ve stated previously, to be consistent with the rest of the LCFS, the definition of “low energy use refineries” should be based on the lifecycle carbon intensity of the transportation fuels produced. A small refinery that consumes a large amount of energy per barrel of transportation fuels produced should not be given special treatment. On the other hand, if special consideration is to be awarded, it should be based on lifecycle carbon intensity of the refined products regardless of the size of the refinery, and it appears at the workshop staff indicated they are working to quantify the difference in transportation fuel CIs between these refineries and complex refineries. WSPA will withhold further comment until more specifics are provided.

5. Innovative Technologies for Crude Oil Production

- Similar to crude differentiation, LCFS credit generation for innovative crude methods adds unnecessary complexity to the regulation.
- We shall await the release of the staff White paper on this topic to better understand the proposal to allow crude producers the option to opt-in as a regulated party and to earn credits based on the application of energy efficiency improvements in their production operations.

6. OPGEE Revisions and Crude Lookup Table Revisions

- WSPA continues to affirm our desired approach that “crude is crude” for LCFS compliance purposes. While recognizing that different crudes do have different properties affecting carbon intensity, regulating these differences in one state will only cause supplies of crude to be shuffled around the globe, doing nothing to reduce global GHG inventories and potentially causing incremental increases due to the increased transportation of crude. WSPA supports a simple crude equivalency approach that does not discriminate between crude oils for a number of reasons such as:
 - 1) *It simplifies an already complex regulation and provides certainty for the standards to be achieved,*
 - 2) *It provides overall certainty and stability to the marketplace, and reduces the cost impact of the regulation,*
 - 3) *It eliminates crude differentiation and any potential negative marketplace impacts such as the initiation of California crude oil exports due to the policy,*
 - 4) *It focuses the intent of the LCFS program on the development of low carbon and innovative alternative fuels,*

- 5) *It provides for equal treatment of all refineries – including out-of-state and international refineries,*
- 6) *It avoids the difficulties and complexities regarding CI accounting of imports of products, intermediates or blend stocks,*
- 7) *It eliminates the need for development and use of complex crude CI accounting systems,*
- 8) *It helps alleviate discrepancies between countries where detailed information is known about crude production processes, and countries where very little accurate data is available,*
- 9) *It totally eliminates crude shuffling attributed to the program,*
- 10) *It eliminates potential negative impacts on California and US energy security, and,*
- 11) *It allows jurisdictions in crude producing areas to manage GHGs (such as existing Canadian federal and provincial GHG regulations) without concern over competitive disadvantages.*

- WSPA reserves the right to comment further when ARB publishes the updated look-up table values in spring.
- As WSPA has stated in the past, if the crude CI values are increasing based on the latest information and model update, the average CI of the baseline has to be adjusted also – at least for the comparison of determining whether incremental deficits will be imposed based on an increase in the average.
- With regard to a three year cycle for OPGEE model updates and Table 8 individual crude CI revisions, we believe the default CI for any crude not in Table 8 during the interim period between updates should be the current California Industry Average Crude CI. We note that this is the approach we see ARB has taken in just posting for comment the 2012 Crude Average CI on March 20, 2014.

7. Enhancements to Reporting and Recordkeeping

- In general it looks like ARB is further complicating the reporting requirements.
- WSPA is currently discussing problems with staff's recent interpretations on the reporting and recordkeeping provisions under the program, so these discussions need to continue in order to make the program workable for the regulated parties. WSPA strongly urges ARB to form a working group involving key stakeholders immediately to ensure that the full impact of any proposed changes are taken into consideration before deciding how to proceed.
- We also strongly believe the biofuel producer information is only relevant for the biofuel when it is first imported into the state. The PTD should include this information, but only up until that point.
- What does ARB mean by reporting all transaction types?

8. Enhancements to LCFS Credit Provisions

- What does CARB mean by specifying default credit retirement hierarchy?
- Need more clarification on what “credits on hold” means relative to the physical pathway demonstration.

9. Enforcement Provisions

- ARB states in the Concept paper regarding enforcement provisions, “The primary goal of this provision is to provide clarity in the enforcement provisions to ensure that penalties are fair and effective at maintaining compliance and deterring noncompliance.” However, ARB should recognize that the most effective means of maintaining compliance and deterring noncompliance is not via enforcement but via implementing clear and concise regulatory provisions, so that the regulated entities clearly understand what is necessary for compliance.
- WSPA does, however, support the general direction staff is moving to clarify the interpretation enforcement provisions relative to definitions of violations and specifics of what enforcement action may constitute, and WSPA wants to be a part of the discussion. Very little detail has been provided to date so it is difficult to provide comments at this point in time.
- We are interested in understanding more regarding ARB’s proposed concepts for how to calculate penalties, including those instances where it may be warranted to assess a violation on a per day basis and those instances where it is not. WSPA believes that simple reporting or interpretation errors or oversights, or errors outside the control of the reporting party, should not be considered violations – particularly if there is no impact on the obligated party meeting their obligation for a given compliance period (for example-reporting mistakes in quarterly reports that are correct in annual reports, or even changes to annual reports with no material impact on the obligation). WSPA would like to discuss with ARB potential penalty relief for small errors compared to what penalties might be assessed relative to more serious ones. As stated, we recommend a workgroup including regulated parties and ARB’s Legal Division and Enforcement Division to work on the details.
- WSPA also supports the direction in which staff is moving to address the integrity of LCFS credits and maintain a viable credit trading market. Again, we recommend a workgroup including regulated parties to work on the details.