



Western States Petroleum Association

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Gina Grey

Vice President, Fuels, Climate Policy, Northwest/Southwest Regions

June 13, 2014

Katrina Sideco, LCFS Lead
California Air Resources Board
1001 "I" Street
Sacramento, CA 95814
Via electronic mail to ksideco@arb.ca.gov

Dear Ms. Sideco:

Western States Petroleum Association's Comments on ARB's May 30th LCFS Workshop

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.

The comments we have provided below are in response to staff's presentation during the May 30th workshop. Overall, as a representative of regulated parties under the LCFS program, we continue to believe ARB's amendments trend towards adding further complexity and administrative burden to an overly complex regulation.

WSPA questions the value of many of the proposed amendments since they do not appear to add to the certainty of reducing GHGs from the transportation sector, nor do they assist the regulated industry in complying with the program.

If staff wishes to discuss our comments or raise any questions, please don't hesitate to contact me at 480-595-7121. WSPA would like to request a conference call with ARB staff to discuss our many comments and questions on the electricity section, so please contact me to begin those arrangements.

Sincerely,

Gina Grey

c.c. M. Waugh – ARB
A. Prabhu-ARB
G. O'Brien - ARB

H. Shahi – ARB
S. d'Esterhazy – ARB
C. Lozo – ARB

H. Chowdbury – ARB

Western States Petroleum Association's Comments on the May 30th ARB LCFS Workshop

The Western States Petroleum Association (WSPA) and its members, who hold the compliance obligation under the LCFS and who are responsible for producing the vast majority of the transportation fuels used daily in California, must again ask for your immediate attention to the feasibility and possible consequences of staying the course with the LCFS. WSPA's continued engagement on proposed technical amendments should not be viewed as an endorsement of the LCFS or as evidence that this policy can be "fixed."

The LCFS, as envisioned by Governor Schwarzenegger in his Executive Order and as developed by the ARB, is infeasible. More importantly, staying the course now could result in disruptions in the transportation fuels markets including potential fuel shortages in the very near future. Regulators and policy makers must seriously re-consider this policy now. A successful 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 you to find better, achievable ways of reducing carbon emissions from transportation fuels.

Fuel Pathways: WSPA continues to support ARB's efforts to simplify the fuel pathway and registration processes for first generation fuels, which allows ARB to focus their limited resources on Tier 2 pathways for second generation fuels.

Although the proposal simplifies the approval and registration process, it will likely increase the number of fuels in the marketplace with different carbon intensities, increasing the potential for error in recordkeeping and accounting systems. WSPA continues to recommend ARB consider quality assurance and fraud resistance as part of this effort.

Several specific comments are:

- In §95488(b)(1) renewable diesel is listed as a "Tier 1" fuel. In §95488(b)(2) "Drop-in fuels" (renewable diesel is a drop-in fuel) defined as "Tier 2" fuels. In addition, "drop-in fuels" are not defined in the regulation.
- §95488(b)(3)(A): Why is permission to use an intermediate value only allowable if the fuel "cannot be sold outside of California" and Methods 1 and 2 are not available? Please give an example of a fuel where method 2 is not available.
- §95488(d)(3): If we understand this correctly, after the effective date of the regulation, a producer whose process exactly matches an existing pathway must now provide a supporting GREET model. Does that requirement exist today?
- §95488(d)(4): We find this section confusing. As structured, the look-up table is in paragraph D in this section (Tier 2 fuels). Will there be a look-up table for Tier 1 fuels?
- §95488(d)(4)(E): Change the phrase "...incremental emission increases..." to "...incremental deficits..."

Electricity Provisions: As stated in our previous comment packages, WSPA strongly opposes ARB's electricity provisions, and has proposed since 2009 that electricity NOT be part of the LCFS program. ARB could account for the GHGs from electricity separately and reduce the



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compliance obligation within the LCFS proportionally based on ARB's anticipated success of the roll-out of EVs.

The rationale for eliminating it from the LCFS is that the fuel is available – in fact ubiquitous- and based on ARB's experience, the market signal hoped for from the LCFS is not needed for this fuel. In fact, ARB is proposing to reduce the incentive funding to EVs based on successful consumer acceptance to date. The applications for incentive funds are chronically over-subscribed; and moreover, this has all been accomplished without any credit generation revenue from the LCFS. Utility reports to ARB in 2012 and 2013 indicate that no revenue has been derived from credit generation; and yet, ARB is touting the popularity of EVs amongst consumers. Clearly, the LCFS credits have not contributed to consumer acceptance to date and should not be needed in the future.

If ARB insists on pursuing the inclusion of EVs in the LCFS, we have additional issues to highlight; for example, the proposed electric credit generation mechanism for electric rail and forklift projects does not lower GHG emissions or the CI of road transportation fuels, and the removal of the direct metering requirements for credits generated from residential charging of electric vehicles will increase the risk of unverifiable or fraudulent credits being generated.

Timing Issue re Credit Generation for pre-LCFS electricity applications:

The inclusion of these provisions does not contribute to the GHG reduction of on-road transportation fuels and should not be eligible to generate CI reduction credits. In addition, most of the CI reduction provided by these sources pre-dates the LCFS, and therefore will not reduce GHGs in the road transport sector.

It appears that the primary effect of staff's proposal is not to incent road transport GHG reductions, but rather to "reward" actions that are inconsistent with the goals of the LCFS in an effort to generate CI credits. Further, such credits amount to a cross-sector subsidy from the transportation fuel sector to the electricity sector. If ARB insists on pursuing credits for these off-road sources, credits should only be generated for prospective alternative fuel projects that occurred after LCFS adoption.

Moreover, these proposals are further evidence that the LCFS program is infeasible. Allowance of LCFS credits for electricity used in applications in place prior to 2010 will lead to a smaller reduction in transportation fuel CI, undermining the stated LCFS objectives. WSPA's position continues to be that we are against including credits for fixed guideway systems and electric forklifts unless they are also properly accounted for in the 2010 baseline. Under no circumstances is it appropriate to make credits available for systems and equipment, such as BART, that have been in operation for decades.

Direct Metering: §95491(a)(3)(D)(1): As noted above, staff is proposing to eliminate the requirement that reporting of electricity dispensed to electric vehicles at residences must be based on direct metering. Instead, staff is proposing to allow the use of a "robust estimation

method” developed by CalETC. Although staff has posted a letter on the ARB website approving this method (dated April 5, 2012), there are insufficient details for us to adequately review and comment upon the methodology. Based on the limited information available, it appears that the method would assume that vehicles within a service area without direct metering would be used in the same fashion as those that do have direct metering. Closer examination of this approval raises many questions/issues as follows:

- The proposal requires the utilities to report data quarterly for EV charging that is metered. The intention is to use this data as a proxy for unmetered EV charging. What is the extent of the metered data? Will this assessment be done only on a regional utility basis because the driving and utilization patterns might vary from region to region? What is the percentage of the metered data relative to unmetered data? What discussions have occurred about the extent necessary to be statistically relevant? For example – one metered customer should not represent hundreds of unmetered customers in the calculation. Is it ARB’s intention to post this data in a de-identified or aggregated manner for public review?
- The proposal then allows a utility that does not have the ability to compile and report their direct metered data to use a statewide average of the direct metered data that is submitted. This means that a utility can use a statewide average value for direct metering as a proxy for its direct metering information that will be submitted to ARB, which will in turn be used as a proxy for statewide unmetered charging. An embedded approximation like this for use in a broader approximation is hardly robust. Moreover, will ARB report on which utilities have direct metering data and which do not and why? At a minimum, any utility that lacks any directly metered data should be excluded from the estimation technique and the ability to generate credits. There is no guarantee that the usage patterns in one utility’s region will be representative of the usage patterns in another region.
- To determine numbers of PEV customers, CalETC will obtain ‘zip+4’ PEV registration data from a data management firm that accesses DMV data, or data from other sources. First, what are the zip+4 data and will this data be posted on the website? Second, who is the data management firm and what controls do they have to ensure the validity of the data? Are they subject to ARB audit and jurisdiction? If DMV data is not used, what are the other sources? How can the data from these other sources be assured?
- Is data separately available for PHEVs and BEVs? What is the average and range of the directly-metered data? It would be important to understand the variation potential that exists to understand the potential error band in the unmetered data. Perhaps some safety factor based on a statistically significant lower range should be incorporated into the credit calculation coupled with a guarantee from ARB that buyers of credits originating from electricity will not be held liable, either in terms of a violation or credit shortfall, should be incorporated into the regulation.
- Vehicle owners who go to the trouble of installing a separate meter are likely to plug in more faithfully than those who do not and are therefore not representative of the entire fleet. This is particularly important for PHEV estimates. Are there any data with which to confirm that the results from the metered fleet can be extrapolated to the unmetered fleet?



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- The data collected on vehicles with direct metering cannot be applied to the entire fleet of BEVs and PHEVs in an area without also confirming that the distribution of vehicles (by BEV/PHEV and by all-electric range) is the same between those with meters and those without. It is highly unlikely that this distribution would be the same. For example, a PHEV with a 10-mile electric range that was purchased primarily for carpool lane access would likely be under-represented in the sub-set of vehicles with at-home meters.
- How is double-counting of electricity usage prevented? If at-home charging for those vehicles without a separate EV meter is accounted for with this method, is it assumed that all of the public charging stations get full credit for that electricity? What if a vehicle owner only charges at public or work-based charging stations and rarely charges at home? Is that vehicle assigned home-based charging at the same rate as those vehicles with at-home meters?
- Credit generators should be held to the same set of standards as liquid fuel providers and not be allowed to estimate the fuel supplied for transportation purposes. Eliminating the direct metering requirements also increases the risk of generating invalid credits, which weakens the integrity of the entire LCFS program. In our opinion the credits obtained through the use of estimates are more suspect than credits generated from actual metered electricity usage.
- There is also a fairness issue. Considering the minutia of OPGEE inputs, the level of detail required for liquid fuel reporting and the detail involved with obtaining a CI pathway (and the record-keeping requirements for some pathways) simply allowing estimates of electricity used for residential charging is inconsistent. ARB is picking “winners and losers” by not requiring similar degrees of rigor across the program.

As regulated parties, we are concerned that any credits generated via estimation techniques are more susceptible to challenges and invalidation. ARB should require measures to increase the validity of credits and not erode the validity. Only verified credits should be allowed in the program. WSPA believes the utilities ought to provide enough incentives through LCFS credit revenue or other incentive programs to maximize the amount of direct metering deployed for charging. We continue to oppose the proposal to allow electricity producers to generate credits from unmetered residential EV charging.

H.D. EERs: §95490 Table 5. Staff has proposed changes to the heavy-duty EV EER based on electric buses operating in California. We are not able to comment on this proposal without reviewing the data upon which the EER is based. Similarly, staff has proposed EERs for heavy rail, light rail and trolley buses, and electric forklifts. We cannot comment on these values without reviewing the data upon which they were based. In general, however, we reiterate our concern about allowing these sources to generate credits without accurately including them in the 2010 baseline.

Excluding Supplemental Information:

ARB is proposing to exclude some supplemental information now required in annual reporting. WSPA disagrees with this, particularly the exclusion of the number of EVs operating in a service

territory. Without this basic piece of information, it will not be possible to cross-check reported electricity usage by EVs for reasonableness.

In fact, we suggest that the reporting requirements be enhanced to include not only the number of EVs in a service territory, but also the number of plug-in vehicles in various categories (i.e., pure electric vs. plug-in hybrids by range).

It is important to distinguish between pure battery electric vehicles (BEV) and plug-in hybrid electric vehicles (PHEV), and within each of those categories, identifying the distribution of vehicles by electric range. For example, data collected by the Idaho National Laboratory on in-use driving patterns for the Chevrolet Volt and Nissan Leaf can be found at: <http://avt.inl.gov/evproject.shtml#>. Dividing the all-electric miles by the number of vehicles reported at that website gives quarterly VMT per vehicle for Oct-Dec 2013. The BEV Leaf (~6000 miles per year if 4Q2013 numbers are forecast to a full year) is accumulating fewer miles on electricity than the PHEV Volt (~8000 miles per year).¹ Clearly, the limited range of the Leaf is resulting in much lower VMT than a typical new car, while the broader utility of the Volt results in greater overall usage and higher VMT on electricity. However, PHEVs with lower range would have fewer miles on electricity, while BEVs with greater range would likely have more miles on electricity. These results reinforce the importance of understanding the make-up of the plug-in fleet in a particular area to generate an accurate estimate of on-road electricity usage. In addition, it is important to continue monitoring recharging and electricity usage of these vehicles as the patterns of usage may change as the vehicles expand beyond “first adopters.”

In the event ARB insists on removing the residential metering requirement, WSPA will oppose the proposal to remove the Supplemental Information from electricity providers reporting obligations, including accounting of credits generated, sold, and banked and accounting of number of EVs known to be operating in the service territory.

Reporting and Recordkeeping: We support ARB’s efforts to clarify the recordkeeping and reporting requirements and work towards resolution of reporting inconsistencies between regulated parties and their business partners. However, the recordkeeping and reporting proposals do not effectively address these issues.

We request the following specific changes:

- Regulated and reporting parties should use the **title transfer** date in their reporting, **as that is when ownership changes hands**.
- §95481(56-1) Total Obligated Amount (TOA): We can envision scenarios where negative TOA’s are possible. For example, a party might import CARBOB in a quarter (or year) and hold that volume in inventory until the next reporting, at which time it is sold. The net volume sold can be greater than what was imported during that reporting based upon “carried-over” inventory. It is not clear from the regulation that this is allowed §95491 regarding PTD’s. WSPA recommends that you strike the new definition and the requirement for a positive balance from the regulation.

¹ A better annual estimate could be obtained by going back to previous quarterly reports to average out potential seasonal effects.



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- §95481(a)(6) Report Corrections: Quarterly reports are progress reports - there should be no restrictions on correcting them. Changes to progress reports (quarterly reports) should not be subject to enforcement action.

Product Transfer Documents (PTD): While we support regulatory clarity related to the PTD requirements, we do not feel a separate PTD must be provided for each fuel transaction(s) if the required information is available on other transaction documents (e.g. bills of lading, invoices, contracts, etc.). The requirement for a specific PTD form is an unnecessary administrative burden.

PTDs – 95481 (51-1) The initial regulation and the definition in the guidance document recognized the benefit and wisdom in taking the position that a PTD could be a document or combination of documents. The proposed change decreases that flexibility and we do not support it.

The new definition for PTD is written in such a way as to suggest that a single, new document must be created to document a transaction for LCFS compliance. If this is the intent, it is a serious departure from the traditional use of the term PTD by multiple regulatory agencies. “Product Transfer Document” is a general term used to refer to any document or collection of documents that transmit required information from transferor to transferee. The purpose of the PTD requirement is to ensure that the appropriate information is documented and transmitted. Requiring that a new, unique document be created to fulfill LCFS requirements when existing documents may be completely adequate is an administrative burden and unnecessary. WSPA strongly recommends that the PTD definition be changed to read as follows:

(51-1) “Product Transfer Document (PTD)” means a document or set of documents that authenticates the transfer of ownership of fuel from a regulated party to the recipient of the fuel. A The PTD requirements of this regulation may be met through the creation of a stand-alone document or is created by a regulated party to contain information collective supplied by other fuel transaction documents, including bills of lading Bill of Lading, invoices, contracts, meter tickets, rail inventory sheets, Renewable Fuels Standard (RFS2) product transfer documents, etc.

PTD content – 95484(c)(1)(A)(7)

ARB is proposing to require the production Company ID and the Facility ID be included on the PTD. As WSPA has stated in the past, this information is not necessary beyond the initial production or importation of this fuel within California. If the initial producer or importer of the fuel reports this information to ARB, it allows ARB to track it back to its origin. Once the fuel is in a fungible system within California, there is no value to continuing to track the fuel in this manner and, in fact, it only increases the reporting burden on obligated parties, increases the chances for mistakes that result in enforcement penalties, and adds burden to ARB’s tracking system. WSPA recommends the company ID and production facility ID only be required for the initial production or import in California.

Fuel Transaction Form (FTF): ARB has introduced a proposed requirement to submit a fuel transaction form on line with prescribed information that will then be routed to relevant business partners. While WSPA understands the intent to provide a level of reconciliation between reporting parties ahead of report submittal, WSPA does not agree with making this a regulatory requirement; nor does WSPA believe that the proposed implementation accomplished ARB's intended goals. The requirement is to submit the form within 20 business days after the quarter-end date. The business partners then have an additional 10 business days to merely acknowledge receipt. Some of our issues with this approach are:

- First, the time horizons for completing this work are too short given the number of transactions involved with each business partner.
- Secondly, if an effort is made to reconcile all discrepancies with all business partners, this significant effort would overlap with the time period necessary to submit the quarterly reports (well into the 60 calendar days allowed in the regulation). We are not confident that the proposed Fuel Transaction Form (FTF) will provide sufficient improvement in the accuracy of reporting to justify the potential administrative burden it creates.
- Lastly, how will any changes to the form be made? Will changes be made at the discretion of ARB staff or will changes be made based upon a public process? The concern here is with the lack of transparency and adherence to APA requirements and the risk of "underground rulemaking".

The FTP proposal is a very time-consuming activity, with the potential for distraction from the existing reporting requirements, and is very likely to be another source of errors and follow up enforcement. In addition, there is no clear evidence that any reporting improvement will be made by the adoption of a FTP requirement.

We agree that good communication between parties is important for accurate reporting and we appreciate ARB's encouragement. However, our job as a regulatory party is to report accurately. We do not have control, and we should not be held accountable, for how our counterparties do or do not report.

The technology/resource investment required on the part of ARB and the regulated parties has the potential to be largely wasted. We believe that, while it is available after reporting has occurred, the recently created reconciliation reports that are available via the LRT-CBTS has sufficient potential to improve the process without adding this additional burden. Considering the very first reconciliations have only just been completed, we recommend putting the FTF proposal on hold until it is clear whether or not the process is able to improve as it is. We do not support its inclusion as a mandatory requirement at this time.

Credit Transactions: Under the proposed rule, all Credit Transfer Forms (CTFs) must be completed in the LRT. However, ARB has kept the requirement to submit the CTF to ARB through email or other approved method in §95487(c)(1)(C)2. WSPA recommends removing this requirement if the CTF is required to be filled out in the LRT.



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The revised language in §95487(b)(2) discusses a priority for retiring credits for compliance based on the acquisition period or year of generation. Given that a regulated party simply carries over a credit balance from one year to another and does not maintain an inventory of credits based on “vintage,” this portion of the regulations is unnecessary. WSPA recommends deleting §95487(b)(2) in its entirety rather than rewriting it.

WSPA appreciates ARB’s alignment of the regulations to the structure of the new Credit Banking and Transaction System. This will help to avoid confusion in the execution of transactions. We agree with the requirement that all transactions be executed through the LRT-CBTS, but does ARB have a contingency plan in mind for any prolonged outages that the system may experience? It may be appropriate to include a provision empowering ARB to put a temporary manual transaction process in place under such circumstances.

Enforcement Provisions: WSPA believes there are a large number of enforcement issues still to be addressed, and we have provided a number of issues below:

- ARB has not included any provision for an administrative hearing process if enforcement actions are challenged. It is more cost-effective and expedient to the regulated community to allow for administrative hearings for enforcement actions. WSPA recommends that ARB consider such a provision.
- WSPA appreciates the proposed option under § 95492 for entering into enforcement protocols. For illustrative purposes, it would be helpful to know under what circumstances ARB envisions using this provision.
- As stated previously, WSPA believes 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. 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.

We continue to recommend a workgroup including regulated parties and ARB’s Legal Division and Enforcement Division to work on all of these issues and the many more that are expected to arise.