Western States Petroleum Association
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Vice President

March 10, 2017

Mr. Sam Wade
Branch Chief
California Air Resources Board
1001 I Street
Sacramento, California 95814

sent via email: LCFSworkshop@arb.ca.gov

Re: WSPA Comments on ARB February 10, 2017 Biodiesel and Renewable Diesel Working Session

Dear Sam,

The Western States Petroleum Association (WSPA) appreciates this opportunity to provide initial feedback on the California Air Resources Board (ARB) staff presentation at Low Carbon Fuel Standard (LCFS) - Biodiesel and Renewable Diesel Working Session, held on February 10, 2017 in Sacramento, CA. WSPA is providing these comments as part of a continuous effort to provide feedback on the LCFS-related items presented by ARB. WSPA is a non-profit trade association representing 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 following comments are not only applicable to Biodiesel and Renewable Diesel but also to other biofuels as well.

Pathway CI Value Tolerance Approach

WSPA strongly recommends that ARB allow for a producer of biofuels to achieve a positive audit finding (also referred to as a materiality threshold) by allowing the actual annual average CI value to be within 5% of the pathway CI value (or alternatively a +/– 2.5 CI value tolerance). WSPA believes that this is fair considering that there are variables not under control of the producer. There is precedent in setting a 5% tolerance level in the Mandatory Reporting Regulation (MRR).

WSPA believes that taking the added headroom approach to the biofuel pathway CI value, as proposed by ARB staff, will have several undesirable consequences, including but not limited to: (1) increase compliance liability, 2) potentially drive up product costs, and (3) provide no credit to the producer if the actual audited CI is lower than the pathway CI. This approach does not on the surface appear fair to those parties producing alternative fuels with lower CI values.

Further, WSPA does not agree with staff's position that producers should be held to their pathway CI to 0.01 CO2e/MJ. This stringency is orders of magnitude more than many of the assumptions in the CA GREET model and the indirect land use change factor. ARB staff should keep in mind the rigorous pathway data submission process and that the CI approved by staff is based on a two-year average.

WSPA suggests that ARB consider developing guidelines that could be incorporated into the auditing procedure such as checking that a significant amount of the monthly values were within +/- 3 standard deviations based on the pathway submission and/or other widely accepted Quality Assurance and Quality Control (QA/QC) procedures that could potentially be required in order for the 5% factor to be applicable.

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Feedstock Tracking

WSPA strongly recommends that ARB modify the proposed feedstock tracking requirements to make the tracking of feedstock for both biodiesel and renewable diesel producers less cumbersome. Specifically, WSPA believes that the tracking requirements, as proposed by staff, appear to ignore reliable standard procedures and protocols. For example, it is a standard procedure in the renewable fuel industry for feedstock purchase contracts to contain quality requirements. It also is a standard procedure for buyers to require a certificate of analysis for each truck load or railroad car load or shipment. Further, it is a standard procedure for producers to have a quality control program in place which includes periodic sampling and testing of the feedstock received. In the case of a renewable diesel plant, there is a large, complex feedstock preparation section before the feedstock is sent to the hydro-treater. Unusual or contaminated feedstock would most likely be evident by adverse changes in the feedstock preparation section. The overall operation including yield is continuously monitored which would also indicate receipt and running of a contaminated feedstock or a feedstock that was not what the certificate of analysis indicated it was. Without modification of the proposed tracking requirements, WSPA believes that ARB staff will be chasing non-existent or extremely minor issues and/or proposing a solution in search of a problem.

Verification Protocols

The protocols for both CI verification and volume verification should be outlined clearly so that the verifiers, regulated parties, and ARB know what is expected with regard to the scope and timing of verfication. It is difficult to determine the cost and scope of the verification audits if what is expected of the verifier changes or grows after the verification has started.

Withholding Unreconciled Credit Transactions

WSPA does not agree with the ARB proposal that withholds credits from unreconciled transactions. This item requires further discussion in order for stakeholders to better understand how significant the issue of unreconciled transactions is and if there still needs to be some accommodation for a responsive party dealing with an unresponsive counterparty.

Exports of Renewable Fuel Blends

ARB has proposed guidance for reporting exports of both ethanol and biomass-based diesel fuel blends that is likely to discourage blending and, where blending occurs, cause a level of recordkeeping and tracking that is unnecessary and contrary to the spirit of the LCFS to date. From the beginning, the LCFS regulations have been structured in a way to allow flexibility in the movement of fuels within California and therefore encourage maximum potential for blending low carbon fuels.

For example, the original regulations contained a provision allowing regulated parties to transfer the obligation for diesel fuel blends as 100% CARB diesel. This provision, found under § 95484(A)(2)(B)(2)(a), read as follows:

> *2. Producer or Importer Acquiring Diesel Fuel or Diesel Fuel Blend Becomes the Regulated Party Unless Specified Conditions Are Met. Except as provided for in section 95484(a)(2)(B)3., when a person who is the regulated party for diesel fuel or a diesel fuel blend transfers ownership to a producer or importer before it has been transferred from its final distribution facility, the recipient of ownership of the diesel fuel or diesel fuel blend (i.e., the transferee)*

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> *becomes the regulated party for it. The transferor must 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.*

When the obligation transfer language in the regulations was consolidated as part of the 2015 LCFS Re-Adoption, this provision was lost in the editing. Given there was no discussion of a change of policy on this topic during the many workshops held in 2014 and 2015, WSPA believes that this deletion was unintentional and the principle still applies. Industry trading practices and norms have been developed around this principle over the last six years. In addition, this practice allows regulated parties to maximize low carbon fuel blending while maintaining the fungibility of diesel fuel in the market.

The flexibility that this practice allows has enabled renewable diesel blending in the industry and will enable the blending of other alternative fuels as well as refinery co-processing in the future. ARB, however, has proposed guidance that would force regulated parties to assume certain percentages of renewable content in any CARB diesel that happens to be exported from the state. This will do nothing to advance the goals of the LCFS program and is likely to discourage low carbon fuel blending in any cases where some portion of the resulting blend may be exported.

ARB staff has commented that the LCFS regulations require that fuel produced for use in California must be used in California. This is not supported in the regulations. The regulations do require the reporting of production or import of fuel intended for use in California, but do not state that that fuel must then be consumed in California. While it is true that exports must be reported, there is significant flexibility within the regulations for ARB to provide guidance that allows regulated parties to allocate CI pathways to those fuels and, therefore, maximize compliance capabilities for regulated parties.

Given the absence of regulatory language since re-adoption, WSPA urges ARB to issue guidance explicitly stating that renewable fuel blends can be transferred within California as 100% CARB Diesel or 100% CARBOB. This policy can and should apply regardless of the renewable fuel blend percentage or any commercial labeling. This written guidance will be helpful clarification in commercial transactions and valuable support for verification purposes. It will also be in alignment with guidance previously issued by ARB for fuel supplier reporting under the Mandatory Reporting Regulation (MRR). This guidance can be found in Section 2.2.2 of the document at https://www.arb.ca.gov/cc/reporting/ghg-rep/guidance/fuel-supplier.pdf.

Exports above the Rack

For the reporting of CARB diesel that gets exported out of California, ARB should not assume that all CARB diesel is blended with 5% renewable and 5% biodiesel as presented in ARB Staff Discussion paper, entitled *'Biomass-Based Diesel as a Transportation Fuel"* (Table 3). Third-party pipeline Kinder Morgan specification for CARB diesel is only up to 5% renewable diesel, but there is no requirement to blend renewable diesel, and there is no requirement to blend biodiesel downstream at terminals. Therefore, diesel exported out of the State should be reported as a pathway code ULSD001 with a CI of 102.01.

As renewable diesel is particularly difficult to track (it can be up to 5% anywhere in the system), this proposed element adds a complicated requirement with little benefit. Regulated parties should not lose credit for renewable fuel that is blended which may discourage use of renewable fuels.

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Exports below the Rack

As part of the discussion around gasoline and diesel blend exports, ARB staff has referred to exports of the E10, E85, and B5 and a requirement to report the renewable fuel component of these exports. Given that the LCFS obligation in California ends at the terminal rack, this proposed guidance is confusing and problematic. The regulations do not allow the transfer of obligation below the terminal rack, meaning that the owner of the fuel prior to the loading of a truck is the last regulated party for that fuel. If that truck then happens to deliver to a station outside California (which would be unusual), there is no mechanism in the regulations for reporting that delivery as an export.

This is particularly true where the sale at the terminal rack is to a marketer supplying its own customers. The seller in that case would not necessarily know the destination of the truck and would therefore be in no position to report an export and it's very likely that the marketer would not be a regulated party under the LCFS. Regardless, the seller would have no ability to transfer the LCFS obligation for the fuel to any customer below the rack. Any guidance ARB may issue related to renewable fuel exports should clearly state that it does not apply to activity below the terminal rack. This will help to avoid confusion.

WSPA appreciates this opportunity to provide our initial input regarding the Biodiesel and Renewable Diesel Working Session. If you have any questions, please contact me at (805) 701-9142 or via e-mail at tom@wspa.org.

Sincerely,

cc: Catherine Reheis-Boyd - WSPA

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