



March 23, 2016

Ursula Lai
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Sent via electronic mail: Ursula.Lai@arb.ca.gov

RE: RPMG Comments on ARB staff presentation -- Proposed Framework for the LCFS Monitoring and Verification Program

Dear Ms. Lai,

We would like to thank you for giving Renewable Products Marketing Group (RPMG) the opportunity to comment on the sweeping staff proposal to expand the scope and complexity of the Low Carbon Fuel Standard (LCFS). RPMG is a biofuel marketing company currently representing 21 ethanol facilities located throughout the Midwest. We support clean transportation fuel policy which diversifies fuel supply, incentivizes innovative technology and advanced renewable fuel selection, creates jobs, and most importantly improves the environment. RPMG participates in greenhouse gas (GHG) reduction and alternative transportation fuel programs throughout the nation and the world. These comments are grounded by that multi-jurisdictional experience.

We fully support the goal of a transparent and robust LCFS marketplace. ARB's efforts to develop a monitoring and verification (MV) program under the LCFS might aid in achieving that goal, but it is important for the MV program to be reasonable, cost-effective and fairly implemented. RPMG is keenly interested in the impact such new components may have on the fuels marketplace and on the workload of participating parties. The staff presentation from the March 8, 2016 workshop focused on high level concepts and a "framework" for how MV may operate. While RPMG appreciates the initial preview of ideas, it is clear that much more thought and work will be required to fully understand the impacts of such potential requirements.

RPMG is committed to working closely with ARB on these important concepts and have prepared our comments at a level consistent with the presentations. We look forward to additional calls, meetings, and workshops to discuss the details and review actual draft language. Though there could be additional benefits to a well-designed MV program, one that is overly ambitious or off the mark can be burdensome and costly to both ARB and LCFS stakeholders. To date the LCFS program has not shown a high-risk for fraud or abuse.

RPMG requests that ARB review the program's current operation and tailor the MV provisions accordingly, rather than assume the worst-case scenario and work back from there.

Potential Costs and Cost-Benefit Analysis

The workshop highlighted new MV components requiring action from both ARB and stakeholders. It is RPMG's understanding that each of the potential activities has the goal of assuring LCFS credit validity and market transparency, but each also has a cost to all parties throughout the full chain of custody—from producers to marketers to regulated parties to consumers to ARB. There were no slides or presentation time set aside for the issue of cost, or cost/benefit

analysis. This is worrisome. Program costs cannot outweigh program benefits. Support for these programs from the regulated community will depend on whether or not they are worth the price to participate.

It should be noted that not all biofuel importers are singularly dedicated to California delivery, therefore any LCFS MV costs will be amplified for intermittent or periodic importers of fuel. ARB surely doesn't want this aspect of the program to become an importation barrier. The cost per gallon will be greater for smaller and intermittent participants solely because they have less volume over which to spread the administrative costs. RPMG also cautions this is not just a concern for credit availability to the LCFS program. This is also a reality for physical supply to the California transportation fuel market.

One of the takeaways from the workshop was that staff would like to reduce the risk of fraud in the LCFS marketplace. It would be helpful if ARB defined material misstatement and the areas of high risk for the program. It was repeated several times the MV program will be based on risk management. RPMG agrees that is an efficient way to structure the program. It also leads to some very basic questions that were not answered: What are the actual risks? How can they be identified as high, moderate, low? What cost thresholds should be applied to each of these levels?

RPMG recommends that ARB conduct cost estimates and a benefit analysis of the various program components to ensure only the most worthwhile (those that focus on high risk aspects) are incorporated in the final proposal.

Buyer Beware

RPMG is supportive of ARB continuing the policy of "buyer beware" in relation to LCFS Credit transactions. To date, this policy has served the program well. It is essential to program integrity to know your counterparty. If the element of buyer beware were ever removed, all parties, regardless of opt-in or subject to the regulation, should have the same protections and mitigations of risk afforded to them.

RPMG recommends that ARB does not alter the current policy of "Buyer Beware".

Transparency

The staff presentation highlighted the desire for greater "transparency" numerous times, had one dedicated slide (#18) and specifically asked for feedback with two questions:

- Should staff consider enhanced transparency of documentation (chain of custody of feedstock, fuel, co-products, etc.)? Carbon Intensity (Slide 14)
- Is there a need for greater transparency of documentation (chain of custody)? Fuel Volume (Slide 15)

ARB needs to better identify what is meant by "greater documentation", "enhanced transparency", and "greater transparency on documentation". Without knowing precisely the issue that ARB is trying to solve, it is difficult for RPMG to provide detailed comments. RPMG is committed to maintaining confidential business information of transactions within the "chain of custody". Biofuels is a highly competitive marketplace. If ARB believes that additional recordkeeping or reporting is necessary to solve an existing problem, RPMG is open to discussing that issue.

RPMG recommends that additional details be provided as to the issue or problem that needs to be addressed. In a highly competitive industry with hundreds of thousands of annual transactions, the concept of full regulatory transparency and even greater documentation could become costly and/or problematic. An approved document sampling methodology as a first cut of review could be very beneficial.

Enforcement

The issue of enforcement was only briefly touched upon in the question/answer portion of the workshop. RPMG believes that this is a very important issue that needs to be fully understood by stakeholders as soon as possible in the regulatory adoption process. MV provisions are being proposed to ensure transparency and confidence in the LCFS credit system.

Simultaneously they represent opportunities for enforcement action, potentially even if there is not a material impact on a CI value. How this is treated within the existing program and the developing regulation is a key concern: How will the MV program, integrated under the existing LCFS, be judged and enforced? How will each potential phase of the MV program be looked at--validation, verification and monitoring. How would violations be determined? What are the potential enforcement risks? How would potential penalties be calculated?

RPMG recommends ARB clearly spell out how the multiple proposed MV provisions would be enforced?

Verification Services and Conflict of Interest

RPMG is supportive of staff's recommendation to preapprove verification bodies and incorporate Conflict of Interest provisions governing Verification Bodies and Verifiers. ARB is correct, a professional level of independence from outside the organizations responsible for pathways must be maintained. Verification bodies should be subject to ARB audits. It would be appropriate for these entities to hold and maintain professional certifications, such as Professional Engineers or Certified Public Accountants. ISO designations could also be appropriate where professional licensures are not held, but certified professionals should not be disqualified if they do not directly conform to ISO.

ARB identified a wealth of existing programs to reference in MV design, including but not limited to Cap-and-Trade Mandatory Reporting Regulation (MRR), US EPA's Renewable Fuel Standard Quality Assurance Program (QAP), EU Renewable Energy Directive (RED), American National Standards Institute (ANSI), Accreditation Services International (ASI), and the International Organization for Standardization (ISO). RPMG appreciates ARB's efforts in examining these resources to aid in the design of MV. RPMG further agrees with ARB staff that it is essential to acknowledge the LCFS is its own program. It would not be appropriate to attempt to make MV conform to any one verification standard designed for other purposes. However, in the interest of fiscal responsibility and respect for the time and effort it takes to be a cooperative party (subject to verification), the existence of efficiencies and layering of review elements must not be ignored.

RPMG supports COI provisions and verifier accreditation.

Carbon Intensity, Fuel Volumes, LCFS Credit Transactions

The staff proposal has Carbon Intensity subject to three levels of audit of lifecycle parameters: initial "validation" to confirm certification of fuel pathway, periodic "verification" of certified CI, ongoing "monitoring" of certified fuel pathway and CI. As presented, each step takes place after the extensive registration, application and certification process required in the existing LCFS regulation. ARB further reserves the right to request and review pathway and CI documentation at any time. RPMG does not believe the CI of all certified fuel pathways need to be subject to four separate audit occasions.

Outside of the described audit levels, there is the matter of verification frequency and timing. RPMG believes it impractical and a deterrent to credit trading activity to require verification of CI before credits can be produced through quarterly progress reporting. Although there are credit trading parties today that will not accept or acquire credits until first conducting due diligence of the chain of custody, this too can be a hindrance to credit trading activity. RPMG respects the choice of counterparties to choose this as an internal protocol, but it should not be a required burden placed on the market. Verifications are time consuming and laborious for all parties involved. The market moves quickly. Parties should have the autonomy to assess and address risk in a fashion of their choosing. It should be maintained as an option to choose to conduct credit trading prior to validation, verification or monitoring. Frequency of review should be at an interval no less than annually. The LCFS regulation requires fuel pathways to consider a full 12 months of on-going activity to account for variations in operation. Attempting to formally or independently review CI on a timeframe less than 12 months will result in misleading and potentially false high-risk indicators. It may be advisable to formally review on a schedule closer to 24 months, as 24 months of data is minimally required for full pathway certification.

RPMG strongly recommends ARB develop guidance for document sample methodology. It is unrealistic to review ALL documentation related to production and transaction of fuel or carbon credits without exception. ARB can and should maintain the right to request and review all documentation, but it should not be the minimum requirement. Implementing a sample methodology allows for a more efficient application of resources and therefore a more thorough review free of overwhelming and tedious review of documents above and beyond their reasonable level of risk.

RPMG recommends the frequency of verification activity not be conducted in a time frame less than annually. Review of fuel pathways should not be attempted for less than 12 months at minimum, however 24 months should be considered. Finally, establishing a document sample methodology is a necessity.

National and/or International Implications/Awareness

The LCFS is a global program with impacts throughout the world. RPMG has existing experience with programs outside of California and the United States and believes ARB should make every effort to ensure basic LCFS MV requirements are consistent, and do not conflict or duplicate, with other standards already established around the world. Biofuel producers are subject to multiple and varied requirements throughout the country and the world. There is efficiency to be gained by referencing existing International protocols, including those for sustainability.

RPMG recommends that ARB consider international models for MV and sustainability such that California's program isn't duplicative or contrary for parties operating in multiple jurisdictions.

Chemical analysis of feedstock/fuel properties

RPMG requests additional clarity on what ARB staff is considering with respect to feedstock chemical analysis mentioned on Slide 7. Would this only apply to certain identified feedstocks? Who would be responsible for the analysis? What happens to the analysis when complete? Would the analysis be ongoing or a spot check? How will it impact facilities? How would this requirement impact importers? Could this be a source of enforcement?

RPMG believes that feedstock analysis should not be a routine or standard requirement of all biofuel producers. It may be more appropriate as a second-tier mechanism to follow up on high risk fuel producers.

RPMG recommends ARB more fully flush out this potential requirement so that stakeholders can better understand it and comment accordingly. It is also recommended that if such analysis is required, that it only be done in a limited and targeted manner.

Sustainability

RPMG is supportive of sustainability as a guiding principle. Our producers have a vested interest in sustainable agriculture. This issue of "sustainability" has been in the background of the LCFS program since the beginning, and ARB has yet to define what it is looking for, how it would go about achieving such a goal, or the timing of any program integration.

Any provisions in this area could require significant workload for both fuel producers and ARB, and therefore stakeholders should be provided sufficient time to fully consider what is being proposed. Equally important is the question of how these provisions would be implemented and who they would apply to under LCFS.

RPMG is supportive of the staff suggestion for a separate public meeting to focus on this issue. It is recommended that ARB provide as much information as soon as possible, prior to such a meeting, to enable it to be more productive. RPMG would also like to better understand how sustainability concepts will integrate with this MV rulemaking.

RPMG recommends the sustainability program should allow for additional CI reduction benefits to certified pathways. Further, the sustainability program should allow for biologic soil carbon sequestration. Our understanding is the Carbon Capture and Sequestration (CCS) Quantification Methodology (QM) currently under development will focus on geologic

sequestration. To ensure this important topic is not left in limbo, it would be appropriate for biologic sequestration to be considered with sustainability for the LCFS.

RPMG is supportive of additional, dedicated workshops and discussions surrounding the topic of sustainability. RPMG anticipates the release of the noted concept paper.

MV Adoption Process and Schedule

RPMG appreciates the workshop and the opportunity to provide written comments before detailed language has been drafted. It is important stakeholders have ample opportunity to gain perspective of the program, review cost estimates, and see actual regulatory language and enforcement parameters in order to provide feedback to ARB.

RPMG looks forward to additional detailed discussions with ARB staff prior to the release of the Draft Proposal, and would encourage ARB to only move to the regulatory package stage when the program is fully understood by the broader LCFS community.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jessica Hoffman".

Jessica Hoffman
Regulatory and Compliance Manager
RPMG, Inc.