



Western States Petroleum Association
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Thomas A. Umenhofer, CCM, REPA
Vice President

March 28, 2016

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

sent via email: samuel.wade@arb.ca.gov

Re: WSPA Comments on ARB March 8, 2016 Workshop Presentation on LCFS Reporting

Dear Sam,

The Western States Petroleum Association (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. WSPA appreciates the opportunity to provide feedback on the California Air Resources Board (ARB) presentation at the March 8, 2016 Workshop on pathway application processing, changes to the Alternative Fuel Portal, and guidance on LCFS reporting requirements. WSPA is providing these comments in an effort to offer initial feedback on the LCFS-related items presented by ARB. WSPA reserves the right to provide formal comments during the notice and comment period once ARB initiates formal rulemaking process.

LCFS Reporting Update

WSPA requests ARB provide the default USEPA and Facility codes for use on PTD and reporting to correspond to the substitute fuel pathway and CI codes proposed. Also, the CI values for the substitute FPCs are very low and are not representative of the typical biofuels currently transacted as indicated in ARB report. WSPA believes that an average value would be more appropriate and that these values could be revisited every three years consistent with the updates to the various models and calculators.

LCFS Dashboard

WSPA requests that ARB provide clarity that these dashboard concepts are additional to the existing data that is presented in the quarterly reports. In addition, WSPA suggests that the "2011-2014 Performance of the Low Carbon Fuel Standard" be updated quarterly instead of annually. Finally, WSPA supports the Workshop presentation slide entitled "2014 Share of Liquid Biofuels Produced In-State by Volume". We do request, however, that ARB also provide the share of in-state biofuels as a percentage of credits generated as well. WSPA would also like to see this breakdown for all fuels, not just liquid biofuels and this chart updated quarterly instead of annually.

WSPA believes a footnote is needed on the proposed dashboard entitled "Carbon Intensity Values of All Certified Pathways (2011-2015)" to ensure that it is known that this just indicates approved CIs and does not necessarily represent fuels that are actually being produced or imported into California.

Verification Program

WSPA has been and continues to be strongly opposed to the “buyer beware” approach to LCFS credit verification. We have consistently stressed the need to shift any liability and associated penalties for invalidated credits to the producer or importer of the fuel. Petroleum fuel suppliers that purchase credits have limited means to vet the biofuel producer and should not be held responsible for the producer’s failure to adhere to the program’s requirements. This issue becomes even more pressing if and when companies are required to enter the credit clearance market, under which they will have no discretion over which counterparties sell them credits. Ensuring that the parties that can ultimately control whether or not their credits are invalidated are also the parties that bear the liability is essential to ensure a well-functioning credit market, as well as a matter of fundamental fairness to the innocent purchasers of the credits.

However, if ARB is unwilling to alter the existing “buyer beware” approach, WSPA would point to the Quality Assurance Plan (“QAP”) administered by USEPA as a good example of how to address liability. Since January 1, 2013, USEPA has provided a voluntary quality assurance program for verifying the validity of RINs under the RFS program. The QAP program provides a means for ensuring that RINs are properly generated through audits of renewable fuel production carried out by independent third parties. Minimum requirements include verification of feedstocks, verification that volumes produced are consistent with amount of feedstocks processed, facility audits and review of records. For RINs that have been verified under the QAP, USEPA provides an affirmative defense against liability for civil violations for the transfer or use of invalidly generated RINs, specifies the conditions under which invalid RINs must be replaced with valid RINs, and prescribes a process for determining who will replace the RINs.

While WSPA does not agree with the voluntary aspect of the QAP program for purposes of the 3rd-party verification program being considered by ARB, WSPA would point to the remedies offered to regulated parties under QAP as a useful template for this program. The RFS program prescribes “buyer beware” liability similar to the LCFS program. The QAP addresses the inherent shortcomings of “buyer beware” by offering protection to the innocent purchaser while ensuring all invalidated RINs are replaced so that there is no shortfall in the system. Were ARB to adopt something similar, end purchasers of invalidated credits would be afforded an affirmative defense if the producer/importer that generated the credits had undergone the verification process; the auditor/verifier would be responsible for replacement of the credits and there would be no associated penalties. WSPA urges ARB to strongly consider certain elements of the QAP program.

WSPA appreciates this opportunity to provide our input to this important program development. If you have any questions, please contact me at (805) 701-9142 or via e-mail at tom@wspa.org.

Sincerely,



cc: Jim Aguila, ARB (via e-mail: jim.aguila@arb.ca.gov)
Catherine Reheis-Boyd, WSPA