June 23, 2016

Ms. Ursula Lai
Lead Staff, Verification
California Air Resources Board
1001 "I" Street
Sacramento, CA 95812

Re: Comments of Weaver and Tidwell, L.L.P. regarding proposed regulatory amendments to the Low Carbon Fuel Standard to add third party verification requirements

Dear Ms. Lai:

We appreciate the opportunity to provide comments and feedback concerning the California Air Resources Board's ("ARB") recent proposal to amend the Low Carbon Fuel Standard ("LCFS") regulations to add new requirements for third party independent verification requirements for fuel pathway holders and reporting parties. This letter provides some background information on Weaver and Tidwell, L.L.P. (hereafter, "Weaver" or the "Firm") and our professional standards and independence requirements, as well as our comments on the proposed LCFS verification program. Weaver received an extension to file comments on this rulemaking via e-mail from Aubrey Gonzalez of ARB staff on June 15, 2016.

Firm Background

Originally founded in 1950, Weaver is a full service public accounting firm offering assurance, tax and advisory services. Weaver has offices throughout Texas (Fort Worth, Dallas, Houston, San Antonio, Midland and Austin), as well as Stamford, Connecticut and Los Angeles, California. With more than 500 employees and firm revenue exceeding $100 million, Weaver is ranked among the top 50 public accounting firms in the U.S. by *Inside Public Accounting*.

Weaver's Energy Compliance Services ("ECS") practice is dedicated to helping businesses navigate compliance with evolving regulations. Transportation fuels regulations governed by the U.S. Environmental Protection Agency ("EPA"), Environment Canada, ARB and other state agencies are a substantial focus for the practice. We help companies of all sizes understand the regulatory requirements and maintain compliance. We have approximately 30 professionals within the ECS practice that have a wide variety of backgrounds, including accounting, engineering, chemistry and law. Weaver is one of the largest providers of EPA attest engagement services in the U.S. and one of only a few firms whose Renewable Fuel Standard ("RFS") Quality Assurance Plan (RIN-tegrity®) is approved by the EPA. Common services offered include the following:

Assurance

- Annual EPA attest engagements (agreed-upon procedures) required under the U.S. Code of Federal Regulations, Title 40, Part 80 – Regulation of Fuel and Fuel Additives
  - Gasoline Attestations – Applicable to gasoline refiners and importers
  - In-Line Blending Attestations – Applicable to gasoline refiners who in-line blend RFG/RBOB and operate under an EPA-approved waiver
  - RFS Attestations – Applicable to parties that generate, transact or simply own Renewable Identification Numbers ("RINs") during a compliance year, under the RFS program
- Quality Assurance Plan ("QAP") verification services, which is a voluntary assurance program related to the RFS program
- Due diligence procedures related to various aspects of fuels programs (e.g., renewable fuel producers, credits/RINs and transactions)
- Compliance audits required under Environment Canada's petroleum and renewable fuels regulations
- Audits of petroleum testing laboratories (independent and refinery)
- Compliance audits for the State of Arizona, related to its fuels programs

Consulting

- General consulting services related to the U.S. Code of Federal Regulations
  - Title 40, Part 79 – Registration of Fuel and Fuel Additives
  - Title 40, Part 80 – Regulation of Fuel and Fuel Additives (all subparts)
  - Title 40, Part 98 – Mandatory Greenhouse Gas Reporting
- General consulting services related to ARB fuels regulations and climate change programs
  - California gasoline and diesel regulations
  - California LCFS
  - California Mandatory Greenhouse Gas Reporting and Cap-and-Trade
- General consulting services surrounding international (e.g., Environment Canada) and state fuels programs
- EPA Moderated Transaction System ("EMTS") account administration, related to RINs, gasoline sulfur and benzene credits
- Assistance with reporting under various fuels programs
- Conducting training sessions related to various fuels programs

Our primary goal within the ECS practice (and the Firm, in general) is to continuously build on our expertise with talented and dedicated professionals, so that we can best serve our clients.

Professional Standards and Independence

As a public accounting firm, Weaver is subject to strict professional standards. The American Institute of Certified Public Accountants ("AICPA") is the national professional organization for Certified Public Accountants ("CPAs") in the United States. Founded in 1887, the AICPA represents the CPA profession nationally regarding rule-making and standard-setting, and serves as an advocate before legislative bodies, public interest groups and other professional organizations. The AICPA's mission is to provide members with the resources, information and leadership that enable them to provide valuable services in the highest professional manner to benefit the public, employers and clients. To achieve this mission, the AICPA develops professional standards for audit and other services provided by CPAs; provides educational guidance materials to its members; creates and grades the Uniform CPA Exam; and monitors and enforces compliance with the profession's audit, technical and ethical standards.

As a governing body, the AICPA provides guidance surrounding independence (ET Section 101 – Independence) for public accounting firms. If a public accounting firm is planning to offer non-attest services (i.e., consulting) to an attest/audit client, the firm is required to check for any independence issues. Certain non-attest services for an attest client may be performed, provided that certain threats to independence are reduced to an acceptable level. Key threats to independence that must be mitigated in order to perform certain non-attest services for an attest client include self-review (in other words, reviewing your own work) and assuming management responsibilities. The AICPA provides substantial resources, information and guidance to CPAs, so that appropriate evaluation of services to be offered can be performed and independence issues and concerns can be avoided.

Weaver's Processes, Procedures and Internal Controls

As indicated above, Weaver has talented and dedicated professionals who focus on certain ECS practice areas. We ensure that all team members have the industry knowledge, experience and training needed to meet the requirements and expectations of our clients. Not only is this good business practice, but it is also required by our professional standards. Regardless of needing to abide by standards set forth by certain regulatory bodies (e.g., EPA or ARB) or regulations, all consulting services are performed in accordance with the Statements on Standards for Consulting Services and all attest services are performed in accordance with the Statements on Standards for Attestation Services, issued by the AICPA.

Our internal controls process begins with the on-boarding of our employees and independent contractors. All employees are required to sign a job description, which is specific to their position and the practice area(s) in which he or she will be working. The job description also covers adhering to the firm's policies and procedures and being familiar with and adhering to the relevant ethical requirements of the AICPA (contained in the Code of Professional Conduct) and the relevant State Boards of Public Accountancy in discharging professional responsibilities. Likewise, all independent contractors are required to sign a consulting services agreement, which covers, among other issues, ethical requirements and client confidentiality. Independence confirmations are also required to be signed on an annual basis, indicating that personnel are both aware of and in compliance with our independence requirements.

Weaver also has a formal process for evaluating and accepting new clients and new services offered to existing clients. This process requires accumulating relevant information about the company and the services to be provided, as well as information about the services already being performed for the company, if any (including the type of engagement – attest, non-attest). A Prospect Evaluation Form is then completed and submitted for formal review and approval to three Firm Partners: the Partner-in-Charge of the practice area, the Service Line Leader and finally, the Risk Management/Quality Control Partner. Work does not commence until the company and/or new services are properly evaluated and approved.

We believe that ARB should consider both the AICPA standards and the internal controls adopted to implement them, in evaluating firms' independence for performing verifications under the proposed LCFS amendments. We elaborate on these independence requirements further below.

Comments on Proposed Regulatory Amendments to the LCFS

We wish to first acknowledge that ARB's proposed verification requirements are an important step in ensuring the validity of qualifying fuels and credits under the LCFS program. We also appreciate the work that ARB staff has put in to develop the proposed rulemaking and to engage stakeholders early in the rulemaking process. Our comments are based on Weaver's informal discussions with ARB staff, our attendance at the workshops held on March 8 and June 2, 2016, and our review of the proposed regulatory amendments. They reflect what we believe are areas of potential improvement to the proposal at this stage of the rulemaking process.

Given our in-depth knowledge of the fuels industry (and the regulations that govern it), as well as our extensive experience in performing attest/audit-type engagements surrounding various fuels regulations, Weaver is considering becoming a third-party verification body under the LCFS. However, while most of the services offered to the fuels industry through our ECS practice are not related to the LCFS program (or ARB programs, in general), we are concerned that our ability to offer verification services under the LCFS program may be significantly inhibited, due to some of the provisions being proposed related to verifier selection, accreditation and conflict of interest requirements. We also do not believe that we are alone in being potentially negatively impacted by these provisions. If firms such as Weaver are unable to perform verifications under the proposed amendments, we believe that market participants will suffer not only from a reduced choice of firms but also less efficient and less cost-effective verification audit procedures. We also believe there is a risk that the overall quality of verifications performed could be reduced if knowledgeable, experienced firms such as Weaver are unable to participate. Please see our specific comments in the sections that follow.

Requirements for Verification

Generally speaking, most of the verification requirements and audit methodologies identified in proposed Sections 95498 and 95499 of the regulations are accounting in nature; however, certain procedures will likely need to involve the work of some technical experts (e.g., professional engineers and CA-GREET modeling specialists). While not technical experts on every aspect of a subject matter, CPAs receive rigorous training to ensure that all critical assertions of a successful audit are covered through the procedures performed. The critical assertions are as follows: existence and occurrence; rights and obligations; completeness; accuracy, valuation or allocation; cutoff; and understandability, classification, presentation and disclosure. These assertions should apply to any type of audit, whether financial or compliance in nature. It seems that ARB should be more specific with regards to ensuring that the audit procedures cover all critical assertions.

Under proposed Section 95498(b)(1)(A)1., verification bodies must, as part of the proposed quarterly review of fuel pathway holders, conduct a "[c]onformance review of high risk pathway contributors". During the June 2nd workshop on the proposed LCFS amendments, ARB staff indicated that it would, at least in part, defer to verification bodies to determine what constitutes a "high risk pathway contributor". While we appreciate ARB recognizing potential verifiers' experience and judgement, we believe that ARB needs to take the lead in determining what constitutes a "high risk pathway contributor". There are two primary opportunities for ARB to make these types of determinations (neither of which is exclusive of the other): (1) during this rulemaking process; and (2) during the evaluation and approval of verifiers. Specifically on the latter point, we believe it is important that ARB require that a verifier's notice of verification services (required under Section 95499(a)) specifically identify a fuel pathway holder's high risk pathway contributors and the verifier's procedures and methodology for evaluating conformance. ARB should, in turn, evaluate all aspects of the notice of verification services, with particular attention to its discussion of high risk pathway contributors and the verifier's plan for reviewing the same.

The proposed amendments also include, at Section 95498(b)(3) and (4), a requirement that "responsible parties shall not use the same verification body or verifier(s) for more than six consecutive years." This appears to be saying that not only does the audit *team* need to "rotate" every six years, but the audit *firm* as a whole. If this understanding is correct, it seems to be an excessive requirement, considering: (1) that there will be strict independence and conflict of interest requirements already in place; and (2) responsible parties will likely want the ability to use a single service provider to perform verifications under the LCFS and other/similar regulatory compliance programs (e.g., QAP verifications under the RFS). While regulatory requirements may differ, the source documents reviewed and audit procedures performed across certain programs will be similar (or in some cases the same). Therefore, it makes sense to allow companies to use a single service provider to avoid duplications of effort, when appropriate. The six-year rotation requirement certainly hinders this opportunity. It is also likely that the pool of qualified verification providers will be somewhat limited. Even in the case of financial statement audits of publically traded companies, partners are required to rotate every five years; however, there is no requirement to rotate audit firms. A firm rotation requirement can reduce audit quality, increase incidence of undetected fraud and increase costs.

The proposed amendments at Section 95499(a) require that a notice of verification services ("NOVS") be submitted to ARB for both quarterly and annual verifications, and allow the verification body to begin work within "ten working days after the notice is received by the Executive Officer and the Executive Officer has determined...that the potential for conflict of interest is acceptable." Submitting a NOVS every quarter seems unnecessary, as the circumstances affecting conflicts of interest are unlikely to change within a three-month period of time. Moreover, any delay in approval of a quarterly NOVS by ARB could have significant impacts on LCFS market participants, since ARB is considering a requirement that LCFS credits would not issue until all related verification work is complete. Understandably, the party undergoing verification will want its chosen verification firm to begin work as soon as possible. We believe a better approach would be for ARB to require a single annual notice of verification services, whether for verification of a fuel pathway holder or a reporting party. This would also provide a collateral benefit in that it would allow ARB an opportunity to expand their evaluation process to address not only whether a conflict of interest exists, but also whether the proposed verification plan/services are appropriate. To facilitate this change, we also believe that ARB should expressly require that a fuel pathway holder or reporting party utilize the same verification body for each quarterly verification in a given compliance year, unless exceptional circumstances arise (e.g., if the party withdrew entirely from the California market, or if the verifier was negligent in its duties). There is significant value in being able to consistently review data from one quarter to the next; if a fuel pathway holder or reporting party could indiscriminately switch from one verification body to another each quarter, it would be easier to conceal fraud or other potential violations.

Accreditation Requirements

We appreciate that ARB wants a well-qualified pool of verification service providers, and agree that this will promote consistency between firms. However, considering that there is already a profession dedicated to performing the service being contemplated by ARB (that being CPAs), it seems unnecessary to re-invent the wheel with regards to accrediting verification bodies and individuals for certain roles related to the LCFS verification program. As indicated above, CPAs receive years of training (classroom and on-the-job) and have to pass a very rigorous set of exams to be able to serve the public. Further, CPAs have to work under the direct supervision of other CPAs for a number of years, even after passing the CPA exam, prior to being licensed. Once the CPA license is obtained, AICPA professional standards require the CPA to obtain expertise on certain industries, regulations, etc. (via appropriate training), prior to taking on a particular engagement where the expertise is required. Further, the AICPA professional standards require CPAs to evaluate the need for (and involve) specialists/technical experts on certain parts of engagements, as needed/necessary (i.e., involving a professional engineer to assist in preparation or review of a mass balance). In light of this, it is very unlikely that any training and related accreditation offered or required by ARB would match the level of training already required by the CPA profession.

With regards to the lead verifier accreditation application requirements proposed at Section 95500(d), it seems like the barrier to entry in being accredited is unusually high. Most of the requirements of this section relate to needing to have been an accredited verifier for a period of time under one of the other ARB climate change programs, or to have been accredited and actively verifying under other very specific programs (i.e., ISO 14065 or ISO 19011). However, none of the programs mentioned have anything to do with the fuels industry. If ARB is to conduct their own training sessions for proper accreditation, it does not seem necessary nor appropriate to restrict otherwise well-qualified firms (and specific individuals) from obtaining accreditation, due to in some cases, consciously making the decision to not participate in other ARB-related verification programs, or not offering the noted (and very specific) verification services mentioned. Based on direct experience in performing many different types of audit/verification engagements (financial and compliance in nature), which in some cases require different certifications (i.e., ISO series certifications), we can confidently say that the level of training and standards required by the AICPA far surpass that of other certification bodies.

An alternative approach that ARB might consider for ensuring that only qualified firms and individuals are accredited would be to require more commonly known and more universally accepted prerequisites. The EPA has taken such an approach with the different types of audits and verifications required/allowed under their fuels regulations. In the case of the annual agreed-upon procedures engagements required for all regulated parties (otherwise known as EPA attest engagements, or EPA attest audits), qualified persons need to be a CPA or Certified Internal Auditor ("CIA"). In the case of QAP verifications specifically tied to the RFS program, the regulations require CPA and professional engineer ("P.E.") oversight and involvement on the QAP team. As part of the process to be registered as a qualified independent third-party auditor under the QAP program, a firm must not only provide documentation about the firm, but evidence of appropriate licensing as a CPA and P.E. As indicated above, based on review of the proposed LCFS verification requirements, the general approach (procedures to be performed, documents to be reviewed, etc.) is better suited for a CPA and P.E. Further, due to the similarities to the QAP verification program and the general request by the industry to streamline verification requirements among the fuels regulations (i.e., RFS QAP and LCFS), as appropriate, it seems logical to align the accreditation requirements as much as possible. In such a case, if ARB was to also request evidence of experience (in addition to the qualifications mentioned above), further training directed by ARB may not be necessary or add benefit.

Notwithstanding our strong preference for the alternative approach outlined above, if ARB proceeds with the accreditation requirements as proposed, we request that ARB at least allow potential verification firms to meet these requirements through subcontractor agreements. The ability to complement/supplement verification teams through subcontracted technical experts already is recognized in the proposed rule; our request is that ARB simply extend this opportunity to allow the subcontractor to perform a designated role on the team – such as fuel life cycle specialist verifier, fuel transactions specialist verifier, or lead verifier. The subcontractor would remain subject to the oversight and direction of the verification body's personnel and management, through contract, and thus there would be no loss of quality or independence by allowing more liberal use of subcontractors to perform such specified verification roles.

Conflict of Interest Requirements

We appreciate the significant emphasis that the proposed amendments place on avoiding conflicts of interest between the verification body and the company under review. For a public accounting firm, independence is at the core of our business. As described above, Weaver is subject to strict professional standards established by the AICPA, and we have implemented a multilayered set of procedures to ensure that we do not compromise the integrity and independence of our attest/audit services.

In Section 95501(b)(2) of the proposed amendments, ARB articulates a variety of circumstances where the risk of a conflict of interest ("COI") is deemed to be "high". While we appreciate the attempt to provide clear examples, doing so presents two opposing but equally significant concerns. On the one hand, a list may potentially omit an activity that may nonetheless pose a high risk of conflict; on the other hand, a list may be over-inclusive by identifying activities that do not present a substantial threat to verifier independence. We recommend instead that ARB adopt a broad set of independence principles modeled on the AICPA standards, with the overarching goal that the verifier should not be reviewing their own work. A broad independence standard can be implemented in practice by requiring verification bodies to make a substantive COI demonstration in their NOVS. The COI demonstration in the NOVS could include many of the same concepts already included in the proposed amendments with which we agree (such as a conflict mitigation plan where necessary).

Proposed Section 95501(b), as well as Section 95501(e)(1)(C), require a five-year look-back period for assessing COI risks. Respectfully, we believe the proposed look-back period is unnecessarily long. As proposed, a firm may be unable to provide verification services due to unrelated activities that were provided before verification rules were ever contemplated, let alone proposed. This type of retroactive disqualifying event does not solely impact the verifier; indeed, it may also arbitrarily limit a market participant's choice of verifier due to decisions it previously made to engage the verifier's firm that were or are wholly unrelated to the LCFS program. We believe instead that relevant period for which conflicts must be avoided should be the period under review by the verifier and for the duration of their verification engagement by the regulated party. Alternatively, if ARB elects to retain a look-back period (whether for five years or a different length), we recommend that ARB distinguish between the degree of risk posed between historic versus present-day COI-implicating activities.

As noted, proposed Section 95501(b)(2) outlines a number of potentially "high" COI risk activities, if engaged in by "[a]ny employee of the verification body, or any employee of a related entity or a subcontractor who is a member of the verification team". We believe ARB should reconsider the application of this requirement to subcontractors. As noted above, the overarching goal of ARB's independence requirements should be for a verification body to avoid reviewing its own work. A subcontractor remains subject to the directions of the verification body that hired them; therefore, even if the subcontractor is reviewing data or documentation that they previously worked on, there will still be an independent set of eyes reviewing that subcontractor's work and performance as part of its engagement. Subjecting subcontractors to the requirements of Section 95501(b)(2) could severely limit the number of qualified technical experts who are available to perform certain specialized services (such as life cycle assessments); this in turn could drive up costs for regulated parties and lengthen the time that each verification takes.

Proposed Section 95501(c) establishes certain criteria for assessing whether there is a "low" COI risk. Consistent with the points above, we respectfully believe the better approach would be for ARB to assess the degree of conflict based on the verifier's COI demonstration in its NOVS. ARB's role should be to determine: (1) whether or not the verifier is disqualified due to a high COI risk; and (2) whether a mitigation plan put forward by a verifier is appropriate. The degree of mitigation should be correlated to the risk assessed by the verifier up-front, and subsequently reviewed and approved/rejected by ARB. The currently proposed approach – where "low" risk would be predetermined based on the identified criteria – would seemingly bias outcomes in favor of certain types of firms that largely operate outside of the transportation fuels sector.

Lastly, we ask that ARB clarify several provisions related to COI (to the extent they are retained in the next iteration of this rulemaking):

- Proposed Section 95501(b)(2)(S) states that a "high" COI risk exists where the verification body has provided "[v]erification services that are not conducted in accordance with, or equivalent to, section 95501 requirements, unless the systems and data reviewed during those services, as well as the result of those services, will not be part of the verification process." We ask that ARB clarify this activity; as it currently reads, it could be interpreted as disqualifying a verifier that also provided, for example, QAP services to the entity under review, since the systems and data reviewed for both QAP and LCFS verification services would substantially overlap. Based on comments made by ARB staff during the June 2nd workshop, we do not believe this is ARB's intention.
- Proposed Section 95501(d) identifies a "medium" COI risk for certain instances of "personal or familial relationships between the members of the verification body and management or staff of the responsible party". A "personal" relationship is ambiguous and requires definition. A "familial" relationship is somewhat more clear, although we ask that ARB identify a "stopping point" where such relationships no longer present a concern (e.g., does not apply beyond mother/father, brother/sister, aunt/uncle, and grandparent).
- Proposed Section 95501(e)(1)(C)1. requires the verification body to identify certain work previously performed for the party under review, including "consulting services for fuel pathway submittal and certification". We ask that ARB clarify that such consulting services are those directly related to preparing carbon intensity models, reviewing the data used for such modeling, and drafting a fuel pathway application. We do not believe that broader consulting services – such as answering questions and preparing training materials concerning the fuel pathway registration process – raise any particular concerns, and therefore need not be disclosed.

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Weaver appreciates the opportunity to comment on these important issues, and is grateful for ARB's efforts to address any concerns related to the proposed regulatory amendments. We believe that all parties benefit from efficient, thorough and well-devised requirements. We would be happy to discuss any questions concerning our comments or otherwise; please feel free to contact Greg Staiti at (203) 487-8091, Greg.Staiti@Weaver.com; or Wade Watson at (832) 320-3262, Wade.Watson@Weaver.com.

Sincerely,

Weaver and Tidwell, L.L.P.

WEAVER AND TIDWELL, L.L.P.