



June 28, 2016

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

Dear Ms. Lai:

Renewable Energy Group, Inc. (REG) appreciates the opportunity to comment on the proposed amendments and verification provisions presented at the June 2nd workshop. We have reviewed the slides and proposed changes to the regulations and offer our comments below for your consideration. REG is the leading North American advanced biofuels producer and developer of renewable chemicals. REG utilizes a nationwide production, distribution and logistics system as part of an integrated value chain model to focus on converting natural fats, oils and greases into advanced biofuels and converting diverse feedstocks into renewable chemicals. With 11 active biorefineries across the country, research and development capabilities and a diverse and growing intellectual property portfolio, REG is committed to being a long-term leader in bio-based fuels and chemicals.

For the continued integrity and transparency of the LCFS program, we make the following recommendations based on the June 2<sup>nd</sup> slides:

### **Proposed Non-Regulatory Changes**

REG supports unique identifiers (UIDs) for LCFS credits that would identify the following information: company who generated the credit off of production or import, year, quarter, fuel pathway code, EPA company ID, EPA facility ID, and physical pathway code.

REG also supports making all of this info visible to the holder of the credit and to a counterparty prior to accepting a trade. For example, Company A initiates an LCFS credit transfer to Company B. Company B would be able to see the UIDs associated with those credits prior to completing the transfer.

As previously stated and discussed, an LCFS credit with UIDs would enable a stronger buyer beware marketplace, with the ability for enhanced due diligence. REG strongly supports the existing buyer beware marketplace. The transportation fuels industry is currently set up to manage this type of due diligence, with little to no extra cost, due to the federal Renewable Fuel Standard.

REG supports credit verification, but does not support delaying credit transfers until validation *unless a company has received prior adverse opinions on verifications*. As currently proposed, CARB has lengthened the time to transfer credits. This has a dampening effect on the credit marketplace and creates an unnecessary and undue burden. However, if the credit clearing delay was based on a prior adverse opinion, it would be a signal to the marketplace rewarding good actors while appropriately adding a layer of verification for actors with past credit transfer problems.

Furthermore, to improve transparency and integrity to the buyer beware marketplace; CARB could consider publishing a list of adverse opinions. Coming back to the LCFS credit UIDs, it would make it appropriately more challenging to trade LCFS credits generated by companies with adverse opinions. It could also provide appropriate market incentives to ensure better compliance through potential price differentials for such credits.

Lastly, REG requests that CARB consider putting the LCFS Credit UIDs in the LCFS regulation like EPA did with RINs for the RFS.

### **Proposed Regulatory Changes**

REG supports regulation harmonization with similar programs like LCFS and Cap’N’Trade. However, it does not support the Know Your Customer provision for LCFS as it is currently proposed. Section 95483.2(e) raises considerable concerns. Prior to any enactment of changes to this section, we believe CARB should perform an analysis of how any proposal comports with the recent personal data security provisions enacted in the last 3 legislative sessions as well as existing federal data security statutes.

REG supports the goal of vetting users in the LRT, but does not support the proposal as written. If one of the goals of collecting the proposed personal information is be able to perform a background check on individuals uploading data, a simpler approach would be to develop a list of acceptable vendors capable of executing a background check and requiring companies to utilize the service prior to approving an individual.

REG believes the 10 year record retention requirement proposals contain significant security risks. First though, we would like to note that we did not see this requirement in the proposed regulatory order. It is on Slide 21 of the presentation which references 95488(c)(3). 95488(c)(3) references 95488(c)(7)(A), but we did not see an amount of years listed. In MRR’s 95105(a), the ten year requirement is for those with a compliance obligation while those without a compliance obligation only have a five year requirement. The five year requirement aligns with 95491(b)(1)(A), US RFS, and Canada RFR.

REG supports keeping the credit transfer window in 95487(c)(1) as it is currently written. Based on market activity, generally a trade is done for a certain window of time (i.e. Q1 2016) so the seller has freedom when to transfer. However, the buyer may not know when that will occur so

they would need more time than the proposed 3 days. Furthermore, “day” is a calendar day unless specified otherwise so if the transfer occurred on the Friday before Memorial Day then it would expire on Memorial Day.

REG would suggest CARB look at changes to some of the requirements in 95491(c) to simplify the process and to try and clear up confusion with counterparties.

- Delete all contact information from 95491(c)(1)(A)(1) & (2) since it is available on LRT and easier to change on LRT than on an PTD.
- Change 95491(c)(1)(B)(1) to “All information identified in 94591(c)(1)(A) as items 1. through 3. and 5. through 6.” Some counterparties switch back and forth between receiving the obligation and not receiving it which can result in confusion since the only difference is a few sentences which may be at the bottom of a prior page. Furthermore, as a company with multi-feedstock plants, we don’t have certainty the FPC planned will be the one used. For instance, a plant may go down unexpectedly
  - Related to this proposal, CARB should consider adding a generic FPC and EPA ID on purchases without obligation to make reporting easier for these counterparties.

### **Proposed LCFS Verification Program**

REG supports CARB’s efforts on strengthening credit verification, but does not support delaying credit transfers until validation unless a company has received prior adverse opinions on verifications. Specifically, we would suggest a 2 strike approach before a company would lose the ability to transfer credits without validation.

Section 95498 lays out the frequency of verifications. We believe the quarterly review process as proposed is unduly burdensome and costly without any corresponding increasing in compliance. The level of detail required is better suited to an annual or semi-annual reporting basis. If CARB believes quarterly data is important to the program, significantly reducing the data set required and verification process complexity is in order. As CARB gives more thought to this process, we would strongly encourage the agency to better define the concepts of high risk and low risk. Leaving that process to any 3<sup>rd</sup> party verifier is troublesome as each will develop their own sets of rules and definitions. This is clearly an area that should be defined in a rulemaking.

In 95498(b)(3)&(4), REG proposes that the six year clock should start when the rule is enacted. While we understand the concerns regarding the “closeness” a verifier could become, starting the clock prior the rule change, in the absence of any hard data highlighting an ethical problem, could be perceived as arbitrary and capricious on the part of CARB. As proposed the requirement represents an undue financial burden without any corresponding improvement in compliance. In addition, we question the 3 year gap requirement prior to returning to a vendor

of choice. As a multi-plant provider of biodiesel and renewable hydrocarbon diesel, our business model and logistics execution are complex. Any verifier will need to develop familiarity with our business in order to provide verification services. Change for changes sake without any underlying data supporting the regulatory rationale is costly and the benefits unclear at best, nonexistent at worst.

Section 95499 discusses the verification plans required by verifiers, we would like to reiterate our belief that an annual or semi-annual verification is in order and that the planning requirement reflect the reduced number of verifications.

Two other areas within the verification planning documents development concern us. Reference is made to using contracts, sales and purchase agreements and “any other supporting documents to track finished fuel.” While sales data is useful in tracking fuel entering the California market, it will not, on its own, represent enough data to support CI calculations. We have shared with CARB previously how multi-plant facilities account for feedstock purchases and sales. We do not wish to see the regulations point to one type of data collection which may not work for larger scale businesses and operations.

The other area of concern is the lack of clarity regarding site visits. Are these to be on a per plant basis or per company basis? For multi-plant businesses a per plant visit each year could easily become overly burdensome. We look forward to engaging CARB staff further to understand their thoughts in this area and to see if there are better options for data collections moving forward.

REG contains to be concerned with data security and the handling of confidential business information. Accordingly, we cannot support a 10 year record retention requirements for a Verification Body; we would still be concerned with a 5 year requirement, but acknowledge it does align with other programs.

We are concerned that sampling plans which call for sampling 90% of production aren't realistic, don't improve compliance, and are financially burdensome. A significantly lower amount of sampling on a randomized basis would be a more preferable method.

Also within section 95499 we are concerned about the provisions (c) (4) requiring 10 day notification to CARB if a verifier is concerned that a potential adverse verification will be found. While we understand the agency's desire to be given advanced notice if problems are to arise, given that the verification structure calls for a variety of best efforts to resolve the impasse prior to the adverse verification being issued, we think it would premature to require notice before the issue(s) are formally at an impasse.

Lastly, we would like to understand what appeal rights, if any, CARB is envisioning to sections 95499 (e) on verification statements and high level conflict of interest and in section 95501 on conflicts of interest. CARB lists in detail, the areas and activities of concern which could trigger

a high conflict of interest determination, however it is not clear what appeal steps a company can take if they disagree.

While we understand that litigation or voluntary withdrawal from the program could be options, we believe that there should be a process to address this issue prior to having to undertake such drastic actions.

Finally, REG proposes 5 gCO<sub>2</sub>e/MJ or 10%, whichever is less, as allowable CI variance during a year.

Thank you for the opportunity to comment, we look forward to meeting with CARB staff to discuss the issues further.

Sincerely,

Scott R. Hedderich  
Director of Corporate Affairs