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Air Resources Board
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Electronic submittal only via: LCFSWorkshop@arb.ca.gov

RE: RPMG Comments on July 29, 2016 ARB staff presentation -- Potential LCFS Regulation Revisions Including Addition of Third-Party Verification

Dear Sam and Jim,

We would like to thank you and your staff for this latest opportunity to review staff proposals and provide additional comments on the evolving set of verification concepts related to amendments of the Low Carbon Fuel Standard Regulations (LCFS or Regulation). As has been noted before, Renewable Products Marketing Group (RPMG) is focused on the real world impacts of such a sweeping staff proposal to expand the scope and complexity of the LCFS. Getting the details right now and not after adoption, are key to successful implementation. We look forward to continuing to work through remaining issues.

RPMG is a biofuel marketing company representing our owner and marketing partner ethanol facilities located throughout the Midwest. We are, and have been, an active stakeholder in the California fuels marketplace. We support clean transportation fuel policy, including California's LCFS, which diversifies fuel supply, incentivizes innovative technology and advanced renewable fuel selection, creates jobs, and, most importantly, improves the environment. The track record of the U.S. renewable fuel industry and the LCFS is an example of how these goals are being achieved through hard work and ingenuity in real world settings. RPMG participates in greenhouse gas (GHG) reduction and alternative transportation fuel programs throughout the nation and the world. These comments are based on that multijurisdictional experience and a desire to see the LCFS program succeed.

While acknowledging that the LCFS program and credit market need to mature, RPMG continues to support ongoing discussions, above and beyond these informal workshops, between the ARB and the fuel provider industry to grind through the myriad of specifics that are the key to smooth implementation of these new provisions. RPMG remains adamant the market confidence and transparency ARB is seeking to address must be balanced against the equally important needs of market participants to operate in a practical, cost-effective, consistent, equitably implemented, risk-reducing and workable system. Based on our extensive experience with biofuel markets and credit quality assurance programs inside and outside of the LCFS, RPMG believes it is far more important that the final regulation be workable, than it be implemented in any accelerated timeframe. Further, RPMG seeks to avoid potential market disruptions and foreseeable negative consequences of a rushed rulemaking.

RPMG is committed to working closely with ARB on these important concepts and we have prepared our comments to both respond to the workshop material presented and topics not mentioned. Such that, they can be a syllabus for an in-depth follow up conversation with staff. Through our experience, we have found these interactions to be extremely valuable.

Verification Proposal Options

ARB has laid out two options for stakeholder review and comment. RPMG appreciates the thought given to initial stakeholder concerns and feedback, as these two options reflect changes sought be industry partners. Both options are improvements from the onerous June 2nd proposal. Upon initial review, RPMG believes Option 2 is the preferable starting point from which to continue development.

RPMG is supportive of proposals which allow LCFS credits to be issued in the shortest timeframe possible, such as Option 2. Likewise, this option recognizes that within the spirit of buyer beware, ARB is seeking to hold the initial credit generator ultimately responsible for invalidation. These two concepts lend themselves to supporting Option 2. It provides the quickest route to LCFS credit issuance with relatively similar cost and regulatory overhead as are required for stakeholder program administration today. Though ARB has assigned it the option with the highest invalidation risk, RPMG believes that those risks can be mitigated with the level of diligence normally shown by responsibly run entities.

Option 1 presents additional complications for regulated parties, such as timing and tracking large volumes of individual transactions. This proposal assumes that all the information that is needed to conduct transactions is full and complete, as well as, static when these transactions occur. This is not always the case, as shown by the example of a pathway securing its CI near the end of a quarter, and using that CI for reporting of all transactions within the period. In such a scenario, it isn't possible to report all transactions within 15 days. Though push/pull is the general model used in the RFS for RIN transactions, adding the complicity of unique fuel pathways and CI scores for each individual producer (sometimes multiple pathways per producer) makes this proposal much harder to implement and would require extensive effort on the part of regulated parties and ARB staff. RPMG does not believe this would be the lowest cost option due to the increased resources needed to handle and track individually reported near "real-time" transactions.

Previously RPMG commented that unique Identifiers (UIDs) were duplicative when layered on top of the original June MVS proposal. The latest set of options only has UIDs for Option 2. RPMG would not oppose the use of UIDs under an approach as outlined in Option 2.

The details of several other outstanding issues associated with verification, such as the need to be able to correct remedial deficiencies and reliance on the verification body for their opinion of risk need to be worked out as well prior to moving forward with design and development. The complete picture is key, but for the sake of moving the process forward, Option 2 should be pursued as the foundation.

RPMG conditionally supports Option 2, as it is the option that most closely allows timely credit issuance and reasonable invalidation scenarios.

Verification Details

RPMG appreciates ARB staff's response to several issues that were highlighted as a result of the June 2nd workshop. These topics include: the Risk-based Approach, Monitoring Plan, Material Misstatement and CI Variability, Proposed Definitions for Verifications, Accreditation, Harmonization with other programs, and Cost Impacts. But there were several other concepts that RPMG believes are still outstanding and were not covered in the most recent workshop, including the conflict of interest provisions and the need to remediate problems or allowing for a corrective action within the frame work of the verification protocol. Additionally, staff seems to be heading in the opposite direction from stakeholder comments with regard to reliance on Verification Body expertise/opinion. Slide 35 highlights this direction most prominently[1].

As has been noted by stakeholders previously, the LCFS credit marketplace is very dynamic and time-sensitive. This puts capital and cash flows at risk on a continual basis and any potential delay in credits issuance would be a significant impact to a producer or marketer. This would be especially true if that level of angst was not justified by the level of the potential problem. This issue is more muted as the two options proposed allow for credit generation prior to verification, so RPMG is appreciative of that change. But we still consider ARB's continued deferral to verifier subjectivity, with only future promised verifier guidance as a response to stakeholder concerns troubling. It is perceived to be ARB's desire to not over-regulate the verifiers in this area. However, without such information available to digest, this poses an unquantifiable risk to regulated entities and as such is a major point of contention with the amendment package. Figuring out what this structured guidance will look like, including some indication of what is acceptable or unacceptable, and which of the various activities carry more weight of higher levels of risk is important to know before the regulation is sent to the Board for review.

RPMG would also like to reiterate comments it made from the June 2nd workshop related to the need to address issues prior to their impact on credit generation, particularly if Verification Option 1 is pursued:

> "It is also very important that there be an opportunity to remedy any issues found by verifiers prior to an adverse statement being issued. The regulations need to provide a timely method to reconcile or "correct" issues that may come up in verifications <u>before</u> market dynamics are impacted. Other biofuel programs provide this option, specifically for this reason. Additionally, for LCFS participants that have multiple locations, producers, venders or credit generators, it is unclear how the regulation would handle an adverse finding as it relates to upstream activity transferred to and reported under a single downstream LRT entity and its subsequent downstream customers. This illustrates how regulated parties in the middle and at the end of the supply chain are virtually held hostage by the minutest detail of all upstream parties in the supply chain of each single quantity of feedstock or fuel."

The previous draft of the proposed regulation only mentions the Monitoring Plan concept twice, and neither set of slides discuss in detail whether or not these Monitoring Plans are subject to ARB approval, if they can be modified after pathway review and certification, their explicit use by the verifiers, nor their enforceability. These are significant issues that RPMG seeks additional clarity on as well.

This workshop continued to show that the staff proposal will be implementing a significant new MVS program. These newly proposed requirements will require significant resources on the part of all program participants, including ARB. All impacted stakeholders need to have a full and complete understanding of the potential costs of this proposal prior to moving forward to adoption. RPMG is still working to determine the potential costs of the varied additional requirements, but acknowledges that final cost estimates are dependent on the final level of rigor required by these amendments. As written, RPMG anticipates those costs will be extensive. RPMG requests ARB staff review and undertake action to reduce or minimize cost.

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[1] http://www.arb.ca.gov/fuels/lcfs/lcfs_meetings/072916lcfspresentation.pdf

The robustness of any verification or audit program depends on the competency of verifiers/auditors, and the certification system under which they are approved. For a variety of reasons, including other governmental requirements, RPMG already works with professionally licensed consultants/verifiers/auditors who routinely provide RPMG with a valued and critical review. RPMG is opposed to being mandated to sever those long-standing relationships simply because they predated this rulemaking. RPMG again, questions the need for a limitation placed on the longevity of verifier and stakeholder professional engagement given the proposed professional standards and ARB training and certification required to become a verifier. It strikes an odd tone or implication by CARB there may not be a robust confidence in the training and certification process designed to vet verifiers or an inherent mistrust of certified professionals' ability to avoid competing or conflicting interests. This issue was not specifically address in the last workshop, but it remains a concern. RPMG strongly urges ARB to allow existing professional relationships to be of continued use in this monitoring and verification scheme.

RPMG recommends staff continue to seek ways in the next version of the LCFS amendment package to address these issues. Providing stakeholders adequate time to review, analyze and thoughtfully comment is a critically important step in this process. Stakeholders are associated with more than one facility, customer, or responsible reporting party, through a complex chain of custody and market flow. Rushing to a conclusion and Board adoption will ultimately cause more effort and delays than taking the right amount of time up front.

Program Enforcement

The LCFS regulation is already complex and these proposed amendments make it more so. RPMG must reassert our concern for how this regulation will be implemented, and more importantly, enforced. Under the proposal, any number of minor issues could lead to significant enforcement liability. Depending on which option is chosen, potential enforcement actions could overlay the withholding of LCFS credits for adverse verification statements. Staff has previously asserted the obvious—that more violations would be found and pursued by ARB—these additional regulatory requirements trip up even the most diligent reporting entity. The goal of the program should be to reduce emissions of GHGs, not to find ways to initiate enforcement actions. Corrections to submitted reports made during or after verification have been noted to not preclude enforcement. ***This places producers, marketers and program participants in enforcement jeopardy based on the opinion of third parties, rather than of the ARB.*** It should be made clear that any enforcement action will be based solely on the independent determination of ARB, and not based on the opinion of third-party verifiers.

The potential for a violation of the Regulation has exponentially grown with this proposal for both pathway holders and regulated parties. RPMG notes that there are many occasions when "pathway holder" and "regulated party" are not the same entity for any given gallon of biofuel. It is appropriate to have separate review tracks for pathway holders and parties transacting fuel under the LCFS.

CONCLUSION

Though there are benefits to the LCFS program of a well-designed MVS program, one that is overly ambitious or off the mark can be burdensome and costly to both ARB and LCFS stakeholders. Today there is complete staff validation of all materials and supporting documents in pathway applications prior to certification, and pathway holders are required to attest to the conditions of the certified pathways to ARB. There are explicit PTD requirements and the requirement for reporting parties to conduct business partner reconciliations of all quarterly reporting data following the entry of transactions. Buyer beware due diligence is conducted where the market demands additional assurance or has identified potential risk, thus questioning the need for new *mandatory* *and redundant* efforts.

To date the LCFS program has not shown a high risk for fraud or abuse. RPMG strongly urges ARB to outline, for all stakeholders, and consider the material risks to the program in developing this rule. Rather than attempting to account for every possible issue scenario for incorrect data, be it intentional or not. The focus should be to regulate from a position of addressing the most critical and material risks. The costs and impact of this proposal should also be well known prior to presenting this regulation to the ARB Board for consideration. It is far more critical to get this right, than to get it done in any predetermined, short time frame.

RPMG looks forward to discussing the issues highlighted above prior to ARB issuing the next draft of the regulatory language. If you have questions, please contact me at (952) 465-3247 or jwhoffmann@rpmgllc.com.

Sincerely,

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