

November 30, 2016

Ursula Lai
California Environmental Protection Agency
Air Resources Board (ARB) – Stationary Source Division
LCFS Program Planning and Management Branch – Verification
Ursula.Lai@arb.ca.gov | LCFSWorkshop@arb.ca.gov

RE: Proposed LCFS Verification Program

Ms. Lai,

Christianson PLLP is a full-service public accounting firm located in Willmar, MN that has worked with renewable fuels producers for over 20 years, providing technical assistance and professional independent services that promote industry compliance.

Our staff participated in your October 24, 2016 workshop via web access and respectfully submits these comments for your consideration in the development of a mandatory third-party verification program.

We appreciate ARB's attention to the varying areas involved in the development of a third-party verification program. We believe the individualized workshops dedicated to the verification bodies and fuel-specific pathways will be valuable towards fine-tuning the essentials of a solid third-party verification program.

We also appreciate the Mandatory Third-Party Verification White Paper. This was particularly helpful for providing background and understanding into ARB's decision-making framework, which in turn allows us the opportunity to provide constructive feedback more in-line with ARB's motivations and goals in the third-party verification program development.

The White Paper was also especially helpful for understanding the backdrop of ARB's Conflict of Interest criteria against the Sarbanes-Oxley Act of 2002 ("SOX"). SOX does provide an established framework for developing guidance on verifier independence and conflicts of interest.

However, we believe careful consideration must be applied in attempting a "one size fits all" approach (e.g., applying Cap and Trade regulation directly to LCFS), or in any application of a blanket policy in a program for which it was not designed (e.g., SOX standards word-for-word to LCFS). This is especially true when the policy becomes unwieldy and needlessly restrictive; and, specifically, when the policy stands to unnecessarily disqualify high numbers of otherwise qualified individuals and entities toward verification accreditation.

WILLMAR

302 SW 5th St, Willmar, MN 56201
P 320.235.5937 F 320.235.5962

LITCHFIELD

194 S Litchfield Ave, Litchfield, MN 55355
P 320.373.1040 F 320.373.1041

christiansoncpa.com

It would be a mistake to confuse restriction for protection. While we appreciate ARB's plans to develop "a list of specifically prohibited services" and "mitigations for allowed professional and personal relationships" as discussed in the White Paper, we remain concerned about ARB's applying SOX and other standards verbatim in LCFS regulation.

The lacking pool of verifiers has been noted multiple times by stakeholders during the previous LCFS workshops. While ARB has used stakeholder concerns to explore expanding verification accreditation, the conflict-of-interest criteria continues to be highly restrictive and limiting towards otherwise qualified verification candidates.

Again, we stress that mere restrictions do not equate to protection. Despite ARB's attempts to use SOX as a guideline, it's made the decision to completely dismiss the PCAOB's findings that audit partner rotation, rather than firm rotation, is more than sufficient for maintaining independence and audit integrity. ARB states in the White Paper that it "prefers the greater protection offered by firm rotation requirements." Stakeholders continue to note the dilemma this is going to present for them.

While ARB's dedication to promoting verifier independence is commendable, it is also necessary to recognize that using the correct tools is just as important as doing the job well. In order for policies to be effective, they must not only address a genuine problem, but they must also be efficient. A tornado isn't needed to put out a match. Overly restrictive policy may get the job done, but every attempt should be made to use the more efficient, less restrictive options that provide the same safeguards. Importantly, the training and certification program ARB is developing means ARB is already poised to adequately vet verification bodies and verifiers without the overreliance on restriction for restriction's sake.

On this note, we also urge careful consideration when exploring certain activities and defining them against the LCFS backdrop. In the development of the list of specifically prohibited services, we urge caution against the use of blanket restrictions, especially if the activities could be conducted in ways unrelated or pose no risk to LCFS. Of notable concern is the definition of "consulting." We believe it is important to not only define what consulting *is*, but also to outline what it is *not*.

There is a difference between "consulting activities" and what is classified as a "professional service." While a legal definition of "consulting" is harder to pin down, "professional services" have been formally recognized and defined by a number of states and governments as pertaining to services within the scope of the practice of licensed professionals. Our concern is that ARB will define any routine service provided by licensed professionals like accountants and engineers as "consulting" when in fact these services are not consulting but are professional services provided within the context of that professional's practice and strictly regulated under that professional's licensing body.

This becomes especially problematic when these services would in no way overlap with LCFS-related activities but could still be mislabeled as consulting and erroneously deemed incompatible with LCFS verification. We have already discussed with ARB the high professional standards required by the American Institute of Certified Public Accountants (AICPA) for accountant professional licensure. Like SOX, AICPA standards require a high level of independence. While we recognize that ARB is reluctant to adopt any other certifying body's regulations in-whole, it's also important that ARB will be willing to recognize the distinction of professional services as a part of a licensed professional's practice within the context of that professional's licensing body. Not all services are "consulting," nor should they be considered as such.

We would like to present the following example. A client contracts with us for their RFS RIN attest engagement. This client has purchased a service from us, and that client should reasonably be able to expect that this purchased service would include basic activities in support of that service (e.g., troubleshooting, basic information and questions pertaining to that service, etc.). If the client calls asking about why they're getting an error in EMTS and we provide them with the troubleshooting information the EPA has provided for the issue, we have provided a professional service—a customer service component in relation to the specific service purchased by the client. We have provided information with no attempt to influence or guide the client towards a specific course of action. This is far different than a consulting activity where a client has asked for and been offered business *advice* meant to influence them towards a specific course of action. The simple act of providing information or customer care in support of a purchased professional service is not “consulting,” and we hope ARB will take careful consideration of this when developing any list of specifically prohibited services.

If ARB is unwilling to make this distinction between consulting and professional service, we hope they will at least be willing to consider actions that examine the specific service provided rather than a blanket-ban on all such services. Suggesting that all services, regardless of their nature or business context, can be considered “consulting” and thus automatically fall into the high-risk conflict-of-interest category is both inaccurate and a great disservice to entities needing to contract verification services. Especially when the service is in no way related to LCFS, we would suggest the option for self-assessment as, if not a low-risk, a medium-risk conflict-of-interest—especially when any mitigation plan exists and can be presented and vetted by ARB.

Christianson PLLP thanks you once again for your time and consideration of our comments.

Sincerely,



Bradley Pedersen, CPA
Partner



Kari Buttenhoff, CPA
Compliance Services Manager

Christianson PLLP
302 5th St. SW
Willmar, MN 56201
(320) 235-5937