



**Western States Petroleum Association**  
Credible Solutions • Responsive Service • Since 1907

**Joe Sparano**  
President

September 22, 2008

Clerk of the Board  
Air Resources Board  
1001 I Street  
Sacramento, CA 95814

*Via electronic mail to <http://www.arb.ca.gov/lispub/comm/bclist.php>*

**Re: Western States Petroleum Association's Comments on Item # 08-8-7 September 25 Public Hearing to Consider Adoption of Proposed AB118 Air Quality Guidelines for the Air Quality Improvement Program and the Alternative and Renewable Fuel and Vehicle and Technology Program**

Dear Clerk of the Board:

The Western States Petroleum Association (WSPA) is providing comments related to the referenced hearing. WSPA a non-profit trade organization representing twenty-seven companies that explore for, produce, refine, distribute and market petroleum, petroleum products, natural gas and other energy products in California and five other western states.

To date, WSPA has provided both written and oral comments to the CEC relative to their AB118 process. Since the Guidelines will apply to both the ARB as well as the CEC portions of the program, we believe it is important to ensure they are consistent and workable, and that decisions made within the Guidelines structure do not lead to unintended negative consequences.

WSPA reiterates our overall position that drawing arbitrary and illogical boundaries between traditional petroleum fuel producers and providers, and the non-petroleum producers and providers of fuel is not good public policy. It also increases the likelihood of failure by eliminating program funds for one of the primary existing sources of research, development and commercialization of alternative and renewable fuels.

Using this selective arbitrary approach will likely increase the amount of time needed to develop and commercialize these fuels in sufficient volume to compete with and augment petroleum-based fuels.

The challenge for the ARB and CEC relative to the AB 118 program is to set up a process that provides a scientifically correct prioritization of project funding that will lead the state to significant GHG and other pollutant reductions that will help achieve the state's goals in a realistic manner while not creating environmental, economic or other negative impacts.

WSPA is particularly concerned about references in the Guidelines document to the allowance of project funding considerations being given to projects that have characteristics of “pollutant tradeoffs”, “minor pollutant increases”, and “emissions equal to baseline”.

If the real goal is to achieve GHG and other pollutant reductions, we do not understand how the ARB and the state can move away from a long history of disallowing these types of characteristics and actually provide funding for these types of projects. This policy departure needs to be reexamined and revised to require significant potential emission reductions of the projects in order for them to receive AB118 funding.

The other element of the Guidelines we continue to find problematic is the unclear commitment to using the NEW CA-GREET model in the full fuel cycle analysis for even the first year of the AB118 program. WSPA does agree with the use of a full fuel cycle analysis approach, however we strongly feel the state needs to wait until the ARB and EPA completes at least the current updates to the life cycle analysis (LCA) models.

Using the older AB1007 CA-GREET model version has a huge potential to set the state on an incorrect path via the significant funding of projects that were found to have a lower carbon footprint under the AB1007 program BUT are currently showing indications they may have a higher carbon footprint than conventional fuels. We are concerned the ARB and CEC will use the fact that the ARB’s LCFS work involving LCA calculations is not now available as a rationale for relying on the old CA-GREET model results, rather than waiting approximately 6 to 9 months to get an anticipated more robust model analysis.

#### Specific Comments on Guidelines Document

In addition, here are several more specific WSPA comments - shown after the excised, italicized portion of the ARB Guideline document:

- *Some projects that result in minor pollutant increases relative to the baseline technology may still pass the screen if the project reduces other pollutants to a substantial degree, advances the goals of AB 118, the resultant pollutant trade-offs are fully offset by other projects within the air basin, and the pollutant tradeoffs are vetted in a public process.*

WSPA comment: This is a departure for ARB from historical policy practice where no pollutant tradeoffs were allowed. We ask for more specific details as to what constitutes a "minor" pollutant increase, what constitutes a "substantial degree," and what kinds of offsets are envisioned.

- *Pg. 12 Staff believes that some flexibility should be provided for pollutant trade offs as long as any disbenefits are fully offset by other projects since one of the goals of AB 118 is to fund innovative or technology-advancing projects. For example, depending upon the origin of the fuel, some alternative fuel projects may result in a slight increase in a criteria pollutant when evaluated on a full fuel cycle basis. However, the project may benefit public health and the environment through significant reductions in other pollutants or by acting as an important bridge towards even cleaner fuels or technologies in the future.*



WSPA Comment: WSPA concurs that the intent of AB 118 is to fund innovative and technology-advancing projects. This is why we have commented extensively at the CEC workshops that we do not understand the exclusion of parties and projects from potential AB118 funding if they are mandated by federal, state or local programs -- such as the LCFS.

Of course the intent of the LCFS is to bring about innovative and technology-advancing fuels. Hence we continue to feel this is an unnecessary and potentially backward restriction in the program. Further evidence of inconsistency between the ARB and CEC programs is the proposal by ARB to utilize all of its first year funds to support obligated parties under a mandated state program.

In addition, we have significant problems with the second half of the paragraph above, which reads:

*"...some alternative fuel projects may result in a slight increase in a criteria pollutant when evaluated on a full fuel cycle basis. However, the project may benefit public health and the environment through significant reductions in other pollutants or by acting as an important bridge towards even cleaner fuels or technologies in the future."*

We believe this is a clear statement that the state is willing to accept a criteria pollutant increase for an indeterminate amount of time, in order to advance a reduce oil use agenda with only a potential promise (perhaps unrealistic) of future viability of an alternative fuel. This is NOT good public policy. At a minimum, the "or" underlined just above should be changed to an "and".

- *If the potential project results in emissions that are equal to or less than the baseline technology, it will pass that part of the analysis and may be eligible for further consideration for receiving incentive funding.*

WSPA Comment: WSPA does not agree that a project should be considered for incentive funding if the emissions are equal to the baseline technology - only if they are better or less than.

- *The evaluation procedures also require that funding agencies ensure that potential projects will comply with all applicable air pollution requirements. Accordingly, the evaluation of fuel projects includes a check for consistency with any existing fuel specifications that apply. Also, on Page 15- The second step requires that all fuels subject to fuel specifications comply with the applicable fuel specifications, if one exists. If no fuel specification exists, then compliance with a fuel specification is not required. This is a requirement of California's existing fuel regulations and does not impose a new requirement on proposed projects.*

WSPA Comment: Although we agree with the initial statements concerning the need to ensure there is consistency with any existing fuel specifications, we believe if no fuel specification exists that there should be an attempt to ensure the fuel receiving funding, will not either harm the environment and/or the vehicle population. Again, the state's historical policy/practice has been to develop fuel specifications and standards for any new fuel going into any level of commerce in the state.

- *Executive Summary - The analysis would incorporate the analytical tools and methodology which will be used to demonstrate compliance with ARB's low-carbon fuel standard (LCFS), currently under development and scheduled to be considered by the Board in December 2008.*



WSPA Comment: The definitive wording in the Executive Summary is not as definitive when one reviews this issue in the remainder of the ISOR - see section 2 below - so we feel a better representation should be included in the Executive Summary.

## *2. Tools for Air Quality Analysis*

*Staff proposes to require ARB and the Energy Commission to conduct evaluations that incorporate a full fuel cycle analysis to ensure that all potential air quality impacts are considered. The analysis would incorporate the same analytical tools which will be used to demonstrate compliance with ARB's low-carbon fuel standard (LCFS), currently under development and scheduled to be considered by the Board in December 2008. This would mean using the updated full fuel cycle methodology- California-specific Greenhouse gases, Regulated Emissions and Energy use in Transportation model (CAGREET model) plus an analysis of indirect land use impacts- that is part of the proposed LCFS. The GREET model was originally developed by Argonne National Laboratory to evaluate emission impacts of vehicle technologies and new transportation fuels and has been widely accepted. It has been customized with data inputs specific to California for use in ARB and Energy Commission programs. One of the project evaluation criterion for the Alternative and Renewable Fuel and Vehicle Technology Program listed in HSC section 44272(b) is, "The project's consistency with existing and future state climate change policy and low-carbon fuel standards." Furthermore, a goal of AB 118 is to help attain California's climate change goals, and the LCFS is one of the Board-approved early action measures to reduce GHG emissions [ARB 2007a, ARB 2007b, Gov 2007]. Staff believes it is necessary to use consistent technical tools and evaluation protocols for both the AB 118 incentive programs and the LCFS because of the close tie-in between the two programs.*

*Significant research, including two interagency agreements between ARB and UC Berkeley and UC Davis, has been invested to update the CA-GREET model and to develop an analysis of indirect land use impacts for use in the LCFS. ARB staff believes it represents the current state-of-the-science, and therefore, the best technical tool to use for the analysis.*

*This proposed regulation would incorporate by reference the methodology and fuel evaluation processes being finalized as part of the LCFS regulation. When the Board considers the LCFS, it will also consider approving the methodology and fuel evaluation processes for use in the AB 118 Air Quality Guidelines. As part of the rulemaking for the LCFS, staff will propose revisions to section 2343(b) of this regulation to add specific reference to the appropriate sections of the LCFS. Consequently, this regulation is essentially being proposed to the Board in two parts. It will be fully approved once the Board adopts the proposed LCFS.*

*In the event that Board adoption of the LCFS is delayed, staff proposes that the technical analysis from the Full Fuel Cycle Assessment: Well-to-Wheels Energy Inputs, Emissions, and Water Impacts, that was prepared to support the December 2007 State Alternative Fuels Plan, be used as the backup tool for the AB 118 air quality analysis [CEC 2007 and CEC/ARB 2007]. The funding agencies will also consider to the extent possible the additional life cycle emission-related factors relevant in evaluating potential projects, but not quantifiable with this analytical tool, such as indirect land use impacts. These could include ARB staff proposals and analyses that become available as part of the LCFS regulatory development process.*



*The State Alternative Fuels Plan, required by AB 1007 (Chapter 371, Statutes of 2005), was adopted by both the Energy Commission and ARB. The technical analysis for the Plan was conducted using the GREET model, populated with the data available at the time. This model served as the starting point for the updates and improvements being incorporated to support the LCFS. The updated analytical tools for the LCFS will address land use impacts associated with fuel production pathways. Until the LCFS is adopted by ARB and legally effective, the GREET model from the 2007 State Alternative Fuels Plan represents the current Board-approved tool for analyzing fuels on a full fuel cycle basis. Staff believes this backup tool is necessary, on an interim basis, so the funding agencies can expend the AB 118 incentive funds appropriated by the Legislature in a timely manner and California can reap the resulting air quality and GHG emission benefits without undue delay. Staff anticipates the contingency, if needed, would only affect one fiscal year of funds.*

*At the public workshops, some stakeholders expressed concern over linking the proposed air quality analysis to the LCFS because the Board has not yet adopted the standards. Staff believes it is critical to use consistent tools between these two programs. Furthermore, the updated CA-GREET model and indirect land use analysis, as adopted by the Board, will represent the state-of-the science and, therefore, the best analytical tool to use for the proposed air quality analysis. Although concerns were raised, no specific alternatives were proposed by stakeholders.*

WSPA Comment: WSPA agrees the use of CA-GREET with the incorporated indirect land use impact analysis is an appropriate tool for both agencies to use in the administration of AB118. We are concerned, however, by some of the statements in the detailed Section 2 that lead us to believe the agencies will move forward - at least for the first fiscal year - with using the older, inadequate AB1007 version of GREET which does not include, amongst many things, a view of what the indirect land use impacts mean for the overall industry.

The obvious danger in the CEC case (ARB is proposing to fully allocate their funds to existing mandated programs) is that they provide \$120MM to projects/fuels/technologies that later turn out to be detrimental or wasteful of plan dollars.

In addition, the wording indicates if the Board adoption of the LCFS is delayed, then the agencies will revert to the old version of CA-GREET as a backup tool which does not include land use change considerations. Since it is already public that ARB is going to delay the December Board item for this regulation, it isn't clear how much time constitutes a "delay."

Moreover, the text uses the words "Until the LCFS is adopted and legally effective." It is recognized by most parties that in order for the LCFS to become legally effective it may take months to complete the process. This will likely direct staff towards using the ineffective tool in the first year which will be out of sync with the LCFS regulation *Page 23 - Defer Adoption Until the LCFS Is Adopted* Another alternative would be to defer consideration of the current proposal until the LCFS has been adopted by the Board. Staff is proposing to link the AB 118 Air Quality



*Guidelines with the LCFS, currently under development and scheduled to be considered by the Board in December 2008. Staff's proposed air quality analysis would incorporate the same analytical tools which will be used to demonstrate compliance with the LCFS as discussed in Chapter 2. Staff's proposal also specifies alternate analytical tools to be used on an interim basis if adoption of the LCFS is delayed (i.e. using the technical analysis from the Full Fuel Cycle Assessment: Well-to-Wheels Energy Inputs, Emissions, and Water Impacts [CEC 2007]. Some stakeholders have noted that this approach adds near-term uncertainty because the LCFS has not yet been finalized. Although ARB received comments regarding uncertainty, no stakeholders suggested delaying Board consideration of this the guidelines as a solution. Staff believes that it is important to move forward with implementation of the AQIP and Alternative and Renewable Fuels and Advanced Technology Programs without undue delay, so the funding agencies can expend the incentive funds appropriated by the Legislature in a timely manner and California can begin reaping the resulting air quality and GHG emission benefits. ARB staff coordinated closely with Energy Commission staff to set the timeline for development and Board consideration of the proposed AB 118 Air Quality Guidelines. Delaying the adoption of staff's proposal would have a negative impact on the Energy Commission's implementation schedule and would likely cause the Energy Commission to miss its goal of issuing its initial solicitation for projects in March 2009.*

WSPA Comment: This is a follow-on comment to the comments offered in the previous section. However, we offer two more comments. First, there is a statement that no stakeholder suggested the Board wait until the LCFS (with the upgraded CA-GREET) was adopted. WSPA would like to recommend the Board wait until the adoption hearing of the LCFS to move forward with the initial solicitation.

Also, the CEC, in particular, seems to be on a more aggressive schedule for providing its \$120MM, although we don't see why a March release of simply solicitations should be held up by a January, February or March ARB Board adoption hearing of the LCFS and the Guidelines. The reason for our concern lies in the second underlined section above which indicates a desire to reap both air quality and GHG benefits as soon as possible. We fail to understand how the state can be sure it WILL achieve any emission benefits for either sector of pollutants when it defaults to using an inadequate tool (old GREET) which may in fact lead to a worsening of emissions.

- *Staff recognizes the need for the public to be informed regarding what projects are proposed for funding in their communities, and has proposed that an analysis be performed annually to evaluate whether the suite of projects funded each year is disproportionately located in environmental justice areas. In addition, ARB and CEC would be required to work in an open and transparent way by making program information publicly accessible, working with interested stakeholders, and providing each year's environmental justice analysis in a public staff report prior to project approval by the funding agency.*
- *Pg 20 E. Reporting Requirements*  
*Staff is not proposing reporting requirements as part of the regulation. The California Legislature is currently considering a bill, AB 109 (Núñez), which would require the*

*Energy Commission and ARB each report biennially on projects funded under the Alternative and Renewable Fuel and Vehicle Technology Program and AQIP, respectively. Each report would include an assessment of the air quality benefits of funded projects. Staff believes these reports would serve to document that the provisions of the proposed regulation are being fulfilled by the funding agencies. Staff also believes it makes more sense that such an assessment be included as part of a broader evaluation of each program rather than in a separate report. If AB 109 is not signed into law in 2008 or does not ultimately include reporting requirements, staff will revisit this issue and propose amending the regulation to include a reporting requirement. Staff would propose such amendments in Spring 2009, at the same time that it is proposing AQIP implementation guidelines.*

WSPA Comment: We find it inconsistent that ARB would lay out a process for an ANNUAL analysis of EJ community impacts, but it would not include in the Guidelines a firm commitment to an ANNUAL (not biennial) report from both agencies administering these significant funds on the air quality success or not of their programs. Similar programs such as the Carl Moyer Program or the South Coast's MSRC program all contain this requirement for a frequent report out to the public so they can understand and assess where their monies have gone.

- *The AQIP and the Alternative and Renewable Fuel and Vehicle Technology Programs are voluntary and provide grants for clean fuels and technologies. Therefore, the AB 118 Air Quality Guidelines will not impose an economic cost on businesses.*

WSPA Comment: The document seems to miss the point that the provision of grants to certain participants in these programs will, by itself, lead to economic disruption due to the fact the competitors of the fund recipient will likely need to expend funds to remain competitive.

If you have any questions or comments, please contact me or Gina Grey at 480-595-7121.

Sincerely,



c.c. CARB Board Members  
J. Levine – ARB  
A. Panson – ARB  
M. Smith – CEC  
P. Ward – CEC  
C. Reheis-Boyd – WSPA  
G Grey – WSPA