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

Electronic Submittal via http://www.arb.ca.gov/lispub/comm/bclist.php

RE: RPMG Comments on Proposed Re-adoption of the Low Carbon Fuel Standard

Dear Clerk of the Board,

Renewable Products Marketing Group (RPMG) is a biofuel marketing company currently representing 21 ethanol facilities located throughout the Midwest. Of those 21 facilities, RPMG actively markets ethanol and distiller's oil produced from various feedstock types from 10 facilities directly into the California fuels market. RPMG is a supporter of the Low Carbon Fuel Standard (LCFS), which diversifies transportation fuel supply, incentivizes innovative technology and advanced renewable fuel selection, creates jobs, stimulates the California economy, and, most importantly, improves the environment. The track record of the U.S. renewable fuel industry and the LCFS is a shining example of these activities being achieved through hard work and ingenuity. We are writing today to provide comment on the recent proposed re-adoption of the LCFS. Implementation of the re-adopted LCFS is going to take a lot of communication and joint effort between industry and CARB.

Below are our detailed comments and indications of areas needing additional clarification with regard to the proposed 15-day amendments published on June 4, 2015. We have broken down our comments into six subsection groupings for reference. We invite CARB staff to contact us with any questions or requests for additional information on any of the points raised. We sincerely appreciate the opportunity to provide these comments to you today, and we thank you for your thorough consideration of each.

Section 95488, Title 17, California Code of Regulations, "Obtaining and Using Fuel Pathways"

Section 95488(a)(3)

While RPMG acknowledges and supports the general intention to avoid creating artificial market barriers and competition for CARB resources with the proposed changes to 95488(a)(3), it remains largely unclear how this proposal would be carried out in practice. It is imperative that CARB provide guidance such that industry can adequately plan and implement the pursuit of pathway approvals. These are some areas of ambiguity and concern we have identified:

- Is each fuel type placed into a single batch for review with a predeclared deadline for application submission, or will there be multiple scheduled batches per fuel type such that applications received in the defined window will be batched and released by a defined date?

- What is the trigger or signal that a batch is "closed" and ready to move on to the staff review stage (quantity of applications received, defined window of opportunity, etc.)?

- Is staff proposing to wait to review any other fuel type application until ALL ethanol pathways are received and reviewed?

- Has staff reviewed the potential credit losses to the whole program by delaying other fuel type pathways?

- What are the anticipated deadlines and release dates of pathways?

- When will CARB begin accepting pathway applications?

- Has CARB consulted the limited number of pathway consultants and advisors available to industry for their input? What are the expressed and anticipated constraints on those resources available to industry?

- What will be deemed the completeness date in the certification approval documents?

- How are the parameters of completeness defined and/or determined?

Through discussions with staff and knowledgeable industry parties, it has come to our awareness that a guidance document is being compiled by CARB staff. We support the development of this guidance document. It is imperative for industry to prepare for and timely obtain new fuel pathways. This will require the coordination and mobilization of both internal and external resources. Clear and definitive information will allow industry to adequately prepare. In turn this should assist CARB in its own preparation to receive and process those applications. However, we are concerned this document may be published without the opportunity for industry involvement or public input. We suggest that CARB provide a public forum for reviewing concepts of the guidance document and allow the opportunity to make recommendations.

Section 95488(c)(5)(B) and (e)(5)(B)

RPMG sympathizes with the expressed concern of CARB staff in 95488(c)(5)(B) and (e)(5)(B) of "eliminating potentially unrealistic deadlines in various parts of the existing proposal." However, it has been the experience of RPMG and our associated producers throughout the four-year history of implementation of the LCFS that delays, extended review periods and uncertainty (specifically in pathway applications) have become the "status quo." It is essential for the program to provide industry with a means of assessing timely responses that will provide the basis for market certainty. This is not achieved through the imposed deadlines on industry participants while simultaneously proposing to remove a similar expectation of deadlines for CARB staff. RPMG would encourage CARB in the future to maintain clear expectations of deadlines on the part of both the regulated industry and CARB staff. By maintaining equitable treatment in this manner, CARB will ensure that it is sending a strong signal of reliability and accountability to the market.

Section 95488(b)(3)

We appreciate staff's proposal to reduce confusion and clarify that the iLUC values referenced in the ISOR are a part of the proposal with the addition of Table 5 in section 95488(b)(3). We also appreciate the simplicity in having a table to reference in the regulations, which is a place where a regulated party can and should expect to find pertinent details of the program without having to consult multiple reference materials or guidance documents. Our concern is the addition of this table limits iLUC to just these values. Our understanding is once an item is codified in regulation it requires a formal rulemaking process to modify any part. If this is not the case, CARB should clarify further. As such, we caution against the formalization of such a table if it would impact or delay the addition or modification of new values, or the inclusion of new feedstock types. Without the means of modifying iLUC values administratively this table is a hindrance to the environmental and market incentive objectives of the program. Any such hindrance would not justify its codification in the regulations. If that is the case, we highly recommend CARB staff devise an administrative alternative to approving and incorporating iLUC values for the program.

Section 95488(c)(3) and (c)(4)(I)(2)

Adding the Tier Pathways to this section is problematic for a variety of reasons, including structure and implementation.

Throughout the regulations, we note evidence of establishing Tier 1 and Tier 2 pathways. With these revisions, we are noting a distinct shift to attempting to classify Tier 1 and Tier 2 facilities. By definition, Tier 1 and Tier 2 labels are applicable to pathways, not facilities. This is very simply demonstrated when you consider that a single facility may have the ability to co-process different tier fuels simultaneously, such as conventional corn ethanol and cellulosic ethanol from non-starch cellulosic material. Further, one should consider single facilities installing and utilizing innovative production methods. It is logical to assume that during the periods when relevant innovative technologies and equipment are utilized, the facility would be producing under a Tier 2 pathway, and conversely, when not utilizing that equipment, the fuel would qualify for a Tier 1 pathway. We wish to point out that "commercial operation" of a facility is materially different from "commercial operation" of a pathway or new fuel product stream.

Adding Tier 1 pathways to the provisional pathways section is concerning because new or expanding facilities are now disincentivized from entering the California fuel market for the requisite two-year "provisional" period. This disincentive will not only impact investments and liquidity of those operations, but it is also a major obstacle for innovative technologies to befit the LCFS program in any meaningful way. This provision creates a barrier to deploying innovative technologies and to supplying the California market with meaningful volumes of low carbon fuel from new sources and those new technologies. With this proposal, CARB is stifling innovation at the greater expense of the explicit goal of the LCFS: to reduce carbon emissions and improve the environment.

Deficit-generating industry parties have repeatedly indicated they are not interested in procuring "commercial" volumes of fuel without obligation. They do not desire to take on the risk of potentially not benefiting from the fuel or blendstock they procure in terms of credit generation for a two-year period. Further, by the time the two-year "provisional" period sunsets, the credit potential for that fuel has incrementally decreased at the predefined rate of the compliance schedule. Both of these factors are barriers to market entry. This is in direct conflict with the objectives of the LCFS.

Real-world implementation challenges and interpretation of this section from the perspective of a producer can be expressed in three case scenarios: newly operational commercial fuel producers in California, newly operational commercial fuel producers outside of California, and preexisting operational commercial fuel producers deploying capital investment projects in new and innovative technologies. We interpret fuel producers falling within these three categories would not be allowed to participate in the LCFS for provisional pathway fuels, until they reach one full calendar quarter of commercial operations. We understand this will restrict them from applying for a pathway until they achieve this milestone. If this is inaccurate, CARB should clarify. The potential market for those fuels becomes so small it is almost nonexistent, as regulated parties generating a deficit will be strongly inclined to procure fuel and credits elsewhere (citing regulatory risk, commercial risk, limitations in access to resources, uncertainty in viability of counterparty, etc.). This will place extreme limitations on producer liquidity. Out-of-state producers will not have sufficient incentive to opt in to the program, and all credit potential for those periods will be lost. Consider that the program incentivizes early credit generation and makes it harder to achieve meaningful credit generation over time. Not being allowed to transfer obligation with physical fuel will disincentivize refiners, blenders and other deficit-generating regulated parties from choosing to utilize these fuels, effectively blocking their access to the market and thereby limiting California's environmental benefit.

This section introduces many unintended consequences by CARB, and we strongly advise staff rework this section of the proposal, even if it means reopening this section after re-adoption of the rule as a whole.

Section 95488(e)

RPMG supports the clarification by CARB in 95488(e) that existing physical pathway demonstrations that were approved under the previous regulation order will be accepted without any resubmittal requirements. This will ensure that CARB is meeting its objective in streamlining the pathway approval process.

Section 95491, Title 17, California Code of Regulations, "Reporting and Recordkeeping"

Section 95491(a)(7)

RPMG notes that the addition of "for the current compliance period" in section 95491(a)(7) adds ambiguity while addressing end-of-year reporting responsibilities in the new year. Upon review, we are unclear how to interpret "current compliance period" during the old-year to new-year transitioning period affecting Q4 progress reporting and annual compliance reports. We request clarification on this part to ensure clear and understandable boundaries from the perspective of the reporting schedule.

In closing, RPMG acknowledges this program is complex. Re-adoption is helpful and a worthwhile pursuit, but it does leave implementation questions. We encourage additional clarity and guidance. Further, we welcome the opportunity for a continued open dialogue with CARB staff to ensure the program moves forward with the proper foundation and clear expectations for industry to adhere to the program regulations.

Sincerely,

J W Hoffmann

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