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Clerks' Office
California Air Resources Board
1001 I Street
Sacramento, CA 95814

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Re: WSPA Comments on Second 15-Day Low Carbon Fuel Standard Amendments Package

Dear Chair Randolph and Members of the Board,

The Western States Petroleum Association (WSPA) appreciates the opportunity to comment on the California Air Resources Board's (CARB or Agency) proposed second "15-day" Low Carbon Fuel Standard (LCFS) program amendments. WSPA is a non-profit trade association representing companies that import and export, produce, refine, transport, and market petroleum, petroleum products, alternative fuels, natural gas, and other energy supplies in California and four other western states, and has been an active participant in air quality planning issues for over 30 years.

WSPA is proud of the technological advancements our member companies have made in bringing more alternative fuels and electricity to California's transportation market since the LCFS came into effect. We believe a well-designed LCFS program that protects a diverse energy portfolio is essential to supporting a healthy lower-carbon fuels market. It remains essential for CARB to adopt final revisions that align with statutory requirements and that are implementable and achievable, while offering Californians a reliable supply of affordable lower-carbon fuels to build on the program's success.

As discussed in more detail below, WSPA highlights the following key issues with CARB's 15-day amendment proposals:

- 1) CARB must ensure that any revised reduction targets are cost-effective and feasible.
- 2) An expansive biofuel cap is arbitrary and would compromise the availability of lower-carbon fuels and interfere with the development of alternative fuel pathways.
- 3) The biofuel sustainability guardrails remain unnecessary and would impose arbitrary restrictions on biomass-based fuel pathway compliance. These amendments will likely compromise access to ethanol – which has **limited-to-no substitutes** for E10 (or E15) gasoline.
- 4) The newly proposed arbitrary and ambiguous requirement to limit LCFS crediting to hydrogen that is at least 80% renewable starting in 2030, combined with the prohibition of hydrogen produced from fossil gas from generating credits beginning in 2035, will add complexity, limit cost-effective decarbonization options, and will likely create market uncertainty for hydrogen suppliers in the future. WSPA opposes these provisions.
- 5) Proposed changes to the Automatic Acceleration Mechanism (AAM) should be clarified. WSPA supports reverting to use of calendar year-based data.
- 6) CARB needs to properly account for reduced Land Use Change.
- 7) Additional flexibility is needed for validation and verification services.
- 8) Further changes to Zero Emission Vehicle (ZEV) crediting provisions are concerning as market-based programs should continue to preserve consumer choice by providing a level playing field for all technologies.
- 9) Changes to crediting periods for avoided methane crediting for dairy and swine manure pathways are concerning given the historically lengthy certification process. We urge CARB to

use the date of the first pipeline injection to determine whether pathways are granted for two or three consecutive 10-year crediting periods.

WSPA has been engaged throughout this LCFS rulemaking process and previously submitted comments in response to prior workshops, proposed regulatory updates, and the recirculated environmental analysis. Those comments are incorporated by reference and are also attached.^{1,2,3,4,5,6,7,8,9,10}

1. A 9% Step-Down in 2025 Compromises LCFS Program Cost-Effectiveness and Feasibility.

CARB is required, pursuant to Health and Safety Code (HSC) §§ 38560 and 43018, to ensure that its program amendments are cost-effective by accounting for technological feasibility and necessity. California Government Code § 11346.2(b)(4) also requires CARB to consider “*reasonable alternatives to the regulation that would lessen any adverse impact on small business,*” and reasonable alternatives that are “*less burdensome.*” As part of these alternatives, CARB must consider “*overall societal benefits, including reductions in other air pollutants, diversification of energy sources, and other benefits to the economy, environment, and public health.*”¹¹ To comply with these provisions, **WSPA urges CARB to revise its proposed program amendments to create a more cost-effective, technology-neutral, and less burdensome regulatory program** that protects a diverse energy portfolio, including for fuels that are contributing to significant emission reductions efforts today.

As WSPA has explained in previous comments, super-accelerating the carbon intensity (CI) “step down” target in 2025 by 9% will likely increase consumer cost impacts and disincentivize longer-term advancements in developing lower-CI transportation fuels. This may compromise CARB’s efforts to balance program costs with emission reductions. The State has repeatedly acknowledged^{12,13,14} that LCFS has a direct cost impact on California consumers, which can disproportionately burden low- and moderate-income Californians. Rather than super-accelerating reductions, CARB should adopt more feasible CI reduction targets to mitigate potentially significant consumer cost impacts and encourage longer-term advancements in lower-CI transportation fuel development.

2. CARB Should Retain Flexibility for Biofuel and Crop-Based Feedstocks.

Rather than address significant concerns raised by WSPA and other commenters, CARB’s proposed 15-day updates exacerbate existing burdens for biomass-based fuels. These proposed

¹ WSPA, “WSPA Comments on CARB Workshop to Discuss Potential Changes to the LCFS,” August 8, 2022.

² WSPA, “WSPA Comments on the August 18th CARB Workshop to Discuss Potential Changes to the LCFS,” September 19, 2022.

³ WSPA, “WSPA Comments on the November 9th CARB Workshop regarding Potential Changes to LCFS,” December 21, 2022.

⁴ WSPA, “WSPA Comments on CARB Preliminary Discussion Draft of Potential Low Carbon Fuel Standard Regulation Amendments and February 22, 2023 LCFS Workshop,” March 15, 2023.

⁵ WSPA, “WSPA Comments on CARB’s Proposed Low Carbon Fuel Standard Auto-Acceleration Mechanism and May 23, 2023 Workshop,” June 6, 2023.

⁶ WSPA, “WSPA Comments on the Low Carbon Fuel Standard Modeling Updates Workshop,” September 12, 2023.

⁷ WSPA, “WSPA Comments on Proposed 2024 Low Carbon Fuels Standard Amendments,” February 20, 2024.

⁸ WSPA, “WSPA Comments on April 10, 2024, Low Carbon Fuel Standard Workshop,” May 10, 2024.

⁹ WSPA, “WSPA Comments on 15-Day Low Carbon Fuel Standard (LCFS) Amendments Package,” August 27, 2024.

¹⁰ WSPA, “WSPA Comments on LCFS Recirculated Draft Environmental Impact Analysis,” September 30, 2024.

¹¹ HSC § 38562.

¹² CARB, LCFS 2023 Amendments, Standardized Regulatory Impact Assessment, September 8, 2023 at 58, <https://dof.ca.gov/wp-content/uploads/sites/352/2023/09/LCFS-SRIA-to-DOF-ADA-Compliant> (estimates that the proposed amendments to the LCFS program will potentially increase the price of gasoline by an average of \$0.37 per gallon between 2024 and 2030, and further increase the price of gasoline by \$1.15 per gallon between 2031 and 2046.).

¹³ See Legislative Analyst’s Office report, “Assessing California’s Climate Policies – Transportation,” December 2018 at 30, <https://lao.ca.gov/reports/2018/3912/climate-policies-transportation-122118.pdf>.

¹⁴ See CEC, Senate Bill (SB) X1-2 Refiner Margin Data at <https://www.energy.ca.gov/data-reports/energy-almanac/californias-petroleum-market/california-oil-refinery-cost-disclosure>.

updates would expand the applicability of the 20% cap on biomass-based fuels to include sunflower oil feedstocks and would impose even more onerous requirements for the sustainability guardrails. As WSPA has previously explained, these requirements will limit proven emission reduction strategies that are effective *today* while disincentivizing additional investments in lower carbon renewable fuels by increasing costs to produce and deploy lower-CI transportation fuels for California's consumers.

CARB should remove the proposed 20% cap on biomass-based fuels:

- *Limiting biofuel production would interfere with CARB's emission reduction goals.* State agencies have repeatedly acknowledged that California's demand for liquid fuels will continue through at least 2045.^{15,16,17} Biofuel production provides an important supply of lower-carbon fuel to meet this remaining demand. However, a biofuel cap would limit the supply of lower-carbon liquid fuels by reducing production incentives. Without an adequate supply of lower-carbon alternatives, Californians would be forced to turn to more traditional, higher-CI liquid fuels, and therefore, a cap may **increase** statewide transportation emissions.
- *The biofuel cap conflicts with CARB's regulatory mandates under the Health & Safety Code.* As described above, by limiting the supply of lower-carbon biofuels to meet the remaining demand for liquid fuels, the proposed biofuel cap may **increase** emissions. Therefore, this proposal conflicts with CARB's mandate, pursuant to HSC § 38560, to adopt measures "to achieve the maximum technologically feasible and cost-effective greenhouse gas emission reductions from sources."¹⁸ The proposed cap may also conflict with HSC § 38562's requirement to consider "diversification of energy sources, and other benefits to the economy, environment, and public."
- *The biofuel cap may violate the Dormant Commerce Clause.* By restricting the quantity of fuel a given company produces, CARB's proposal impacts the instrumentalities of interstate transportation and may impermissibly impede the flow of interstate commerce in violation of the Dormant Commerce Clause.¹⁹ Instead, CARB should allow annual benchmarks and CI scores to drive the selection of feedstocks in a market-based program.

If CARB retains the arbitrary cap on biomass-based fuels, the Agency should, at a minimum, incorporate the following revisions to mitigate some of the harms associated with this provision:

- Clarify that exports from California should not be included in volumes subject to the cap. Export transactions should therefore be subtracted from the 20% volumetric obligation.
- CARB should also facilitate and expedite the review and certification of fuel pathways for biomass-based diesel produced from specified source feedstocks such as used cooking oil, tallow, and distiller's corn oil, and refrain from imposing arbitrary and burdensome requirements for these pathways as these feedstocks will likely become increasingly important to the supply of lower carbon fuels to California.

The compliance volume should be based on an annual calendar year to align with other compliance requirements in the LCFS program. For example, the first quarter could have a higher than 20% vegetable oil with no LCFS credit penalty as long as the remaining quarters of the year and the first quarter average 20% or less. WSPA also recommends that CARB publish guidance addressing how and when credits for annual volumes in excess of the cap will be

¹⁵ CARB 2022 Scoping Plan Update, pgs. 86, 100: <https://ww2.arb.ca.gov/sites/default/files/2023-04/2022-sp.pdf>

¹⁶ CEC Transportation Fuels Assessment, pgs. 1, 9, 22 at: <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=23-SB-02>

¹⁷ CARB, April 10, 2024, California Low Carbon Fuel Standard Workshop at slide 38: <https://ww2.arb.ca.gov/sites/default/files/2024-04/LCFS%20April%20Workshop%20Slides.pdf>

¹⁸ See also HSC § 43018.

¹⁹ *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).

retired to allow market participants sufficient time to prepare.

3. CARB Should either Remove the Sustainability Guardrails or Substantially Modify Requirements in Order to Limit Burdens to Biofuel Producers.

CARB's proposal to impose "sustainability guardrails" may limit the supply of crop-based feedstocks used in the production of biofuels while imposing resource-intensive verification processes. This would likely increase costs associated with biofuel production. WSPA continues to have concerns about the proposed sustainability guardrails and the impacts they will have on biofuel producers and consumers.

- *The sustainability guardrails will compromise California's access to ethanol.* CARB's proposed 15-day amendments would explicitly include ethanol in the sustainability guardrail requirements under § 95488.9(g)(4), despite significant concerns raised by WSPA and other commenters. Nearly all gasoline sold in California today includes blends of up to 10% ethanol by volume, which has resulted in significant reductions in CI for liquid fuels. Ethanol is an essential component of the State's efforts to reduce greenhouse gas (GHG) emissions from gasoline, which has **limited-to-no substitutes**. Despite the importance of ethanol to California's emission reduction goals, CARB's proposed feedstock limitations would increase the risk of a supply shortage for ethanol by imposing significant new cost burdens on ethanol production and limiting industry's ability to import ethanol into California, thus disincentivizing ethanol development and potentially *increasing* emissions from liquid fuels. Therefore, these measures conflict with HSC § 38560's mandate that CARB adopt measures "to achieve the maximum technologically feasible and cost-effective greenhouse gas emission reductions from sources" and would run counter to CARB's ongoing efforts – and the State Legislature's recent interest in – the evaluation of potential future approval of E15 blends.
- *The sustainability guardrails are unnecessary and duplicative.* CARB has yet to provide data demonstrating that there is a sustainability issue that must be addressed²⁰ and has not adequately considered that placing a limit on crop-based feedstocks for biomass-based fuels to California's transportation fuels market could potentially increase costs for California consumers. WSPA reiterates that existing LCFS program measures and related Federal programs provide sufficient guardrails to address potential land use changes associated with crop-based feedstocks that are of unsubstantiated concern. In addition, having both a cap and guardrails is duplicative; CARB previously determined that the guardrails would effectively address any remaining risks without the need for a cap.²¹

If CARB retains the sustainability guardrails, the Agency should substantially modify the requirements in order to limit burdens to biofuel producers:

- *Overly Broad Attestation Language Should Be Narrowed.* CARB's revised language in § 95488.9(g) broadens the biomass attestation letter requirements for fuel pathway holders and applicants, requiring these participants to attest that "...all forest derived biomass was cultivated and harvested in accordance with all local, State, and federal rules and permits." This additional language potentially exposes the fuel supplier to excessive liability that is best placed with the biomass provider. Particularly if the fuel supplier does not possess this information.

²⁰ See Cal. Gov. Code § 11346.2(b)(1) (requiring the agency to submit "A statement of the specific purpose of each adoption, amendment, or repeal, the problem the agency intends to address, and the rationale for the determination by the agency that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose and address the problem for which it is proposed."); see also § 11349.1(a)(1) (requiring the agency to review its regulations and make determinations based off the regulation's "necessity.").

²¹ CARB, April 10, 2024, California Low Carbon Fuel Standard Workshop at slide 40: <https://ww2.arb.ca.gov/sites/default/files/2024-04/LCFS%20April%20Workshop%20Slides.pdf>; CARB, LCFS 2023 Amendments, Initial Statement of Reasons (ISOR), December 19, 2023 at 32, <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2024/lcfs2024/isor.pdf>.

- *Overly Burdensome Geographical Shapefile Requirements Should Be Removed.* Similarly, the new requirement in § 95488.9(g), that a pathway holder must submit “geographical shapefiles or coordinates of plot boundaries (farm, plantation or forest) that are managed to produce the forest derived biomass” in each annual reporting year, in addition to an attestation letter requirement, is overly burdensome -- particularly if they do not possess this information. There is no requirement in any U.S. or Canada renewable or lower-carbon fuel program today for mapping U.S. and Canada farms, which makes § 95488.9(g)(5) particularly problematic.
- *Certification Requirements for Process Energy Should Be Removed.* It is unclear how this requirement would be tracked, much less certified, by renewable fuel producers. As a result, this requirement would unnecessarily further complicate pathway review and approval as well as disrupt and possibly restrict the supply of renewable fuels into California. At a minimum, CARB should provide greater clarity on how this requirement would be implemented.
- *Guardrails Should Align Regulatory Language with International Certification Schemes.* WSPA appreciates CARB’s recognition of Canada’s Clean Fuel Regulation by discussing revisions to § 95488.9(g)(7)(H) in the Second Notice of Public Availability of Modified Text and Availability of Additional Documents, which explains that “[t]he addition specifies that CARB may modify certifications if appropriate for consistency with the removal or suspension of certification systems in other programs such as the European Union Renewable Energy Directive, or Environment and Climate Change Canada’s Clean Fuels Regulations.” However, it does not appear that these revisions were incorporated into CARB’s regulatory text in the proposed second 15-day regulatory text. We urge CARB to correct this apparent oversight.

In summary, WSPA opposes arbitrary caps and additional “guardrails” that will create an unnecessary burden for transportation fuel producers and may impact the availability of alternative transportation fuels for California consumers. Further, it is unnecessary to include both in the program, given that the sustainability guardrails were introduced as a substitute for a feedstock cap.

4. CARB Should Apply a Technology-Neutral Approach to Hydrogen Usage.

WSPA opposes CARB’s proposal in § 95482(h) to arbitrarily limit crediting for hydrogen to hydrogen that is at least 80% renewable beginning in 2030 and then entirely prohibiting hydrogen produced from fossil gas feedstocks beginning in 2035. Importantly, this provision would prohibit lower-carbon hydrogen production using carbon capture and sequestration (CCS) from LCFS credit eligibility.

CARB’s proposed 80% renewable hydrogen mandate will create significant uncertainty around eligible volumes.

- *Renewable hydrogen volumes are highly uncertain.* CARB’s proposed 80% renewable hydrogen mandate ties the availability of any fossil-based hydrogen in 2030-2035 to the availability of a specific percentage of renewable hydrogen volumes. For example, if only 80 tons per day of renewable hydrogen production materialize by 2030, LCFS credit eligibility for lower-carbon fossil-based hydrogen production would be limited to 20 tons per day. Whereas, if 800 tons per day of renewable hydrogen production materializes by 2030, 200 tons per day of fossil-based hydrogen would be LCFS eligible. Fossil-based hydrogen producers will be forced to rely on third-party performance in order to continue supplying product, which will create significant uncertainty around future investments and ongoing hydrogen projects. This uncertainty comes at a time when lower-carbon hydrogen projects employing CCS are being developed, risks and returns are being weighed, and funding decisions are being made.
- *CARB has not indicated how the 80% renewable mandate will be implemented.* CARB’s proposed 80% renewable hydrogen mandate is ambiguous and offers no details regarding how

this will be measured or enforced. Without further clarification, this mandate creates significant uncertainties for any fossil-based hydrogen project starting in 2030, which may deter investment decisions being made today despite a clear market demand for hydrogen fuels.

Eliminating fossil-based feedstocks will arbitrarily restrict hydrogen supply, strand key assets, and forgo important emission benefits.

- *Restricting hydrogen feedstocks will forgo important emission benefits.* Sunsetting fossil-based hydrogen credits limits hydrogen production from natural gas, including the deployment of carbon capture and sequestration technologies that would dramatically lower the CI scores. By constraining production eligibility, CARB is failing to achieve the “maximum technologically feasible and cost-effective greenhouse gas emission reductions” in accordance with HSC § 38560. A technology-neutral approach would better align with CARB’s rulemaking obligations under Gov. Code § 11346.2(b)(4)(A), which requires CARB to consider performance standards as an alternative to mandating the use of specific technologies or equipment or prescribing specific actions or procedures. Further, HSC § 38562.2 obligates CARB to “[i]dentify and implement a variety of policies and strategies that enable carbon dioxide removal solutions and carbon capture, utilization, and storage technologies in California to complement emissions reductions . . .”. By disallowing fossil gas feedstocks under the LCFS, CARB is violating the mandate under HSC § 38562.2 and preventing the use of lower-carbon hydrogen production using CCS under the program.
- *Eliminating credits for fossil-based hydrogen will strand existing assets and deter future investments.* The 2035 sunset of fossil-based hydrogen credits does not leave sufficient time for companies to recoup their investment in both CCS retrofits to existing hydrogen production, and facilities that have yet to be built. This will likely deter investment in the production of lower-carbon fossil-based hydrogen. CARB’s proposed departure from a technology-neutral, market-based approach sends a clear message to investors that California’s regulatory agencies may arbitrarily change rules and negatively impact the investment landscape. Large-scale innovation and new investment in various industrial sectors rely on a diverse portfolio of resources. Arbitrarily restricting production technologies will likely stifle investments and innovation and will drive up program costs.
- *Renewable hydrogen development is currently too costly and not at a scale to support additional hydrogen demand.* CARB’s proposal favors electrolysis using renewables, even though this technology is, by most estimates,²² at least triple the cost of hydrogen currently produced by steam methane reforming. In addition, the supply of renewable hydrogen is still limited due to the failure to scale up fast enough to meet demand. Limiting hydrogen development by constraining supply creates uncertainty for investments in hydrogen vehicles and fueling infrastructure that presents risks for the future of California’s hydrogen economy.

The LCFS *market-based program* should continue to preserve consumer choice by providing a level playing field for *all* technologies, embracing fuel- and technology-neutral principles that focus on the meaningful and timely reduction of GHG emissions. By constraining production eligibility, CARB is failing to achieve the “maximum technologically feasible and cost-effective greenhouse gas emission reductions” in accordance with HSC § 38560. A technology-neutral approach would better align with CARB’s rulemaking obligations under Gov. Code § 11346.2(b)(4)(A), which requires CARB to consider performance standards as an alternative to mandating the use of specific technologies or equipment or prescribing specific actions or procedures. Further, HSC § 38562.2

²² Justin Bracci, Adam Brandt, Sally M. Benson, Gireesh Shrimali and Sarah D. Saltzer, “Pathways to Carbon Neutrality in California: The Hydrogen Opportunity,” Stanford Center for Carbon Storage and Stanford Carbon Removal Initiative. <https://sccs.stanford.edu/california-projects/pathways-carbon-neutrality-california>. https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2024/lcfs2024/lcfs_appa1.pdf

obligates CARB to “[i]dentify and implement a variety of policies and strategies that enable carbon dioxide removal solutions and carbon capture, utilization, and storage technologies in California to complement emissions reductions . . .”. By disallowing fossil gas feedstocks under the LCFS, CARB is violating the mandate under HSC § 38562.2 and preventing the use of “blue hydrogen” under the program.

Again, CARB’s late addition of these provisions likely conflicts with CARB’s rulemaking obligations under Gov. Code § 11346.8(c), which makes clear that CARB cannot significantly alter its proposal from what was originally proposed in the 45-day notice without providing a new 45-day public comment period. To avoid triggering a new 45-day comment period, any substantive proposed changes in a supplemental 15-day comment period must be “sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action.” These additional 15-day changes are not sufficiently related to the original proposal to provide stakeholders with sufficient notice of CARB’s revised proposal.

5. CARB Should Revise the Automatic Acceleration Mechanism (AAM).

WSPA recommends the following updates to the AAM provisions; please note that the recommended revisions that follow the need for data clarification requirements would only be applicable should CARB retain reliance on quarterly credit bank fluctuations:

- *Base trigger on calendar year.* WSPA recommends that CARB adjust the AAM trigger to reflect banking trends across the *calendar year*, rather than quarterly fluctuations. This approach would better align with program compliance requirements, which are based on a calendar year, and would be more representative of actual credit/deficit trends. Quarterly credit bank fluctuations may not necessarily reflect a meaningful trend when trying to determine when the AAM is triggered.
- *Provide sufficient stakeholder notice.* Should CARB retain the proposed quarterly basis for the trigger in §95484(b), WSPA recommends that CARB update the proposed language in §§§§ 95484(c)(2), 95484(b)(1), 95484(b)(2), and 95484 (b)(2)(A) to better align with CARB’s intent to “provide earlier notice to stakeholders that the AAM has been triggered, providing further market certainty and lead time to LCFS participants.” For example, the currently proposed language under § 95484(c) could be interpreted as resulting in *less time* for stakeholders for announcements made in August and November and potentially resulting in a second AAM trigger occurring before the first AAM has been implemented for a full compliance year.
- *Clarify data requirements.* CARB should clarify that the triggers calculated in § 95484(b)(2) must use *final reconciled quarterly transactions reports* (which are not due until three months after the quarter in question) rather than incomplete data that has yet to be reconciled (submitted within 45 days after the quarter in question). WSPA recommends the following proposed changes:

§ 95484(b)(1)

The Automatic Acceleration Mechanism cannot be triggered in the four quarters that immediately follow an announcement that the Auto Acceleration Mechanism has been triggered or in the calendar year following an update to the benchmark schedule pursuant to § 95484(c)(1).

§ 95484(b)(2)

The Automatic Acceleration Mechanism is triggered when the conditions in both subparagraphs (A) and (B) below are met, and if it was not triggered in the immediately prior four quarters or in the calendar year following an update to the benchmark schedule pursuant to § 95484(c)(1).

§ 95484(c)(2)

An updated benchmark schedule posted pursuant to § 95484(c)(1) will override any prior benchmark schedules and will take effect January 1 of the calendar year after the ~~Automatic Acceleration Mechanism was triggered~~ updated benchmark schedule is posted to the LCFS website per section 95484(c)(1).

§ 95484(b)(2)(A)

*Credit Bank*_{20xx} is the final credit bank for the program as calculated at the end of the four quarters for which quarterly fuel transactions reports have been submitted per section 95491(b)(2) preceding the quarterly Automatic Acceleration Mechanism announcement; and

*Deficits*_{20xx} is the total number of annual deficits generated under the program as calculated at the four quarters for which quarterly fuel transactions reports have been submitted per section 95491(b)(2) preceding the quarterly Automatic Acceleration Mechanism announcement.

§ 95484(b)(2)(B) would require similar changes to the definition of Credits and Deficits as proposed above.

We reiterate that the above subsections would need to be modified should CARB maintain an AAM triggering mechanism based on a calendar year.

6. The Program Revisions Should Properly Account for Reduced Land Use Change (LUC).

WSPA urges CARB to reconsider proposed changes in § 95488.3(d)(2), which would allow the Executive Officer to assign *only* a more conservative LUC value. CARB should be able to assign *either* a higher *or lower* LUC value than those listed in Table 6. Failing to recognize evolving market and technology advancements could undermine efforts to produce more affordable, lower-CI fuels.

7. Additional Flexibility Needed for Validation and Verification Services.

In § 95501(b)(3), as an alternative to site visits at the central records location, CARB should allow virtual visits through online technologies that enable screen sharing. A physical site visit to look at data on a screen in a conference room does not bring any additional value than sharing a screen through a virtual meeting would. Reducing unnecessary travel would also have the benefit of decreasing GHG emissions associated with verification activities.

8. CARB Should Not Adopt Further Changes to ZEV Crediting Provisions.

In previous comments, WSPA expressed significant concerns regarding proposed changes that affect crediting for ZEV charging, which would unreasonably favor ZEV technologies above other emission-reduction technologies. Rather than address these comments, CARB is now proposing to *expand* these changes.

First, WSPA again emphasizes that the LCFS *market-based program* should continue to preserve consumer choice by providing a level playing field for *all* technologies – which will be a critical component towards achieving the goals outlined in CARB’s 2022 Scoping Plan. A technology-neutral approach better aligns with CARB’s rulemaking obligations under Gov. Code § 11346.2(b)(4)(A), which requires CARB to consider performance standards as an alternative to mandating the use of specific technologies or equipment or prescribing specific actions or procedures. Revising § 95483 to explicitly reallocate Electric Distribution Utility base credits to Original Equipment Manufacturers that manufacture light-duty vehicles effectively subsidizes mandates an increased use of light-duty ZEV and imposes a substantial burden on other program participants.

Second, WSPA reiterates that CARB's late addition of these provisions likely conflicts with CARB's rulemaking obligations under Gov. Code § 11346.8(c), which makes clear that CARB cannot significantly alter its proposal from what was originally proposed in the 45-day notice without providing a new 45-day public comment period. To avoid triggering a new 45-day comment period, any substantive proposed changes in a supplemental 15-day comment period must be "sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action." These additional 15-day changes are not sufficiently related to the original proposal to provide stakeholders with sufficient notice of CARB's revised proposal.

9. CARB Should Not Adopt Changes to RNG Crediting Periods.

CARB's proposed updates to crediting periods for avoided methane crediting for dairy and swine manure pathways could unnecessarily delay crediting. As revised, § 95488.9(f)(3)(A) states that "Avoided methane crediting for dairy and swine manure pathways as described in (f)(1) above, and for landfill-diversion pathways as described in (f)(2) above, certified on or after the effective date of the regulation and before January 1, 2030, is limited to two consecutive 10-year crediting periods, counting from the quarter following Executive Officer approval of the application." This language is unclear as to what "certified" refers to. Requiring a certified pathway could unreasonably delay crediting due to the historically lengthy process for CARB to certify pathways, which will harm project developers who made the early investment decisions several years prior on these important projects to address methane emissions. Project developers may still be waiting on CARB to approve relevant pathways even if projects have begun construction. We urge CARB to use the date of the first pipeline injection to determine whether pathways are granted two or three consecutive 10-year crediting periods.

WSPA appreciates the opportunity to provide these comments.

Sincerely,



Tanya DeRivi
Senior Director, California Climate and Fuels