July 3, 2018

FLINT HILLS
resources

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

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

Public Availability of Modified Text and Availability of Additional Documents and Information for Proposed Amendments to the Low Carbon Fuel Standard Regulation and to the Regulation on Commercialization of Alternative Diesel Fuels

To the California Air Resources Board:

Flint Hills Resources (FHR) is pleased to submit comments to the modified text and availability of additional documents and information for the proposed amendments to the Low Carbon Fuel Standard (LCFS) and to the Regulation on Commercialization of Alternative Diesel Fuels (ADF).[1]

FHR operates fuel ethanol plants in Iowa, Nebraska, and Georgia as well as a biodiesel plant in Nebraska. We produce a large quantity of ethanol and biodiesel that may be sold within the state of California.

In summary, the proposed addition of **Section 95486.2 Generating and Calculating Credits for ZEV Fueling Infrastructure Pathway** would provide for a regulation that is a significant departure from the current program, whereby LCFS carbon credits issued to support the construction of ZEV fueling infrastructure would not represent actual greenhouse gas emission reductions. As currently constructed, the LCFS regulations provide for real and permanent greenhouse gas emissions reductions, when a transportation fuel with a carbon intensity lower than the annual average carbon intensity requirements is actually used. To be consistent with the current program, LCFS carbon credits should only be provided after low carbon fuels are physically supplied to ZEVs, thereby quantifiably reducing greenhouse gas emissions. In support of this overall comment, FHR provides the following detailed comments:

The proposal to provide LCFS carbon credits for ZEV fueling infrastructure must be included within the Climate Change Scoping Plan and meet the requirements of Health and Safety Code Section 38561.

According to Section 38561(a), the California Air Resources Board (CARB) must prepare and approve a Scoping Plan for achieving the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions from sources or categories of sources of greenhouse gases. California's 2017 Climate Change Scoping Plan does not include the proposal to provide LCFS carbon credits for ZEV fueling infrastructure, and therefore, must be updated.

---

[1] For a variety of reasons, CARB's LCFS and Climate Change Scoping Plan are unlawful and FHR, by submitting these comments, is not suggesting that these actions are lawful.

Furthermore, LCFS carbon credits issued to support ZEV fueling infrastructure must meet the cost-effectiveness requirements within Section 38561(a) and (b). According to Section 38505(d), "cost-effective" or "cost-effectiveness" means the cost per unit of reduced emissions of greenhouse gases. By CARB staff's own admission during the June 11, 2018 workshop, these credits will not represent actual greenhouse gas emission reductions. As a result, any LCFS carbon credits issued by CARB and purchased at any cost by fuel reporting entities to retire carbon deficits for the purposes of compliance would not represent cost-effective greenhouse gas emission reductions.

As part of Scoping Plan requirements within Section 38561(a), CARB is also required to consult with all state agencies to ensure that the greenhouse gas emissions reduction activities to be adopted and implemented are "complementary, nonduplicative, and can be implemented in an efficient and cost-effective manner". Additionally, in Section 38561(c) CARB must consider all relevant information pertaining to greenhouse gas emissions reduction programs in other states, localities, and nations. However, the proposal does not consider if ZEV fueling infrastructure projects have or will also receive funding from other federal, state or local programs, such as the California Cap & Trade Program or from the California Public Utility Commission. As a result, infrastructure projects could receive multiple government subsidies, including the proceeds from LCFS carbon credit sales, that may exceed actual capital costs.

By issuing carbon credits to support ZEV fueling infrastructure, CARB is creating a discriminatory preference for hydrogen and electricity over other low carbon fuels contrary to the equitable treatment requirements of Health and Safety Code Section 38562(b)(1).

CARB has not issued or contemplated the issuance of LCFS carbon credits for other low carbon fuel production or infrastructure investments. With this proposal, CARB is also disregarding the significant capital investments (possibly stranding these assets) already undertaken by other low carbon fuel producers and will create a disincentive for future investments into the production and distribution of other low carbon fuels.

By adopting a regulation to issue LCFS carbon credits for ZEV fueling infrastructure, CARB will not meet the requirements of Health and Safety Code Section 38562(d)(1) that greenhouse gas emission reductions achieved are real and permanent.

Again, by CARB staff's own admission during the June 11, 2018 workshop, these carbon credits will not represent actual greenhouse gas emission reductions. In addition, these carbon credits are proposed to be provided for a period of 15 years for hydrogen refueling and 5 years for electric vehicle charging infrastructure, starting with the quarter following application approval and based upon refueling capacity and station uptime/availability. Although the Summary of the Proposed Modifications indicates that carbon credits will not be provided to stations that provide no throughput, a threshold throughput quantity is not established within the proposed regulations, and infrastructure investors could receive LCFS carbon credits only after dispensing nominal quantities of hydrogen or electricity.

Greenhouse gases and other pollutant emissions during the construction of hydrogen fueling and electric vehicle charging stations should be included within the Environmental Assessment (EA) for this rulemaking, as required by the California Environmental Quality Act (CEQA).

CEQA requires the disclosure of potential environmental impacts and identification of potential mitigation specific to the proposed LCFS regulatory amendments. Since this recent proposal was not comprehended within the draft EA included in the Staff Report, CARB should update the EA as required by 14 CCR Section 15088.5 of the CEQA Guidelines verifying that greenhouse gases and other pollutant emissions from the construction of 200 hydrogen refueling and 10,000 direct current fast electric vehicle charging stations will not cause a significant environmental impact. Otherwise, a decision not to recirculate the EA should be supported by substantial evidence in the administrative record per Section 15088.5(e).

Should you have any questions, please contact FHR's VP, Quality and Compliance, Rita Hardy (rita.hardy@fhr.com, 316/828-7840), or myself, for further information or to schedule a meeting.

Sincerely,

Philip Guillemette

Philip Guillemette
Compliance Manager, Operations
Flint Hills Resources
philip.guillemette@fhr.com, 316/828-8440