



Thomas A. Umenhofer
Vice President

November 11, 2019

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

Re: WSPA Comments on Proposed CARB LCFS Regulation Amendments

Clerk of the Board:

The Western States Petroleum Association (WSPA) appreciates the opportunity to provide the following comments regarding the proposed California Air Resources Board (CARB) Low Carbon Fuel Standard (LCFS) Regulation Amendments, dated October 1, 2019. WSPA is a non-profit trade association that represents companies that explore for, produce, refine, transport, and market petroleum, petroleum products, natural gas and other energy supplies in California and four other western states.

General Comment

WSPA appreciates the recognition that the current Credit Clearance Market (CCM) is not sufficient to respond to structural credit shortages that may occur in the LCFS program. WSPA and its member companies strongly believe that any regulatory program, particularly one that governs such an important part of the California economy, must provide a certain process for obligated parties to comply. We are appreciative that CARB has been receptive to this message and that steps which aim to address this imperative have been proposed in this current round of rulemaking. That being said, WSPA still believes that the proposed regulation amendments fall short by presuming that there could never be a scenario that could require more than 10 million (MM) borrowed credits in the event of a credit shortfall.

Specific Comments

Participation in Credit Clearance Market

WSPA appreciates CARB's deletion of the language in § 95485(c)(4)(B) that would have required the publication of the LCFS credit positions of those parties participating in the CCM. WSPA sees this requirement as anti-competitive and supports its deletion. We also appreciate the addition of language in § 95495(b)(5)(d) to protect those required to purchase credits in the CCM. Purchasers who are required to purchase pledged credits should not be held liable for replacing CCM credits that are later declared invalid.

Borrowed Credits 10 MM Limit

CARB details in § 95483(c)(3)(C) the issuing of "borrowed credits" should there be insufficient credits pledged to the CCM to fully clear outstanding deficits. WSPA appreciates the effort toward improvement on the current CCM design, which contains no mechanism for closing these gaps. Given the inherent imprecision of forecasted credits and deficit quantities in the LCFS, we

continue to believe that the 10 MM credit limit is unnecessary and may not provide a means for compliance. WSPA believes that the provisions in the proposed Regulation Amendments should be adapted to fill any credit gap in any given year once the buffer account and normal CCM mechanisms have provided as many credits into the market as can be made available. This approach eliminates the need to carry a deficit and ensures the program remains liquid, enhancing its stability. In addition, CARB should not limit the provision to a six-year window as proposed in § 95485(c)(3)(C)2.

Source of Borrowed Credits

WSPA believes that the proposed design fails to incentivize other technology developments. While it may help to relieve temporary shortfalls, the proposal should be expanded to additional technologies in order to maintain fuel neutrality and provide a signal to market participants that all technologies delivering emission reductions play an important role in the LCFS. Maintaining the market-based aspect of the LCFS and including additional market participants is essential. Establishing a process for a formal credit approval criteria would allow other credit generators to qualify for credit borrowing.

LCFS Credit Price Cap

CARB proposes to establish a price cap on LCFS credits in § 95487(a)(2)(D). WSPA appreciates the desire indicated by CARB to protect fuel consumers in California by limiting the price of a transaction that can be reported in the LCFS tool. While this provision may provide a signal to the market of a price that CARB desires, such a signal is likely to be lost in the event of a structural LCFS credit shortage.

During the April 5, 2019 CARB LCFS Workshop, this issue was discussed as noted in the WSPA Comment Letter of May 2, 2019. In response to workshop questions, CARB staff appeared to acknowledge that the wide-ranging nature of potential transactions does not lend to the ability to confidently identify the actual LCFS credit price in transactions. Subsequently in the July 31, 2019 CARB LCFS Workshop, CARB staff understandably indicated that they would not be prepared to assess the actual price of an LCFS credit in a fuel transaction. Thus in reality, an LCFS credit cap is illusory.

Further, effective cost containment and achievable targets must go hand-in-hand. A price cap is only helpful if credits are available. The actual market price will be responsive to firm signals, and the certainty of available credits will effectively provide this signal and achieve the result that CARB clearly indicates it wants with this element of the proposed rulemaking.

Compliance Plan

In § 95483(c)(2)(C), CARB proposes to require a written compliance plan be submitted by anyone who participates in the CCM two years in a row. There are several concerns with this requirement. WSPA believes that requiring a party to submit a compliance plan so intimately tied to a sensitive commodity market crosses a confidential business information (CBI) threshold. The proposed compliance plan requirements represent an excessive level of detail that has the potential to affect commercial operations. In particular, the requirement to include “Data records, including written contracts and associated verbal or electronic records, and invoices used to demonstrate actions underway consistent with the submitted plan” [§ 95483(c)(2)(C)(1)(h)] which appears to require the sharing of sensitive commercial communications. This is an inappropriate requirement and should be removed from the proposal.

Further, the requirement that a CCM participant submit a five-year plan for achieving compliance presumes that such a plan is feasible. If participation in the CCM is the result of issues such as a lack of technology breakthroughs, slow vehicle fleet turnover, or feedstock constraints, an individual program participant will not have sufficient influence to change those factors. This will be particularly true if several reporting parties find themselves subject to the CCM, representing a systemic failure of the program to meet its targets.

If CARB is going to require these compliance plans, the requirement should allow for a reporting party to illustrate the barriers to achieving compliance within five years. Additionally, CARB could establish formal procedures for re-evaluating the CI reduction schedule in the event of a significant number of parties being subject to the CCM in a given year. WSPA strongly recommends that CARB eliminate the compliance plan requirement entirely from the proposed rulemaking. However, if CARB continues with its desire for entities to provide such a market sensitive compliance plan with the associated risk of inadvertently disclosing CBI, it would indeed be imperative that these are maintained with the strictest of confidentiality and only available to select CARB staff with very tight controls.

WSPA appreciates the opportunity to provide feedback on this important issue. If you have any questions, please contact me at (805) 701-9142 or via email at tom@wspa.org.

Sincerely,



Cc: Catherine Reheis-Boyd – WSPA