



February 17, 2015

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

Electronic Submittal

RE: CARB Low Carbon Fuel Standard Re-Adoption, February 19<sup>th</sup> Hearing

Dear Chairwoman Nichols and Honorable Board Members:

Tesoro appreciates the opportunity to comment on the proposed re-adoption of the Low Carbon fuel Standard (LCFS). Tesoro reliably provides a substantial volume of clean gasoline and diesel to the California market and has a tremendous interest in the implementation of the LCFS and its impacts on that reliable fuel supply.

We understand that the Western States Petroleum Association has provided comments on this re-adoption as well. Tesoro supports those comments, but wishes to focus on a few specific aspects of the proposed regulation.

### **Refinery Investment Credits**

Tesoro appreciates the inclusion of Section 95489 (f) – Refinery Investment Credit that will allow a refinery to receive credit for reducing greenhouse gas (GHG) emissions from its facility. We believe such regulatory incentives will lead to overall statewide GHG emission reductions while concurrently lower carbon intensity of California transportation fuels. Fundamentally, such a provision makes good sense in the context of a performance and life cycle based standard. However, we believe the highly complex qualification criteria added to the proposed regulation will make it very difficult or impossible for emission reduction projects to overcome the hurdles and be qualified for the credits. Tesoro recommends the proposed regulation be modified to address the following concerns:

1. **The regulation should be cost neutral related to investment.**

The objective of the proposed provision should be to provide sufficient incentives for refineries to implement emission reduction projects regardless of project costs. Innovations can come in many different forms. Some projects may require physical modification, while other projects may simply require a change in refining process or method of operations. The cost of implementing these projects and air quality permits requirements may vary significantly. We suggest the proposed regulation define capital investment project as a

project to improve energy efficiency, or reduce GHG emissions through physical modification, change in refining process or method of operations at a refinery.

2. At a minimum, projects that demonstrate GHG emission reductions or construction beginning on or after January 1, 2015 should be eligible for credits.

During the workshop process, Tesoro advocated that any projects completed since 2010 achieving real, quantifiable and verifiable reductions should be eligible for credits in years following adoption of such a provision. Because 2010 is the baseline year for the LCFS, Tesoro still believes that such projects result in valid credits utilizing the lifecycle approach promoted by the LCFS:

Because CARB has been reluctant to make this change, Tesoro requests that CARB revisit the requirement that eligible projects must not have submitted permit applications prior to January 1<sup>st</sup>, 2015. Many emission reduction projects requiring air quality permits may take up to two years to permit due to various regulatory requirements. For this reason, refineries may choose to submit applications for authority to construct early in the process concurrent with internal feasibility evaluation to ensure construction can begin on schedule. Without being able to take advantage of refinery investment credits, some of these projects may not be economically feasible, resulting in missed GHG emission reduction opportunities from projects for which application for authority to construct were submitted prior to January 1, 2015. Tesoro suggests a more appropriate demarcation is a project's construction or implementation date commencing on or after January 1, 2015.

3. The regulation should address the issue of criteria and toxic air contaminants by ensuring that the projects comply with applicable regulations administered by the local air pollution control agencies.

Regulating criteria pollutants and toxic air pollutants to ensure no significant net increase is complex. Refineries that may implement GHG reductions under this proposed regulation are located in the jurisdictions of four of the largest air pollution control agencies with the most stringent New Source Review (NSR), Prevention of Significant Deterioration (PSD), and Toxic Air Contaminants Regulation. These regulations must meet the no backsliding requirements under state law and most regulations were reviewed and approved by the Air Resources Board as part of the State Implementation Plan (SIP) or other air toxic programs. We believe compliance with applicable regulations administered by these local air pollution control agencies should be adequate qualification for these projects.

4. The carbon intensity threshold for investment project should be at 0.05 gCO<sub>2</sub>e/MJ level or below.

Depending on the size of the refinery and the product outputs, it may require GHG emission reduction project in the range of 30,000 to 70,000 metric tons to achieve 0.1 gCO<sub>2</sub>e/MJ reduction in carbon intensity. Consider that the threshold for reporting under this regulation is 10,000 metric tons and the threshold for compliance obligation is 25,000 metric tons, Tesoro suggests the project qualification threshold be eliminated or set at a level below 0.05

gCO<sub>2</sub>e/MJ reduction in carbon intensity. This level or below is a more reasonable level and will provide better incentives for emission reduction projects.

5. Conduct a survey of California refineries to develop a threshold limit for renewable feedstock that is technologically feasible and cost effective.

We are not aware that the requirement to replace petroleum feedstock with a minimum 10% of renewable feedstock is technically achievable in the current refinery setting. We would like to suggest that ARB conduct a survey of California refineries to establish a minimum level that can be achieved by refineries within the state. At a minimum, the eligibility threshold should be set no higher than a GHG reduction threshold equivalent to the 0.05 gCO<sub>2</sub>e/MJ suggested in the prior comment.

6. Clarify and Correct Equations in the Proposed Regulation.

In the equation for credits for diesel and CARBOB on page 119, the term  $E^{XD}_{Renewable}$  should be replaced with the term  $EC^{XD}_{Renewable}$  as defined on page 121.  $Volume^{XD}$  should be clearly defined as the volume of certain products reported to ARB under Subpart Y including coke with a specific conversion rate from ton to barrel.

### Compliance Schedule

CARB's own compliance scenario demonstrates that the LCFS target of a 10% reduction by 2020 is not feasible. Even in the most back-end loaded schedule proposed by CARB, by 2018 the level of banked credits begins to draw down. This means that by 2018 and in the subsequent years, even with ARB's overly optimistic estimates of low CI fuel availability, there are not enough alternative fuels generating credits to offset the deficits generated by ARB's predicted demand for gasoline and diesel. Based on CARB's data, it appears that only a 7% CI reduction is feasible by 2020. The remaining 3% is made up for by credits banked in the early years of the program. While 3% does not sound like much, it constitutes 30% of overall program compliance towards the 2020 goal and amounts to three times as many credits as have been required on an annual basis to date. The program is simply not feasible in the timeframe contemplated by CARB and not sustainable in the years beyond. This fact necessitates a different approach.

One solution to this issue is to understand what is feasible without banked credits and set a 2020 target (and intervening years) that is consistent with the availability of the fuel. The quantities of excess credits accumulated to date from over-compliance in the early years of the program should be viewed as providing compliance flexibility to obligated parties when the reduction obligation increases or when unforeseen incidents occur impacting low CI fuel availability. In fact, this could obviate the need for the Cost Containment Measure CARB has proposed in the amendments.

Coupled with a more feasible compliance schedule, CARB staff should annually review the status of alternative fuel developments, along with all the underlying assumptions to that compliance schedule and provide a report to the board. This way, the board can

more frequently assess the volumes of alternative fuels and related credits compared to the projections that were relied upon in setting the schedule and then provide direction to staff regarding program and schedule changes.

**Cost Containment Mechanism**

Tesoro wants to emphasize that a cost containment mechanism, no matter how well designed, is not a substitute for ensuring a feasible compliance path in the regulation (as discussed above). Such mechanisms have their place to deal with short-term, unforeseen circumstances that can adversely impact fuel availability on consumer cost. With this in mind, Tesoro requests that CARB study the pros and cons of allowing obligated parties in the LCFS program to cover their reduction obligation with allowances and/or offsets from the Cap & Trade program as an additional cost containment option.

Tesoro appreciates the opportunity to submit comments on the draft LCFS regulation. Please contact me at (916) 462-5062 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Miles Heller', with a long horizontal line extending to the right.

Miles Heller  
Director, CA Fuels and Regulatory Affairs