

**STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
AIR RESOURCES BOARD**

**Comments of AmeriGas Propane, L.P.  
to Proposed Amendments to the  
Regulation for the Mandatory Reporting of Greenhouse Gas Emissions**

Dated: September 12, 2016

## **1. Introduction**

AmeriGas Propane, L.P. (“AmeriGas”) is pleased to provide the following comments in response to the California Air Resources Board’s (“ARB”) proposed amendments to California’s existing Regulation for the Mandatory Reporting of Greenhouse Gas Emissions<sup>1</sup> (“MRR”). AmeriGas’s comments are provided in response to ARB’s July 5, 2016, Notice of Public Hearing (“Notice”), which contained an invitation for interested members of the public to submit written comments in response to the proposed amendments.<sup>2</sup>

AmeriGas is a nationwide distributor of liquefied petroleum gas (“LPG”) with extensive operations in California and is subject to the MRR as a California consignee of imported LPG.<sup>3</sup> ARB’s Initial Statement of Reasons for Rulemaking (“Staff Report”) and the recommended amendments reflected in the Proposed Regulation Order<sup>4</sup> indicate that one of the proposed amendments to the MRR is designed to change the point of regulation for imported LPG from the consignee to the importer.<sup>5</sup> AmeriGas offers the following comments in response to that particular proposed amendment.

## **2. AmeriGas Supports Changing the Point of Regulation to LPG Importers**

AmeriGas supports the ARB’s proposed amendments to the MRR<sup>6</sup> in furtherance of maintaining a robust and accurate greenhouse gas reporting program. AmeriGas agrees with the ARB’s statement that a modification to the point of regulation for importers of LPG is needed in

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<sup>1</sup> 17 CCR § 95100, et seq. The MRR was developed pursuant to the Global Warming Solutions Act of 2006 (“AB 32”).

<sup>2</sup> Notice at 1.

<sup>3</sup> See 17 CCR § 95101(c)(5).

<sup>4</sup> Exhibit A to Staff Report.

<sup>5</sup> Staff Report at 3, 5.

<sup>6</sup> Notice at 5.

order to ensure more complete emissions coverage in the reporting program for LPG.<sup>7</sup> There is ambiguity inherent in having the “California consignee,” as that term is currently defined in the MRR, as the point of regulation for LPG importers. The proposed new definition of “importer of fuel” provides improved clarity over the existing definition for “consignee.” AmeriGas notes the importance of AB 32’s statutory requirement to “prevent emissions leakage to the extent feasible”<sup>8</sup> and believes that the proposed amendment is needed in order to address the potential for leakage to arise from LPG distributors reducing their own emissions position below the reporting threshold by disaggregating it among their customers.

### **3. Expansion of the Proposed Definition of “Importer of Fuel” May Be Needed to Fully Prevent System Leakage Created by Disaggregated Emissions Positions**

In addition to clarifying the importer as the point of regulation, ARB should consider further expansion of the definition for LPG importers of fuel to fully prevent leakage via disaggregation. Even under the proposed definition, an available “paper” strategy for LPG distributors would still exist allowing them to disaggregate emissions positions among their customer bases. By simply shifting the contractual point of delivery and transfer of title to the customer from the customer’s California storage tank to a terminal outside of California an opportunistic LPG distributor can disaggregate their emissions position and sidestep being the “importer” and the first entity to take title to the fuel within California.<sup>9</sup> Spread across enough customers (including both LPG end-users and other distributors), such disaggregation can reduce an LPG distributor’s emissions position below the thresholds that trigger MRR and Cap and Trade Program compliance. For example, an opportunistic LPG distributor may arrange to have its California customers take title and delivery of the product across the border in Nevada, with

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<sup>7</sup> Staff Report at 20.

<sup>8</sup> AB 32 § 38562(b)(8) instructs ARB to design its MRR and Cap and Trade regulations in a way that minimizes system “leakage,” which is defined as “a reduction in emission of greenhouse gases within the state that is offset by an increase in emission of greenhouse gases outside the state.” § 38505(j).

<sup>9</sup> Note: In such a scenario, the LPG distributor could still arrange for delivery to the customer’s storage tanks and there would be no practical operational changes resulting from shifting the delivery point. Indeed, many customers might never notice the shift in where they are formally taking title to the LPG.

full knowledge that the customer will be taking the product into California for combustion. In such a scenario, the LPG distributor might argue that a strict interpretation of the proposed definition of an LPG “importer of fuel” makes the *customer* the point of regulation, not the distributor. In order to avoid such behavior similar to the scenario described above, ARB could add language to the proposed definition of “importer of fuel,” specific to LPG importers, to address this type of behavior. For example, such additional language specific to LPG could read as follows:

*If the first entity to hold title to the fuel in California is also the end-user or other distributor of the fuel and is purchasing the fuel outside of California from an importer or distributor that prior to 2015 transferred title to fuel in California upon delivery to such end-users’ or other distributors’ storage tanks then such importer or distributor shall be deemed the “importer of fuel” instead of the end-user or other distributor for the purposes of this subarticle.*

Beyond the additional language to the proposed definitional amendments set forth above, ARB should consider a corresponding revision to the subarticle of the MRR concerning enforcement.<sup>10</sup> Such revision could add language making it an enforceable violation of the MRR or Cap-and-Trade rule to intentionally avoid regulation by disaggregating LPG-related emissions positions in the manner detailed above.

#### **4. Conclusion**

AmeriGas Propane, L.P. is pleased to submit the foregoing comments in response to the Staff Report, Proposed Order, and Notice.

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<sup>10</sup> 17 CCR § 95107.

Respectfully submitted,

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