

April 23, 2018

**VIA ELECTRONIC FILING AND ELECTRONIC MAIL**

Clerk of the Board

Air Resources Board

101 I Street

Sacramento, CA 95814

**Re: Proposed Amendments to the Low Carbon Fuel Standard**

Dear Sir/Madam:

Valero Refining Company California, Ultramar Diamond Shamrock Wilmington Refinery, Valero Marketing and Supply Company, Valero Renewable Fuels and related subsidiaries and affiliates of Valero Energy Corporation (collectively, “Valero”) appreciate this opportunity to provide comments regarding the Air Resource Board’s proposed amendments to the Low Carbon Fuel Standard (LCFS), as proposed on March 6, 2018. Valero owns and operates two refineries in the state of California, with a combined throughput capacity of over 305,000 barrels per day, and further markets products on a retail and wholesale basis through an extensive bulk storage and pipeline distribution system.

Valero has significant concerns that the proposed modifications to the LCFS program run counter to the purpose of the program and the underlying statute. The Agency is ostensibly proposing to amend the LCFS program regulation to reflect actual current market penetration of alternative fuels and provide pathways to grow the use of these fuels over the life of the program in an effort to achieve the 2030 reduction target. Many of the proposed amendments appear to undermine the quality control systems and overall compliance mechanisms in an effort to promote the growth of credits produced by alternative fuels in order to provide liquidity and achieve program feasibility. The proposed structure of the amendments will ultimately discourage refiners from lowering the carbon intensity of the fuels they produce.

Should the Agency proceed with modifying the LCFS as proposed, Valero supports and incorporates by reference the joint comments submitted by the Western States Petroleum Association on April 18, 2018 and April 23, 2018, to the extent they do not conflict with our position stated herein. In addition, we are providing comments on specific provisions in the proposal as follows:

* Refinery Investment Credit Program
* Credit generation by electric vehicle charging and/or hydrogen production
* Source specific feedstock requirements
* Third party verification requirements
* Appealable decisions
* Reporting requirements for change of ownership
* Clarification for various sections

**Refinery Investment Credit Program**

The proposed revisions to the Refinery Investment Credit Program provide greater flexibility and credit generation potential for renewable fuel and Carbon Capture and Sequestration (CCS) projects than for industrial process improvement projects, despite the fact that all projects result in reduced greenhouse gas emissions. Process improvement investment project credits are limited to a maximum of 5% of an entity’s annual compliance obligation and expire January 1, 2025. These restrictions will mute the economic benefit of any process improvement project being considered. Projects involving carbon capture and sequestration, use of renewable or low CI electricity or lower CI process energy and replacement of high carbon fossil energy input with lower carbon grid electricity are not subject to the same restrictions as process improvement projects. There is no evident basis for this arbitrary limitation on the credit generation potential of process improvement projects, and such a limitation would frustrate the goals of the LCFS program.

**Electric Vehicle Credit generation**

Several new credit generation pathways and renewable energy accounting practices are proposed to facilitate credit generation and investment, largely in electricity fuel pathways:

* + Renewable energy sources no longer have to be collocated with ZEV charging in an effort to incentivize investment in renewable energy generation. In order to qualify for the low CI renewable energy, the ZEV charging station must only be located in the same balancing authority where the renewable fuel is generated.
  + Credits for metered and non-metered residential charging have been bifurcated into base and incremental credits. The Electrical Distribution Utility (EDU) can generate base credits (i.e. credits calculated using the Lookup Table CI for electricity-grid) leaving other entities or the EDU to generate incremental credits. Incremental credits are calculated using the difference between the grid electricity CI and the low energy CI or time of use CI.
  + Time of use (TOU) carbon intensities are designed to encourage EV charging during periods of renewable energy curtailment. Carbon intensity values fluctuate based on the hour of day and season.
  + Inclusion of electric transportation refrigeration units and electric motorcycles

The addition of these pathways and the associated accountability underpin a number of significant problems with LCFS implementation:

1. These pathways are not subject to the same level of review, reporting or validation as Tier 1 or 2 fuel pathways. Proposed accounting mechanisms for certain proposed pathways appear onerous and difficult to verify when the EV charging occurred and the quantity of “fuel” dispensed during a discrete amount of time, leaving regulated parties exposed to purchasing fraudulent credits. For instance, non-metered electric vehicle charging can produce incremental credits using a time-of-use pathway based on *estimated* electricity use of non-metered residential plug-in vehicles within a given EDU service area. Credit generators do not have to demonstrate that the charging occurred during a period when renewable energy would have been curtailed. The potential for fraud in this scenario is significant.
2. There is a risk of double counting renewable energy when calculating electricity pathways under Section 95488.5(d) and (e). Electric grid and TOU pathways are calculated based on the energy resource mix reported to the California Energy Commission. ARB has proposed fuel pathways for EV charging and H2 production using renewable and/or low CI energy that is not collocated with the consumer. Credit generators can apply for these pathways provided the renewable electricity is supplied to the grid within a California Balancing Authority and the credit generating entity can demonstrate via contract or invoice that the renewable energy was provided for electric vehicle charging or hydrogen production. The volume of renewable energy provided directly to end users should be removed from the resource mix of renewable energy supplied to the grid prior to calculating the carbon intensity of the grid electricity.
3. Concerning the broader goals of the LCFS program, the proposed additional electric pathways are borderline *de minimis* in their impacts to meeting the requirements of Executive Order S-01-07. Given the significant bureaucratic burdens associated with each identified pathway, coupled with the complications described above that undermine the effectiveness of the program, these efforts appear to be less a meaningful step towards the state’s goals than a desperate attempt to provide incremental credits to keep a marginal program viable. The questionable validity of these electric pathways under E.O. S-01-07 aside, CARB should instead focus on addressing the viability of producing LCFS-compliant fuels, rather than setting untenable regulatory goals, offset by unregulated credit generation.

**Source Specific Feedstock Product Transfer Documentation**

Proposed rule language requires product transfer documentation for biodiesel and renewable diesel feedstocks from the point of origin to the fuel processing plant.  ARB has not demonstrated the necessity of requiring this level of documentation from fuel providers. Processing plants receive a bill of lading for each shipment. However, these documents do not revert back to the point of origin for the feedstock. Several points of origin can be used to supply product for a single rail car or truck, making it virtually impossible to tie the volume back to the exact source because the volume will be comingled.  Many feedstock generators are very small and disparate but collectively provide sufficient material for large-scale processing. Tracking exact points of origin for each feedstock purchase from these many small providers will require the development and deployment of an entirely new system that will be extremely onerous for the suppliers and producers with very little benefit to the integrity of the program. The proposed documentation will thus incentivizing them to consider alternate low carbon markets to avoid the documentation complexity of the LCFS program.

**Third Party Verification**

Section 95488.8- *Fuel Pathway Application Requirements Applying to All Classifications* contains a subsection which defines confidential business information for the purposes of the fuel pathway application and carbon intensity determination. However, this language does not extend to the third party verifications required for annual fuel pathway reporting, quarterly fuel transaction reporting, crude oil quarterly and annual volume reporting, project review or low complexity/low energy use refinery reporting. These sections lack provisions ensuring that proprietary data is not taken by a third party and/or preventing the third party verifier from inadvertently providing confidential information to the state. Release of operational data, process design and technology employed, feedstock procurement, and accounting practices could result in entities losing a competitive advantage.

**Appealable Decisions**

CARB has proposed that the following decisions by the Executive Officer are not appealable: classification of a fuel pathway, scientific defensibility demonstration for Tier 2 pathway applications, substantiality requirements for multiple pathways for the same feedstock-fuel combination or Tier 1 pathways using innovative methods, and use of temporary fuel pathways. Fuel pathway applicants would have no recourse to provide additional data to support an applicant’s position prior to the Executive Officer making a permanent final decision. Furthermore, the Executive Officer is not obligated to notify the applicant in writing of the results of the evaluation process. CARB cannot circumvent due process in an effort to minimize administrative burdens, or provide the Executive Officer with absolute authority over scientifically-supported discourse in favor of political expediency. We contend this provision should be removed from the proposal.

**Reporting Requirements for Change of Ownership**

Section 95483.3 requires the current owner/operator to assume the compliance liability for the previous owner/operator and submit a single report covering the entire compliance period. The current operator must certify compliance for a portion of the compliance period where they did not have access to, influence over, or knowledge concerning compliance activities as they were not the owner. For these instances, each owner should be allowed to submit compliance reports reflecting each party’s period of ownership.

**Clarification for Various Sections**

* Missing data Section 95488.8(k) requires entities to submit an alternate method of reporting for approval by the Executive Officer. However, the regulation does not stipulate what is considered missing data. Some instruments can obtain and record data on a frequent interval. What is the maximum percentage of time a meter can be offline before it is considered missing data?
* Sources included in “Other mobile freight and goods movement equipment”. Is the cargo handling equipment identified in the California Sustainable Freight Action Plan the intended equipment to be included in the LCFS program? This includes trucks, locomotives, transport refrigeration units, cargo equipment, commercial harbor craft, and airport ground service equipment.
* Table 4 does not contain an Energy Economy Ratio (EER) for “other mobile freight and goods movement equipment”. This value is necessary to calculate the credit generation for these sources.

Valero is committed to working with the Agency to meet its goals and objectives under the Low Carbon Fuels Standard regulation as it relates to growing the renewable fuels market in ways that are reasonable, scientifically sound, technically feasible, and cost effective. We thank you for your consideration of these comments and we look forward to further discussion on this issue. Please contact me (210) 345-2438 should you have any questions.

Sincerely,

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