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California Air Resources Board
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Re: WSPA Comments on Third 15-Day Low Carbon Fuel Standard Amendments Package

The Western States Petroleum Association (WSPA) appreciates the opportunity to comment on the California Air Resources Board's (CARB) proposed third "15-day" Low Carbon Fuel Standard (LCFS) program amendments released on April 4, 2025. WSPA is a non-profit trade association representing companies that import and export, produce, refine, transport, and market petroleum, petroleum products, alternative fuels, natural gas, and other energy supplies in California and four other western states, and has actively participated in air quality planning issues for over 30 years.

WSPA is proud of the technological advancements our member companies have made to bring more alternative fuels and electricity to California's transportation market since LCFS came into effect. We believe a well-designed LCFS program that protects a diverse energy portfolio is essential to support a successful lower-carbon fuels market and offers Californians a reliable supply of affordable fuels. It remains essential for CARB to incorporate clearly defined and achievable final revisions that align with statutory requirements.

In light of the Office of Administrative Law's (OAL) disapproval of the previous rulemaking package,¹ WSPA urges CARB to issue implementation guidance – including a workshop or webinar – to address potential delays in implementation of the revised program requirements and to solicit additional stakeholder feedback on changes made to address this disapproval decision.

As detailed below, WSPA highlights the following concerns with the third 15-day amendments:

- CARB should extend compliance and reporting deadlines to account for delays associated with OAL's disapproval;
- CARB should remove provisions categorically excluding new fuel pathway applications for biomass-based diesel;
- CARB should retain provisions allowing it to update data and modeling for "Tier 1 CI Calculators" between LCFS rulemakings;
- CARB should evaluate further revisions to its Land Use Change provisions to account for OAL concerns and to provide for stakeholder feedback;
- CARB should retain a technology-neutral approach to the LCFS program by removing restrictions for certain hydrogen-based fuels;
- CARB should clarify requirements for credit true-ups; and
- CARB should exempt aviation gasoline from program requirements.

WSPA has been engaged throughout this LCFS rulemaking process and previously submitted comments in response to prior workshops, the three prior sets of proposed regulatory updates, and the recirculated environmental analysis. Those comments are incorporated by reference and

¹ State of California Office of Administrative Law's Decision of Disapproval (File Number 2025-0103-01S), February 25, 2025, at: <https://oal.ca.gov/wp-content/uploads/sites/166/2025/02/LINDSEY-2025-0103-01S.pdf>

are also attached.^{2,3,4,5,6,7,8,9,10,11,12} California faces significant challenges in meeting its ambitious climate goals through various electrification programs across the transportation, building, and industrial sectors, including barriers to implementation, uncertainties driven by changing Federal policies (including CARB's recent withdrawal of waivers to implement various Zero Emission Vehicle (ZEV) requirements across the transportation sector), and limited State funding. A well-devised LCFS program can help mitigate these challenges by using a market-based, technology-neutral approach that reduces burdens in light of the ongoing affordability challenges facing many Californians. As WSPA previously emphasized, the proposed revisions to the LCFS program instead exacerbate these existing challenges by imposing technologically infeasible mandates and non-cost-effective requirements, which will likely create greater market volatility and higher prices, disproportionately impacting economically disadvantaged individuals.

1. CARB Should Delay Forthcoming Compliance Deadlines in Response to Implementation Delays Associated with OAL's Decision of Disapproval.

OAL issued a disapproval of CARB's LCFS Program Amendments on February 25, 2025, which has delayed the effective date of these amendments by nearly six months. This unexpected – and significant – delay requires corresponding extensions of forthcoming compliance deadlines in order to allow regulated entities sufficient time to meet new program requirements. WSPA urges CARB to adjust any future reporting provisions in accordance with the forthcoming effective date of the revised regulation. In particular, WSPA recommends the following updates:

- CI Benchmarks:** WSPA reminds CARB that they should not move the new 2025 Carbon Intensity (CI) target back to the start of this year. Indeed, in CARB's Notice of Public Availability for the first set of 15-day changes,¹³ CARB explicitly stated that "[t]he proposed compliance target for 2025 will take effect for Quarter 1, 2025 reporting *if* the Proposed Amendments *become effective prior to April 1, 2025*, which marks the beginning of the Quarter 1 2025 reporting period." WSPA recommends that the new benchmarks take effect only after the effective date of the rule, i.e. July 1, 2025. In accordance with the Market Notice posted by CARB after OAL's disapproval,¹⁴ regulated entities have relied on the currently effective LCFS regulation for activities occurring in Q1 and Q2 of 2025. In addition to being a potential violation of due process principles under the U.S. and California Constitutions, retroactive CI targets would likely result in retroactive impacts to fuel transactions which have already occurred, substantial administrative burden, and quarterly reporting challenges.
- Sustainability Criteria:** The sustainability criteria are benchmarked upon a still-unknown effective date. WSPA recommends that compliance with these provisions be delayed by six months or one full calendar year to account for the delay caused by OAL's disapproval, given that the window to prepare for such changes has been significantly shortened. Furthermore,

² WSPA, "WSPA Comments on CARB Workshop to Discuss Potential Changes to the LCFS," August 8, 2022.

³ WSPA, "WSPA Comments on the August 18th CARB Workshop to Discuss Potential Changes to the LCFS," September 19, 2022.

⁴ WSPA, "WSPA Comments on the November 9th CARB Workshop regarding Potential Changes to LCFS," December 21, 2022.

⁵ WSPA, "WSPA Comments on CARB Preliminary Discussion Draft of Potential Low Carbon Fuel Standard Regulation Amendments and February 22, 2023 LCFS Workshop," March 15, 2023.

⁶ WSPA, "WSPA Comments on CARB's Proposed Low Carbon Fuel Standard Auto-Acceleration Mechanism and May 23, 2023 Workshop," June 6, 2023.

⁷ WSPA, "WSPA Comments on the Low Carbon Fuel Standard Modeling Updates Workshop," September 12, 2023.

⁸ WSPA, "WSPA Comments on Proposed 2024 Low Carbon Fuels Standard Amendments," February 20, 2024.

⁹ WSPA, "WSPA Comments on April 10, 2024, Low Carbon Fuel Standard Workshop," May 10, 2024.

¹⁰ WSPA, "WSPA Comments on 15-Day Low Carbon Fuel Standard (LCFS) Amendments Package," August 27, 2024.

¹¹ WSPA, "WSPA Comments on LCFS Recirculated Draft Environmental Impact Analysis," September 30, 2024.

¹² WSPA, "WSPA's Second LCFS 15-Day Comments," October 18, 2024.

¹³ See CARB's "Notice of Public Availability of Modified Text and Availability of Additional Documents and/or Information, Proposed Low Carbon Fuel Standard Amendments," August 12, 2024, at page 5 [emphasis added]: https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2024/lcfs2024/15day_notice.pdf

¹⁴ See CARB's "Information Regarding Low Carbon Fuel Standard Regulation Updates," February 26, 2025: https://ww2.arb.ca.gov/sites/default/files/2025-02/LCFS%20OAL%20Market%20Notice_2.pdf

WSPA recommends that CARB explicitly clarify that the new attestation requirements are only effective once the amended regulation is made effective by OAL. WSPA urges CARB to delay the effective date for these requirements to January 1, 2026, to avoid compliance risk and to allow sufficient time for regulated entities to complete these verifications, given the significant burden associated with reviewing performance under two different sets of procedures. Section 95488.9(g)(5)(C)(1) clarifies that fuel pathway applicants, in addition to fuel pathway holders, must maintain attestation letters certifying compliance with the revised sustainability requirements. Under the current provision, pathway applicants would essentially be required to immediately demonstrate compliance based on the delays in finalizing the program revisions, even though CARB has not currently issued any implementation guidance. The attestation requirements will require substantial time to implement – which CARB acknowledges by giving pathway holders until January 1, 2026 – and pathway applicants should not be required to maintain attestation letters any earlier than fuel pathway holders.

- **Reporting Requirements:** §95488(c) updated the transition period for fuel pathway holders to use CA-GREET 4.0 for new pathway applications from January 1, 2025 (as was adopted in November 2024) to the yet-unknown effective date of the final amendments. For such provisions that were otherwise to have become effective on January 1, CARB should provide a reasonable transition period – such as transitioning new pathway applications from CA-GREET 3.0 to CA-GREET 4.0. A transition schedule described in a table or plain language would provide program participants with important clarity if they are considering a fuel pathway submission in 2025.

2. CARB Should Remove the Categorical Exclusion of New Fuel Pathway Applications for Biomass-Based Diesel.

OAL's disapproval identified concerns regarding the Executive Officer's (EO) discretion to decline new pathway applications for biomass-based diesel if the number of unique Class 3-8 ZEVs reported or registered in California exceeds 132,000 ZEVs or near-zero emission vehicles (NZEV) on December 31, 2029, in accordance with §95488(d). CARB is proposing to address this concern by removing the EO's discretion and instead stating that it "shall not" accept new applications if the conditions in §95488(d) are met. This creates a risk of limiting the EO's flexibility to respond appropriately to future conditions that are not foreseeable at this time and may limit innovative technologies that could have significant greenhouse gas (GHG) reduction benefits both in California and in other LCFS markets where ZEV/NZEVs are not as prevalent. This rigid approach is fundamentally inconsistent with LCFS's foundational principles of using market-based mechanisms to incentivize emission reductions in a technology-neutral manner. Further, by constraining potential pathway applications, CARB is failing to achieve the "maximum technologically feasible and cost-effective greenhouse gas emission reductions" in accordance with California Health & Safety Code (HSC) §38560 and is foregoing new fuel pathways which may be more efficient and lower CI than existing pathways. This flexibility is particularly important for developing diesel substitute products as older fuel pathways may be retired. A technology-neutral approach would better align with CARB's rulemaking obligations under Gov. Code §11346.2(b)(4)(A), which requires CARB to consider performance standards as an alternative to mandating the use of specific technologies or equipment, or prescribing specific actions or procedures.

WSPA requests that §95488(d) be stricken in its entirety. If there are in fact a critical mass of Class 3-8 ZEV/NZEVs in the market in the future, the demand of biomass-based diesel will naturally drop, with no need to preempt the review of fuel pathway applications.

3. CARB Should Retain the Ability to Create New, and Update Existing, Tier 1 CI Calculators Between LCFS Rulemakings.

CARB's Third Notification of Public Availability of Modified Text and Availability of Additional Documents and Information indicates that §95488.3(b)(9) is "unnecessary." However, this section provides important flexibility for CARB to modify the LCFS Tier 1 Calculators between rulemakings – especially if errors are identified – as data availability and modeling methodologies are continuously updated and improved for new and existing feedstocks. Without the ability to create new, and update existing, Tier 1 CI calculators, or correct incorrect or out-of-date data, feedstock sourcing will suffer – leading to inefficiencies and higher costs. Striking §95488.3(b)(9) eliminates an opportunity for the Executive Officer to approve new and updated Tier 1 CI calculators between rulemakings.

4. CARB Should Evaluate Additional Revisions to the Proposed Land Use Change (LUC) Provisions to Address OAL's Concerns.

OAL's disapproval identified various concerns with the proposed revisions to CARB's determination of LUC values in accordance with §95488.3(d), including a lack of clarity for certain key terms and failure to respond to comments. While CARB is proposing revisions to partially address these concerns, WSPA urges CARB to evaluate additional revisions in order to sufficiently respond to OAL's disapproval:

- **Clarifying Appropriate Scope of Underlying Data:** CARB has endeavored to define certain terms that OAL determined were vague, such as "satellite-based empirical estimates of land cover change" and "empirical data on biomass feedstock yields." However, these revisions do not provide further clarity on which estimates, datasets, and peer-reviewed research articles or reports the Executive Officer would utilize in making a LUC determination. There is significant debate in the scientific community about the proper methods of measuring land use change in general, and as related to renewable fuels programs in particular. As such, the EO must have clear guidance on what resources to utilize. WSPA urges CARB to rely on the most recently available data in making LUC determinations. In addition, WSPA urges CARB to allow for stakeholder feedback on these resources by making information the EO is proposing to rely upon publicly available and providing for a public notice and comment period. This approach would better align with CARB's typical process for soliciting feedback on data informing its various assumptions about fuels, feedstocks, and pathway applications.
- **Public Oversight Mechanism:** OAL's disapproval expressed concern that CARB did not address several comments related to the LUC revisions, including CARB's failure to provide a mechanism for public oversight and involvement. Rather than address this concern, CARB's proposed revisions have only further solidified the sole discretion in the hands of the EO.
- **Novel Pathways:** WSPA members are concerned by the language in §95488.3(d), which now states that the Executive Officer "shall calculate a conservative LUC value" for pathways not represented in Table 6. Applying a conservative LUC factor for novel pathways without any stated cap or percentage in addition to the calculated score may lead to inaccurate or unrepresentative LUC determinations for these pathways. Additionally, CARB's proposed revisions remove any ability for the fuel applicant to participate or provide feedback in determining LUC scores. WSPA recommends that CARB clarify what a conservative LUC score would be relative to a non-conservative score to ensure there is not an excessive CI burden placed on novel pathways. In addition, WSPA requests that the biomass sustainability requirements guidance document be updated shortly following publication of the final LCFS regulation to clarify the iterative relationship between CARB staff and novel fuel pathway applicants to ensure that a fair and accurate LUC calculation process is undertaken.

- **Scope of Determinations:** CARB's proposed revisions do not specify whether the new LUC value established by the EO would be specific to an individual fuel pathway applicant or if it would be added to the table such that other fuel pathway applicants may take advantage of the new LUC value, should it meet their needs. WSPA is concerned that this lack of clarity will cause future implementation challenges.
- **Timing of Determinations:** Given the complexity of calculating LUC scores, there is a real concern that there may be an excessive delay to arrive at a LUC determination. WSPA recommends that CARB include a timing component to the LUC calculations.

5. CARB Must Ensure That the LCFS Revisions Accurately Account for Hydrogen Production CI Scores.

WSPA had previously expressed concerns that the second proposed 15-day amendments would effectively ban LCFS from crediting hydrogen produced using fossil natural gas as a feedstock and assign any volumes of such hydrogen the default ultra-low sulfur diesel (ULSD) CI beginning in 2031. This constraint ran counter to CARB's 2022 Scoping Plan Update, as hydrogen must play a critical role in achieving California's ambitious carbon neutrality by 2045 goal. Yet the third 15-day amendments retain the proposed use of the ULSD CI factor regardless of technological advancements that reduce the CI of fossil-based hydrogen: §95482(h) would require qualifying hydrogen beginning in 2030 to be from 80% renewables, hydrogen with carbon capture, utilization and sequestration technology, or a combination thereof (increasing to 100% in 2035) – or be assigned a ULSD CI from Table 7-1. Replacing a calculated hydrogen CI with the ULSD CI lacks a scientific basis and arbitrarily penalizes fossil-based hydrogen, foregoing potential GHG emissions reductions. Similarly, CARB's proposal to apply an Energy Economy Ratio (EER) value of "1" for hydrogen technologies that go into fuel cells that have an EER value greater than 1 artificially gives preferential treatment to certain technologies. Traditional hydrogen is projected to become a deficit generator under these proposed revisions, even though it represents a lower-carbon alternative to ULSD. By constraining production eligibility, CARB is failing to achieve the "maximum technologically feasible and cost-effective greenhouse gas emission reductions" in accordance with HSC §38560. A technology-neutral approach would better align with CARB's rulemaking obligations under Gov. Code §11346.2(b)(4)(A), which requires CARB to consider performance standards as an alternative to mandating the use of specific technologies or equipment, or prescribing specific actions or procedures. Rather than artificially lowering the CI score of traditional hydrogen or prescribing specific technologies for participation, the LCFS should continue to allow hydrogen to participate based on a calculated, science-based CI score.

6. CARB Should Clarify the Role of the Margin of Safety in Assessing Credit True Ups.

CARB is proposing to revise §95488.10(b) to remove the Executive Officer's discretionary authority to perform credit true ups after an annual verification, and instead base credit true ups on "the previously certified CI, including any margin of safety, that was used for credit generation during the compliance year." This language is ambiguous and unclear. WSPA requests that CARB clarify whether the "margin of safety" newly referenced is meant to mean that a regulated entity must first exceed that margin and then only receives credit above that, or if that newly referenced margin is part of the difference that would be awarded – and provide example scenarios for regulated entities.

7. The Program Revisions Should Exempt Aviation Gasoline.

WSPA urges CARB to revise §95482(c)(2) to exempt both jet fuel and aviation gasoline, rather than just jet fuel. CARB previously proposed to include intrastate jet fuel in the revised regulations, but later removed this provision. At that time, staff informed WSPA that "aviation

gasoline” should *not* be stricken from this exemption. Consistent with this interpretation, WSPA requests that aviation gasoline be expressly listed as an exempted fuel. Currently, the rule defines “aviation gasoline” in §95481 but does not make use of that definition.

8. Stakeholders Should Be Notified of Certification System Modification, Revocation, or Approval.

Section 95488.9(g)(8)(K) states that affected certification systems will be notified within seven days of modification, revocation, or approval. WSPA requests that regulated entities are also notified of changes to a certification system’s status within a timely manner.

9. Specified Sourced Feedstocks Not Intentionally Produced.

CARB should exempt Distiller’s Corn Oil (DCO) from the reference in §95488.8(g)(1)(D)(3)(e), because DCO is a co-product of an ethanol plant, so it could be construed as “intentionally produced.”

WSPA appreciates the opportunity to provide these comments.

Sincerely,



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