



Western States Petroleum Association
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Chief Operating Officer and Chief of Staff

September 3, 2008

Bob Fletcher, Division Chief
Stationary Source Division
California Air Resources Board
P.O. Box 2815
Sacramento, CA 95812
Via e-mail to rfletche@arb.ca.gov

Subject: **WSPA Comments Regarding ARB's Proposal to Adopt a Low Carbon Fuel Standard (LCFS)**

Dear Mr. Fletcher:

The Western States Petroleum Association (WSPA) is submitting the following comments on the ARB's proposal to adopt a LCFS to supplement our general comments on ARB's Scoping Plan (dated August 1, 2008).

WSPA is a non-profit trade association representing twenty-seven companies that explore for, produce, refine, transport, and market petroleum, petroleum products, and natural gas in six western states – California, Arizona, Nevada, Oregon, Washington, and Hawaii. WSPA members with operations in California and other western states will be substantially affected by the ARB's proposed Low Carbon Fuel Standard.

In our general Scoping Plan comments, we urged ARB to ensure that: 1) all AB 32 regulations and technologies are technologically feasible and well-supported by the record; 2) all AB 32 programs are evaluated and demonstrated to be cost-effective; 3) all AB 32 regulations and programs harmonize with whatever federal climate program is ultimately adopted; and, 4) all AB 32 regulations and programs harmonize with California and federal legal requirements.

Additionally, AB 32 requires ARB to coordinate with state agencies and consult with industry sectors, business, groups, and other stakeholders. Our comments also apply to the proposed LCFS, as further explained in this letter.

The ARB's proposed LCFS is clearly subject to the procedural and substantive requirements of AB 32 codified in Division 25.5 of the Health & Safety Code. In addition, Division 26 of the Health & Safety Code applies to ARB's adoption of any "standard or regulation relating to motor vehicle fuel specifications" such as the LCFS.

Thus, to adopt regulations establishing a LCFS, ARB must comply with all the applicable provisions of both Divisions 25.5 and 26 of the Health & Safety Code. ARB should also harmonize its LCFS with applicable federal fuel requirements.

Specifically, in addition to the requirements of AB 32, ARB should comply with the following requirements in developing and adopting the LCFS:

- Fuel Regulations Under Health & Safety Code § 43013.
 - This is ARB's general authority for all fuel regulations, including the LCFS. ARB has followed § 43013 for all fuel regulations for many years and it applies to ARB's proposed LCFS as well.

Most recently, ARB followed § 43013 in adopting the 2007 Amendments to the Phase 3 Reformulated Gasoline Regulation and should follow it for the LCFS as well.
 - Under Health & Safety Code § 43013, ARB may not “adopt or implement motor vehicle emission standards, in-use performance standards, and motor vehicle fuel specifications for the control of air contaminants and sources of air pollution” unless the ARB finds them necessary, cost effective, and technologically feasible. Cost effectiveness and technological feasibility are distinct inquiries requiring separate treatment under § 43013.

Under § 43013, for example, determining technological feasibility involves analyzing the expected availability, effectiveness, reliability, and safety of proposed technologies. All of these criteria apply to ARB's development and adoption of the LCFS.
 - Under Health and Safety Code § 43013, ARB must determine the technological feasibility and effectiveness “based on a preponderance of scientific and engineering data in the record.” Concerning the life cycle analysis and GHG emissions of low carbon fuels versus conventional fuels there is currently no preponderance of scientific and engineering data.
 - Also under § 43013, ARB must undertake an economic analysis quantitatively documenting significant impacts of the LCFS upon segments of the economy.

ARB must also consult with public or private entities significantly impacted by the LCFS such as vehicle manufacturers, distributors and users to identify actions necessary to ensure consumer acceptance, product availability, acceptable performance, and equipment reliability. This analysis and procedure is essential for a major fuel regulation like the LCFS.
- Multimedia Evaluations of Fuel Regulations.
 - The legislature requires multimedia evaluations in order to assess the full environmental impact of any proposed fuel regulations across all media: air, water, and soil. Procedurally, under Health & Safety Code § 43830.8,

ARB must conduct a multimedia evaluation before adopting a motor vehicle fuel regulation like the LCFS.

Multimedia evaluations must be made in consultation with other boards and departments constituting the California Environmental Policy Council (“CEPC”) and various other state agencies with responsibility or expertise regarding possible impacts. ARB must issue a written summary of the multimedia evaluation and submit it to the CEPC for peer review.

Once ARB issues notice of its intention to adopt the proposed regulation, CEPC has 90 days to complete its peer review. If CEPC determines the proposed regulation will have significant impacts on the public or the environment, or that a less adverse alternative exists, then it must recommend potential alternative measures to reduce the impact(s).

In such a case, CEPC must notify ARB of the adverse impact(s). Sixty days after receiving this notice, ARB must adopt revisions to the proposed regulation designed to reduce or avoid the impact(s) to the extent feasible. This detailed and binding procedure is important for all new fuel rules and will be essential for a rule as complex and far-reaching as the LCFS.

- In the multimedia evaluation for the LCFS, ARB must identify and evaluate any significant adverse impact(s) on public health or the environment potentially resulting from the production, use, or disposal of motor vehicle fuel used to meet new motor vehicle fuel regulations like the LCFS. In other words, section 43830.8 mandates a full life-cycle analysis for all pathways.
- Under Health & Safety Code § 43830.8(c)(1), at a minimum, all multimedia evaluations must also address, among other items: “[e]missions of air pollutants, including ozone forming compounds, particulate matter, toxic air contaminants, and *greenhouse gases*.” (emphasis added). By its terms, the multimedia evaluation applies to the GHG impacts of fuel rules, clearly including the LCFS which is designed to reduce GHGs.
- Under subdivision (e) of § 43830.8 of the Health & Safety Code, if the CEPC determines that a motor vehicle fuel regulation will cause significant adverse impact(s) on either the public or the environment, or that less adverse alternatives exist, the CEPC must recommend alternative measures that ARB may take and require ARB to adopt revisions to the regulation to avoid, reduce, or mitigate impact(s).

This “alternatives” analysis resembles the “alternatives” analysis under CEQA. See CEQA Guidelines, § 15126.6, subds. (a), (f); see also, *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 566 (CEQA review must consider a reasonable range of alternatives to the project). An analysis of alternatives would be particularly important for the LCFS because there are many potential pathways for complying with such a broad regulation, at least six of which have now been identified. See

WSPA Comments on CARB LCFS Six Fuel Pathways (dated July 8, 2008)(attached).

- At a minimum, ARB can and should evaluate the multimedia impacts of each of the six fuel pathways that it has identified to date. Multimedia evaluations of impacts of the various fuel pathways are likely to differ.

For example, the accompanying land use impacts of the denatured corn ethanol pathway are likely to differ markedly from that of the ULSD fuel pathway. ARB should also evaluate the multimedia impacts of combinations of pathways.

- Although ARB has begun a multimedia evaluation for biofuels, and has completed such an evaluation for ethanol several years ago, other fuels that could comply with LCFS, such as hydrogen, biodiesel, and natural gas, have not undergone full multimedia evaluations. ARB will need to undertake multimedia evaluations for these remaining potential pathways if any is considered a realistic pathway for compliance with the LCFS.
- Clean Air Act § 211.
 - As mentioned above, WSPA urges ARB to harmonize the LCFS with federal fuel requirements, including those in the Clean Air Act § 211 and those promulgated by EPA under § 211.
 - Under Section 211(k), for example, reformulated gasoline for conventional vehicles is bound by requirements set by the EPA Administrator for that fuel. Those regulations control NOx emissions, oxygen, benzene, heavy metals, aromatics, lead, detergents, VOC emissions and toxics. ARB should harmonize the requirements of the LCFS with § 211(k) for gasoline.
 - Alternative fuels such as ethanol blends or other fuels blended with gasoline must also comply with Section 211(k). ARB should harmonize the requirements of the LCFS with § 211(k) for these gasoline pathways.
 - Section 211(m)(2) covering oxygenated fuels sets the oxygen percentage of fuels at 2.7% for particular CO non-attainment areas. ARB should harmonize the requirements of the LCFS with § 211(m)(2) for these pathways.
 - Under Section 211(o), fuels produced under the LCFS must also comply with the renewable fuel standard (RFS) applicable to refiners, importers, and certain blenders of gasoline. The RFS for 2008 requires that 7.76% of gasoline must be composed of renewable fuel defined as “motor vehicle fuel that is produced from grain, starch, oilseeds, vegetable, animal, or fish materials” (i.e. biofuels) or “natural gas produced from a biogas source.” As all refiners, importers, and certain blenders of gasoline must comply with this regulation, ARB should harmonize the requirements of the LCFS with §211(o) for these pathways.

We look forward to working with ARB to develop a LCFS program that meets all of these legal requirements as well as the requirements of AB 32 and other applicable laws. If you have any questions, please feel free to contact me at this office or Gina Grey at (480) 595-7121. We would also be happy to arrange a meeting with your staff to review and clarify our comments.

Sincerely,

A handwritten signature in blue ink, reading "Catherine A. Boyd". The signature is fluid and cursive, with the first name "Catherine" being the most prominent.

cc: Mike Scheible - ARB
Dean Simeroth - ARB
John Courtis - ARB
Renee Littaua - ARB
Anil Prabhu - ARB
Mike Barr - WSPA General Counsel
Gina Grey - WSPA