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Mary D. Nichols, Chair
California Air Resources Board
Headquarters Building
1001 I Street
Sacramento, CA 95812

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Subject: Comments to Support Commercially Viable Implementation of the Low Carbon Fuel Standard

Dear Chairwoman Nichols,

The purpose of today's letter is to provide the California Air Resources Board and Staff with insight and comments into practical and commercial implications of the proposed Low Carbon Fuel Standard (LCFS).

On behalf of the Clean Fuels Clearinghouse, we are in support of the LCFS and believe it can achieve the objectives set out by the Global Warming Solutions Act of 2006 and the Executive Order S-01-07 signed by Governor Schwarzenegger, provided that commercial dynamics and the resulting market economics are taken into account and addressed in the regulatory process.

History has shown that unintended consequences will result if the final regulations fail to instill financial motivation and provide the degrees of freedom necessary for the marketplace to properly function. The objective of a market based credit banking and trading program, as proposed by the LCFS, is to facilitate technical and commercial advancements through market driven economics. A solid foundation and complete framework are critical components in meeting this objective.

The Clean Fuel Clearinghouse (CFCH) operates RINSTAR®, the nation's only private sector registry for renewable fuels and the associated credits known as RINs. Facilitating the transfer of title to renewable fuel, and the associate credits, over 700,000 such events have been successfully completed among and between over 700 companies across the entire supply chain through this registry. The unique insight we have gained through this experience has served to highlight several key factors necessary for an efficient market. These are factors that we encourage Staff to consider in the final design of the regulations.

We understand from the Notice of Public Hearing that Staff will be focusing more efforts towards implementation issues following the Air Resources Board hearing scheduled for April 23 & 24. Comments are made recognizing that some of this work is therefore in progress and not yet made available to the public.

An efficient market is tantamount to the success of the LCFS. It is therefore our recommendation that Staff incorporate the following elements into the final regulations to insure an efficient and stable market for the motor fuels of today as well as advanced fuels and associated credits of the future.

- ★ Address competing settlement periods by requiring more frequent submission of credits by parties obligated to comply with the regulations.
- ★ Require all parties to participate on a central registry.
- ★ Implement safeguards and take aggressive action against acts of fraud
- ★ Partner with the private sector to certify credits and the fuel path.
- ★ Do not limit the trading of credits to only the regulated parties.
- ★ Allow the generation of credits on a daily basis to support commercial settlement.
- ★ Recognize and address the inherent relationship of credits between LCFS and the RFS and proposed RFS2

In order to illustrate just one of the elements identified above, please consider the following explanation of separate and conflicting settlement periods:

Experience has shown that inherent within the Federal RFS program are two separate and conflicting settlement periods. Consequently, the market for both renewable fuel and the associated credits has experienced severe inefficiencies and price volatility. One recent bankruptcy filing of a prominent renewable fuel company stated pointed to such inefficiencies as a major contributing factor in its failure.

“Regulatory Settlement” is on an annual basis. Obligated parties under RFS, primarily crude oil refiners and importers of gasoline, are mandated to meet the fuel standard each year and on an annual basis. This is achieved by submitting the requisite number of credits, known as RINs, by the reporting deadline for the compliance year. For example, a refiner with an obligation to utilize 100 million gallons of renewable fuel in compliance year 2009 would meet this obligation by submitting 100 million Gal-RINs on or before February 28, 2010.

Conversely, producers of renewable fuel, importers of renewable fuel, marketers, distributors, traders, blenders, etc. have no obligation to meet a particular mandate. However they are required to meet commercially acceptable business practices and therefore motivated based upon commercial settlement.

“Commercial Settlement” is on a daily basis. Commercially speaking the settlement of a business transaction is completed only once both assets and money have changed hands. Since renewable fuel credits are assets having monetary value, acceptable business practices demand a daily settlement.

Inherent with these competing and conflicting time cycles of settlement is inefficiencies that result in erratic market behavior and overall instability for emerging renewable fuels. In the case of the RFS, history has shown year-end activity increase by nearly three-fold and prices swing by more than 100% in as little as two weeks time. Supporting data can be made available to Staff upon request.

Recognizing that the objective of the LCFS is to incentivize new and advance technologies, and the resulting low carbon transportation fuels, such erratic market forces should be avoided. The burgeoning technologies for advanced renewable fuels can not attract the capital necessary from the investment community to sustain growth under such business conditions. New companies will need a ready daily market for their product, including the credits, and can not wait until the end of each year for the market to form. Understandably, the companies and the shareholders behind them can not tolerate such instability and its affect on the balance sheet.

On behalf of the Clean Fuels Clearinghouse and the hundreds of clients we serve each day throughout the renewable fuel supply chain, we would welcome the opportunity to meet with Staff as you consider and further formulate the regulations around issues of implementation.

By addressing each of the elements outlined above, the State of California, its citizens, and the renewable fuel industry will come to realize the full benefits of the proposed regulations.

Thank you for providing this opportunity to submit comments on the proposed LCFS.

All the Best,

Clayton McMartin II
President
Clean Fuels Clearinghouse

“Delivering Business Solutions for Cleaner Fuels Since 2001”