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October 17, 2008

Christina Zhang-Tillman and Wes Ingram
California Air Resources Board
P.O. Box 2815
Sacramento, CA 95812

Dear Ms. Zhang-Tillman and Mr. Ingram,

The Western Propane Gas Association represents nearly 120 companies that sell and distribute propane throughout California. Following the public meeting held on October 16, we developed a collection of questions and suggestions based on the draft regulatory language. I would propose holding a conference call to discuss and clarify the following:

ISSUE 1: According to the ARB's Technical Analysis report, "Table 1-1. California transportation fuel GHG emissions in the baseline year, 2004" LPG accounts for 0.19 MMTCO₂e and 0.10% of the total GHG. At this stage in the regulatory development process, we would suggest that propane be exempt from reporting until it reaches a threshold of at least 2% of the total GHG in the state.

ISSUE 2: It is not clear just who is the regulated party concerning the production and use of propane. Looking for precedent for other fuels, we see at Page 7, Section 95423 (a)(1) Gasoline and Gasoline Blends states "the regulated parties are the gasoline and gasoline producers, and certain recipients". Yet, in the following section (B) ...any person transfers custody or title of gasoline (i.e., the transferor) the recipient of the gasoline, (i.e. transferee) assumes the LCFS compliance obligation. I assume that the transferee in this case becomes the regulated party since at (B)(2) "the recipient is now the regulated party...."

On page 8, (2) referring to diesel fuel and diesel fuel blends, "For purposes of this regulation, the producer or importer of pure biodiesel (B100) is treated as the diesel fuel producer or importer", and must determine the carbon intensity. I assume in this case the producer or importer is the "regulated party" but that's not the case, because like gasoline, Page 9, (B) the recipient becomes the "regulated party".

Turning to CNG, page 10, (3) (A) "the regulated party is the person or entity that provides the CNG for transportation use or is otherwise legally responsible for its quality". As we read this, that could either be the transmission company, the local gas utility, or the entity actually selling the fuel, whoever has the legal responsibility for quality. Further, on this page at (F) 1. "the transferor of the fuel retains the LCFS compliance obligation." In the case of CNG, the fuel is transferred from the pipeline to the local utility who in turn transfers custody to the entity selling the fuel to the customer (if not the utility), so I'm not sure just who is the "transferor." (The transferee may agree to accept the compliance obligation in which case it becomes the "regulated party").

Turning to propane at page 11, (4) we see a similar pattern as for CNG. "The regulated party is the person or entity that provided the LPG for transportation use or is otherwise legally responsible for its quality". Those could be two different persons or entities, one doing the transfer, the other having legal responsibility for quality.

Under California's Liquefied Petroleum Gas standard, the so-called HD-10 fuel specification, the entity providing the fuel to the vehicle is responsible for the fuel quality, in WPGA's case, that is the local retail marketer for the most part. (There may be deliveries to a large commercial account by a wholesaler, e.g. for a large forklift customer or taxi fleet.) As we have argued on many occasions, the retailer has no way of knowing the fuel quality and whether it meets the California fuel specification unless the producer/wholesaler/supplier informs the retailer, a practice now rarely done. We are back to the conundrum of a compliance burden placed on a person or entity that does not have access to the information needed for compliance.

Page 11 (4) (B) 2. If the transferor gets an agreement that the recipient accepts the compliance obligation, "the recipient becomes a fuel producer under the LCFS regulation and is the regulated party...." By default then, that means absent an agreement accepting responsibility as the regulated party, the transferor is the producer and has the compliance obligation?

Let's construct an example: ABC Propane in Bakersfield sells 1 million gallons per year to a mix of end users including agriculture for pump engines, industrial for heating and forklift use, residential and commercial, recreational vehicles and engine fuel for forklifts and fleets. Of that, 100,000 gallons are for forklifts delivered in exchange cylinders to customers, 100,000 gallons are sold for on-highway vehicles, 50,000 gallons are at the retail bulk storage plant through a dispenser, and 50,000 gallons are delivered in bulk to local fleets, all light duty vehicles, that have their own dispenser.

As we read the proposal, the forklift and fleet sales are jurisdictional and subject to the LCFS compliance.

ABC purchases its fuel from LMN Distribution, a propane wholesale supplier who buys some supply from Shell, some from Chevron, imports some from Canada, and some from Salt Lake City, all of which is delivered under contract by LMN to ABC Propane. Title and custody transfers at ABC's retail plant. In addition, ABC Propane has its own transport truck and occasionally picks up a load directly from the Naval Petroleum Reserve at Elk Hills. Here, title and custody transfers at Elk Hills.

Which brings us to the questions:

- a) In each of the instances above, who is the transferor and who is the transferee?
- b) Each contract specifies that the fuel specification is HD-5 propane because no supplier will certify that it meets California's HD-10 spec. What entity or person in the above scenario has the legal obligation for "fuel quality"?
- c) In each instance above, who is the "regulated party" absent an agreement to accept the obligation?
- d) Page 11, (4) (B) 2 states the transferor may transfer the compliance obligation to the recipient (the transferee) in which case the recipient becomes the fuel producer and the regulated party. But who is the recipient, the wholesale supplier? ABC Propane or the forklift or fleet customer who uses the fuel?

PROPOSAL RELATED TO ISSUE 2: As you can see from the above discussion and questions, we are extremely concerned about the reporting burden on our members, a majority of which are small businesses that we feel are ill equipped to handle the technical requirements outlined in the proposed regulatory language. In an attempt to relieve this burden, we have a proposal. The propane industry compiles a yearly sales report through the American Petroleum Institute that breaks out the number of gallons sold in the engine fuel market. Could this single number be submitted on behalf of the entire California propane industry, thereby relieving individual reporting requirements?

ISSUE 3. Page 16, (3) (B) 1. Additional requirements for CNG, LNG and LPG requires each private access filling station is required to report the fuel dispensed in standard cubic feet (scf). Weights and Measures requires propane to be measured and sold in gallons, not scf. Why must propane be converted

to scf?

- b. The proposal requires separate meters for each class of vehicle, LMV. Modern dispensers are programmed to accept vehicle description, vehicle numbers, VINs, vehicle size—any number of descriptive measures which can be compiled at the end of a reporting period. Separate meters simply add to the cost of an already heavy reporting burden. Why separate meters?
- c. (B) 4. requires separate meters for private for public access stations so that "only the amount of fuel dispense for transportation use" can be accounted for. Transportation fuel in California is taxed. Why not be able to merely report total the amount of fuel that is taxed?

ISSUE 4. Page 23, Table 7. EER values. We do not entirely understand this table, but we think the 1.0 value for LPG/LMD ICEV is correct if our understanding of EER is correct. It appears that there is a credit to gained (EER meaning Fuel Displacement Factor) since the alt fuel displaces a gallon of gasoline and diesel. It would be interesting and helpful if ARB would take the scenario of ABC Propane (above) and run these formulas to see how we might come out.

In conclusion, we again request a brief meeting conference call to discuss and clarify these issues. We appreciate the incredible amount of work the Air Resources Board has invested into this effort, and our industry looks forward to continuing as partners in the future to improve California's air quality.

Sincerely,

Lesley Brown Garland
President and CEO