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Via e-mail: czhangti@arb.ca.gov

Christina Zhang-Tillman
California Air Resources Board,
1001 I Street
Sacramento, CA 95812

Re: Comments on the Draft Low Carbon Fuel Standard Regulation.

Dear Ms. Tillman:

Clean Energy would like to thank you for the opportunity to comment on the Draft Low Carbon Fuel Standard (LCFS) proposed by the California Air Resources Board (CARB) this October. Clean Energy is very supportive of CARB's greenhouse gas goals under AB 32 and plans to be a strong participant and supporter of California's growing LCF industry. We would also like to compliment CARB staff on pulling together the proposed Draft LCFS in such a short amount of time and believe that, overall, it provides a good framework for how the industry might achieve CARB's ten percent carbon intensity reduction goals by 2020. We would, however, like to share with you some of our concerns and comments that we have with the current proposed draft.

Section 95420. Applicability of the Standard.

Although we can understand CARB's desire for a rigorous reporting process for large fuel producers under the LCFS, we ask CARB staff to consider a streamlined reporting process for small LCF producers that can factually demonstrate a carbon intensity reduction of ten percent or greater in their product. This, in turn, will relieve LCF producers of significant compliance costs and allow them to focus more on market penetration. Historically, California consumes approximately 27 billion gallons of petroleum annually. CARB's proposal that regulated parties be exempted if they produce less than 3.6 million gasoline gallon equivalents appears to be set too low if the regulated party produces a LCF product that achieves 10% or more and if CARB wants those producers to flourish. We therefore ask CARB staff to consider easing the costs of compliance for LCF producers by streamlining the process for them, while still allowing them to participate in credit generation.

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Section 95421. Standards.

We have a number of concerns associated with this section, starting with the values attributed to the carbon intensity for gasoline and diesel. In April, CARB assessed carbon intensity values to gasoline and diesel at 96.6 gCO_2e/MJ and 99.4 gCO_2e/MJ, respectively. However, in the October 2008 draft LCFS, gasoline and diesel values are 96.7 gCO_2e/MJ and 95.8gCO_2e/MJ. While the carbon intensity number for gasoline did not move much, diesel seemed to shrink in carbon intensity by 3.6 gCO_2e/MJ. It would certainly help to better understand what assumptions changed for CARB so that we can better comment on future drafts of this regulation. Please consider providing stakeholders with greater transparency on how carbon intensity calculations are arrived at, particularly for baseline fuels, in future drafts of this rulemaking.

Our next concern is over both compliance pathways for gasoline and diesel. While we can appreciate CARB's desire to provide large fuel providers in the state with some start-up time to comply with the LCFS, the compliance pathway currently proposed is: (1) incrementally inconsistent; (2) penalizes true LCF providers early on; and, therefore, (3) hurts CARB's efforts to achieve lower carbon fuels in the near term. Once again, we would ask CARB to propose a linear compliance path that sets the incremental carbon intensity reductions in equal units at a minimum. This way, CARB would provide even deeper incentives for the California LCF industry to penetrate the market and flourish. Setting the bar too low as currently proposed only hurts the very fuel providers that CARB hopes to succeed. We view this horizontal compliance slope for fuel providers that mostly dominate the fuels market in California, therefore, favoring diesel which is not very fuel neutral. Please reconsider this proposal and raise the urgency for low carbon fuels sooner, not later.

Section 95422. Applicable Standards for Alternative Fuels.

No comments at this time, although we would like to have the flexibility of applying CNG sales to gasoline's carbon intensity values and LNG sales to diesel's carbon intensity values as we discuss in further detail below.

Section 95423. Compliance.

We have a number of comments and suggestions for this section. First, under the Section's (a) (3) (G), we clearly hope it is not the intention of CARB to block the blending of fossil-based natural gas with other low carbon and renewable fuels such as biomethane or hydrogen. Blocking the ability to blend low carbon fuels would not only prevent California's LCF Industry from achieving even fuels that are very low in carbon, it could also place yet another barrier to producing fuels that are renewable, significantly low in carbon, and needed to achieve CARB's LCF goals sooner. CARB's own recently released analysis on biomethane derived from landfill gas demonstrated a value of 11.01 gCO_2e/MJ or an 88.6% reduction in carbon intensity. CARB should promote these types of very low carbon and renewable fuels and one way to promote their development is through allowing them to be blended much like biodiesel and ethanol. We therefore ask CARB to remove blending barriers for both hydrogen and biomethane when it comes to natural gas.

With regard to this Section's (c) (1) (A), we would like to once again ask that CARB provide a streamlined approach for LCF producers so that they can avoid high compliance costs and focus more on market penetration. Tying down LCF producers of small volumes is not in the interest of CARB. For example, this Section's (c) (3) (B) (3) requires separate metering of fuels used for light/medium duty vehicles (LMVs) and heavy-duty vehicles (HDVs). We have a number of issues with this particular proposal because this approach can potentially hamstring a growing LCF producer that is, again, helping CARB achieve its LCF goals earlier. Clearly, CARB staff is setting up a regulatory structure that is gasoline and diesel focused because these fuels dominate the marketplace. That said, this policy fails to be fuel neutral because of this very fact. If CARB wants not to be fuel neutral, it should favor low carbon fuels, not penalize them because the existing system is dominated by high carbon fuels. One suggestion to streamline this process would be to peg compressed natural gas against gasoline's carbon intensity and liquefied natural gas against diesel's carbon intensity. We are aware that some members of the Natural Gas Industry would like the flexibility of taking an average of both diesel's and gasoline's carbon intensity in order to streamline credit generation, but we are cautious of this approach as the current carbon intensity values of both gasoline and diesel have changed between April 2008 and October 2008 with little explanation or transparency and we believe in the importance of separate carbon intensity values for gasoline and diesel.

Section 95424: LCFS Credits, Deficits, and Incremental Obligation.

Clean Energy supports the "one-way credit trading" OUT of the LCFS' credit program. Likewise, Clean Energy opposes any proposal to trade credits into the LCFS program from outside the LCFS market as such a option can only further weaken the regulation and deplete the value of LCF credits generated. Credit value is critical in that it can provide additional incentives to build and establish a healthy LCF market here in California.

Finally, Clean Energy opposes any limit placed on credit generation or discounting of credits as such policies can only harm LCF growth in California's market. Furthermore, it would especially harm the LCFs that are needed to achieve future LCFS goals and the ultimate goal of AB 32: a 80% reduction of carbon intensity in transportation fuels.

General Comments on the LCFS.

We wholeheartedly support the comments submitted by Waste Management concerning biomethane (or biogas as they refer to it). Like Waste Management, we expect to produce significant volumes of landfill gas (LFG) for our customers and LFG has significant potential to reduce the carbon intensity in our product. We therefore encourage CARB to:

- Provide incentives that discourage landfill gas and other biomethane sources to be flared and to encourage these sources through meaningful incentives to be harnessed for transportation fuel.

- Consider biomethane, a fuel that essentially comes from wastes, be considered by CARB to be totally biogenic and "carbon neutral" like other biogenic fuels.

- Establish methodologies so that fuels that do not necessarily pass through existing liquid fuel channels are properly accounted for in the standards and LCFS credits can be efficiently generated and transferred to those traditional fuel suppliers who need credits to meet their LCFS compliance schedule.

- Provide additional incentive credits to fuel producers whose portfolio is made up of very low carbon fuels throughout the program, but particularly at the beginning of the program. CARB should provide ways in which the final LCFS rule might be structured to incentivize the early development of very low carbon fuels as failure to do so may delay the development of these key fuels.

Thank you for your time and consideration. We look forward to working with CARB staff as they further refine and develop the draft LCFS. We also support CARB in its efforts to transform the current fuel market in California to one that protects against global climate change.

Sincerely,

Todd R. Campbell
Director of Public Policy