

Western States Petroleum Association (WSPA) LCFS Implementation Proposal

March 25, 2008

The following outlines WSPA's proposal for the Low Carbon Fuel Standard. It is offered with the idea that we keep our eye on the program's stated goal of achieving a 10 percent carbon intensity reduction in transportation fuels by 2020; WSPA believes the program should be designed to get it right the first time and not driven by unachievable interim goals. To get it right, the LCFS should:

- Be the product of a transparent, technically sound rulemaking
- Be fuel neutral
- Start simple and ramp up to meet the 2020 goal
- Prevent leakage of emissions out of state
- Contain regular milestone reviews to assure the program is on track
- Rely on markets as much as possible and assure fair competition for at risk investments

Program Phasing: Phase in the LCFS program. Start simple and build as experience is gained and uncertainties are resolved. Program review should occur on a regular basis to evaluate program progress, impacts and impediments and to make program adjustments as appropriate. WSPA envisions a major program evaluation in the 2015 timeframe to assess key features and potential major changes or expansion.

LCFS Scope: According to the Governor's January 2007 White Paper, the LCFS is intended to be a passenger vehicle fuel (PVF) regulation. Starting with a PVF program provides a way of phasing in the LCFS program by starting simple with a single target. The GHG intensity of California's PVF pool should be calculated using 2006 as the baseline year. In addition, fuel providers should have the ability to use sales of low carbon diesel (i.e., biodiesel and renewable diesel) and other low carbon fuels outside the PVF pool as credits toward compliance. By 2015, consider whether to expand the scope to include heavy duty fuel use.

Light Duty Diesel: GHG intensity of a fuel is a function of both the fuel and the engines that run on it. It is appropriate to provide credit to fuel providers to produce whatever fuels are required for OEM compliance with federal and state vehicle efficiency standards, and to enable technology that reduces the GHG intensity of the PVF pool. Crediting fuel providers for supplying increased volumes of diesel resulting from the displacement of gasoline vehicles by light duty diesel does not deprive OEMs of any credits for compliance with federal CAFE or AB 1493 requirements.

Compliance Schedule: It will be very difficult to achieve the required 10 percent reduction in carbon intensity in 2020 without the development and commercialization of fuel, vehicle, and delivery infrastructure technologies that do not exist today. When a full life cycle analysis is performed, including the effects of direct and indirect land use changes, existing biofuels are likely to increase the GHG intensity of the PVF pool. In view of this, the compliance schedule should focus on technological innovation and be designed to provide sufficient time to develop,

demonstrate, commercialize, and build the necessary technologies. To avoid misdirecting resources on current technologies and to allow time for innovation and commercialization to occur, WSPA recommends a back loaded compliance schedule that requires only moderate reductions over the initial years with accelerated reductions in the final years.

Additionally, WSPA recommends that the LCFS program:

1. Be driven by appropriately set carbon intensity performance standards intended to promote the development and introduction of advanced, not-now-commercially available low carbon intensity fuels.
2. Be fuel and process neutral, so that it does not selectively favor any technology, process, or product.
3. Include meaningful, regular milestone reviews to evaluate technology advances, technical feasibility, cost effectiveness, and the program's impact on the state's fuel supplies.
4. Is compatible with the federal renewable fuels standard and other federal programs.

Uncertainty: More regulatory, economic, and scientific certainty is needed by fuel providers to support effective compliance strategies and required long-term investments. From the beginning, WSPA has supported the following to deal with uncertainty:

- **Adequate assessment** of the effects of direct and indirect land use change on GHG intensity of alternative fuels, so that key scope and target decisions can be made with sound information about the GHG impacts of those decisions.
- **Regular milestones** at which the program is reviewed to ensure it is not having an adverse impact on state fuel supplies, that it is technologically feasible and cost-effective and allows for program adjustments, as determined to be appropriate.
- **Collaborative** efforts to provide technical review and guidance to the state as it refines the LCA models and deals with other key policy, technical and economic issues.
- **Transparent process** that does not lead people to believe that the resulting values and regulatory decisions are any more certain than the underlying science and economics.

Compliance Point: For liquid fuels the LCFS should apply to producers and importers; the compliance point should be at the production or import facility, which is the same point at which the CARB CBG rules and the federal renewable fuel standard apply.

Default Values: The state should set accurate default values for all fuels that are based on the best available information. They should be neither “pessimistic” nor “optimistic.” They should be accurate. Default values should be consistent with whatever the state uses to set the baseline carbon intensity factor.

Investment decisions made in reliance upon state-established default values should be protected until fully depreciated.

Default values should be reviewed regularly and adjusted to reflect:

- Improvements in the science of life cycle analysis
- Wells-to-tank facility emissions reductions resulting from the AB 32 program

The state should have a process allowing companies to qualify for optional carbon intensity values using actual process- or facility-specific data. This opt-in process should be transparent, rigorous, and limited only to major process changes that yield significant reductions in fuel carbon intensity, such as large carbon sequestration projects. The submissions and communications for that process should be protected under the PIIRA statute. This opt-in process could be developed and implemented as the program unfolds but should be in place by 2015 at the latest.

Crude Oil Production Emissions: There should be a single baseline value for all crude oil feedstocks used in the production of covered fuel sold in California, including crude oils produced by thermal enhanced oil recovery, water injection, and CO2 floods. In other words, all crudes should be treated equally.

Drive Train Efficiency: The drive train efficiency (DTE) of engines is a necessary component of determining the GHG intensity of the fuel, and therefore must be used with respect to all vehicle–fuel combinations. More work is needed to provide accurate DTEs for all technologies.

Credit Trading Across Fuels Within the LCFS: Allow credit trading between fuels (i.e., within and between liquid, electricity, or gaseous fuels) only if:

1. Credits are generated from at-risk investments on innovative technologies and facilitating infrastructure, and
2. There is fairness in competition between regulated and unregulated industries. The LCFS must be structured to allow all fuel providers access to all markets, regulated and unregulated.

Wherever credits are allowed, WSPA supports the banking, borrowing, trading, and indefinite life of LCFS credits. There should be rigorous controls to assure the integrity of the credit market.

Compliance and Enforcement: In general, WSPA believes that LCFS compliance and enforcement should parallel the state’s RFG program. WSPA opposes the concept of a mitigation fee. Any fee system should be designed along the lines of the current state RFG variance program, meeting the following requirements. The fee:

- Should be part of a formal variance process;
- Be used only for unexpected or extreme circumstances;
- Not applied as a result of the failure of non-obligated parties to perform as anticipated;
- Set at levels that do not give a competitive advantage to variance holders; and
- Not available or treated as an alternative emission reduction program.

The compliance program needs to be compatible with the fuel distribution system and should avoid needless shuffling of alternative fuels. It should use US EPA's RIN accounting system.

Additionally, there should be a process for qualifying or certifying low carbon fuels that ensures use of appropriate carbon intensity values, fuel system compatibility, air quality compliance, and availability. The submissions and communications for that process should be protected under the PIIRA statute.

Cost, Technical Feasibility, and Cost Effectiveness: The LCFS should be designed as simply as possible to reduce administrative costs and confusion. The parameters for establishing cost effectiveness need to be made clear at the outset of the rulemaking process so that all stakeholders know the ground rules. Regulatory determinations of cost, cost effectiveness, and technical feasibility should be consistent with the requirements of H&SC §44013 and §38560.5, as appropriate.

Harmonization with related EPA Programs: ARB should closely monitor related federal EPA rulemakings (particularly the implementation of the federal 2007 energy policy act) to prevent conflicts in the requirements for regulated parties, and no later than 2015 there should be an assessment to determine whether the programs should be merged. ARB should harmonize its life cycle modeling with that carried out by US EPA.