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California Air Resources Board
1001 I Street
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Attn: Ms. Christina Zhang-Tillman
Via email to: czhangti@arb.ca.gov

Re: Comments for Draft LCFS Regulation

ConocoPhillips appreciates the opportunity to comment on The California Low Carbon Fuel Standard Regulation draft proposal. ConocoPhillips is directly impacted by this regulation as we own and operate two refineries in the State of California. In addition, we have pipeline, terminal, and marketing assets in the State that distribute fuels produced at our refineries. ConocoPhillips is a member of the Western States Petroleum Association (WSPA) and support the comments submitted by WSPA. In addition to the WSPA comments, we offer the following.

Section 95423 Compliance

(a) Regulated Parties

ConocoPhillips supports the proposed compliance concept outlined in Section 95423(a)(1)(B), where the compliance obligation is transferred to the point where the fuel becomes finished for final distribution. ConocoPhillips believes that this approach is appropriate as it moves the point of compliance to where parties have control over how the fuel is finished. Refiners or importers of the fuel who do not retain title or custody of the fuel when it is blended with renewable fuel downstream, have limited control over what the downstream party will chose to blend. The downstream party may make choices based on the lowest cost option versus what is needed to meet the LCFS standard. The draft indicates that on each occasion that custody or title is transferred, the transferee assumes the LCFS compliance obligation. These can be two different entities (title is transferred to a different entity than custody transfer). . In terms of “control of the fuel”, the CARB regulations need to be clear regarding “title” versus “custody”. It is our recommendation that the standard apply to “title holders” as opposed to those that may have temporary custody of the product.” In other words, the ultimate obligation should rest with the title holder. Section 95423(a)(1)(D)(2) would allow custody holders to blend the fuel at the instruction of the title holder, with the title holder being the obligated party.

(c) Compliance and Progress Reporting Requirements

The proposed requirement for quarterly reporting is not warranted. CARB has not justified the benefit of this new reporting burden on industry. As the LCFS is an annual program, the Agency should not require reporting more frequently than annually.

The Agency asked for feedback on the feasibility of including a requirement for sustainability reporting. The LCFS implementation, including reporting, will be a very complex task for multiple industry segments. Inclusion of sustainability reporting would significantly increase the complexity of the reporting requirements and should not be considered at this time. In addition, the definition of “sustainability” is vague and uncertain. In the absence of a consensus definition

of sustainability, it is premature to add reporting requirements for this undefined parameter at this time.

(d) Recordkeeping and Auditing

(2) Evidence of Physical Pathway

This section will require clarification as to what appropriate documentation is. It is unclear whether or not actual volumes of the alternative fuels must be blended in California. A demonstration of a physical pathway should be sufficient. If however, some volume of the alternative fuel must be blended into California fuels, this will lead to increased emissions associated with increased transportation to get the fuels to California (“shuffling”). The Federal EPA is currently working on rulemaking to implement the provisions of the Energy Independence and Security Act of 2007. Recordkeeping and auditing provisions of the California LCFS should synchronize with the Federal provisions in this area as much as possible to avoid multiple systems. For example, the current RFS uses Renewable Identification Numbers (RINs) to track volumes of renewable fuel used for compliance with the RFS. The RINs identify the production facility where the renewable fuel was produced and the type of renewable fuel. It would be advantageous for California to build upon that system rather than creating a need for new documentation for reporting purposes.

Section 95424 LCFS Credits, Deficits, and Incremental Obligation

(c) Credit acquisition, banking, borrowing, and trading

A commentary was provided in this section indicating that the Agency may place limits on credits generated in the early years of the program. ConocoPhillips is opposed to this. Any reductions achieved in the early part of the program, or any time in the program, should be allowed to be banked and used in later years toward compliance. This will help incentivize early action. Another reason to not “discount” early year credits is that based upon input from the University of California at Berkeley, early reductions may be more valuable than later reductions.

The one-way limit on credit trading (LCFS credit may be exported for compliance with other greenhouse gas reduction initiatives, however, credits generated from outside the LCFS program cannot be used in the LCFS), may not be the most cost-effective approach. This concept is also counter to AB32 which requires “...the state board to adopt rules and regulations... to achieve the maximum technologically feasible and cost-effective greenhouse gas emission reductions...” The Bill also authorizes “... the state board to adopt market-based compliance mechanisms...” Allowing exchange of credits between programs will result in reductions where they are the most cost-effective. Given the current economic situation and constraints, this is an important factor in minimizing the economic impact of these programs.

**Section 95425 Determination of Carbon Intensity Values
Non-Conventional Crudes**

In assessing non-conventional crude production, CARB should consider other regulatory CO₂ programs (current and future) in evaluating LCA pathways elements. If CARB fails to do this, the LCA will impose demerits on oil sands production even though other regulated areas (such as Canada) have already imposed controls (operational, offsets, fees, etc.) that have accounted for the production intensity of the crude in that region. The imbedded “deselect” for oil sands created by the absence of this consideration will lead to problematic trade considerations and will no doubt result in “crude shuffling”.

General

We continue to have concerns over the methodology and actual values used in the LCA modeling. These are specific and technical points that would best served in a face-to-face meeting to review, rather than trying to communicate them through written comments. In addition, ConocoPhillips urges CARB to work with the Federal EPA in order to harmonize the modeling work associated with both the Federal RFS program and the California LCFS.

Thank you for the opportunity to comment on the draft proposal. Please contact me at the above address or at (562) 290-1521 with any questions regarding these comments.

Regards,

<H. Daniel Sinks>

ecc: Bob Fletcher (CARB)
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