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Floyd Vergara
California Air Resources Board
Sent via Email Only

July 29, 2011

Dear Floyd,

Poet Ethanol Products respectfully submits for your consideration the following commentary on the proposed LCFS regulatory amendments which were the subject of the public workshop held on July 22, 2011. For the present, we are focused on what appear to us to be the most significant issues for which we believe there are relatively simple possible adjustments.

We agree with most of CARB's recommended clarifications and modifications to the regulations and believe they provide practical responses to how regulated parties will interact with the LCFS.

The following sections are areas Poet Ethanol Products respectfully offers alternative proposals or dissenting opinion on:

Section 95481 (a) 25. Import Facility Definition – We encourage the staff to reconsider its suggested modifications to the definition of Import Facility, providing a broader interpretation to allow for the reality of how liquid biofuels are currently delivered into California. Many biofuel producers enter in to contracts with brokers or marketers to arrange for the final delivery of their product into the markets where the biofuel will be consumed. In some cases, these or other 3rd parties will also handle or assist with the various compliance responsibilities on behalf of the producers at a state or federal level.

For the LCFS, it is not uncommon for someone other than the producer to own the biofuel as it physically crosses the state line into California. This entity will typically have a direct and on-going relationship with the biofuel producer and the position holder in the terminal the biofuel is delivered to (usually a petroleum refiner). As constructed, the definition of Import Facility would no longer allow marketers or 3rd parties, as ourselves, to "Import" the fuel and generate the credits to pass on to our customers who are unloading the product at the terminal. In fact, Poet Ethanol Products would not even qualify as a regulated party even though our customers would only be able to generate credits based on the information we provided to them. The refiners recognize this complication and the industry practice has been in place since 2010 for us as the marketer to generate the credits under the LCFS and pass those credits and the compliance obligation for the volume of biofuel on to our customers.

This arrangement removes the obligation from the refiners, in the event of an audit or inquiry from CARB, to try and assemble documentation on the appropriate fuel pathway for a given credit by dealing with a biofuel producer with whom they have no contractual or commercial relationship. Rather, CARB would presumably come to us, as the Importer, seeking whatever evidence was necessary to substantiate the generation of credit(s) being questioned. Given our on-going relationship with the biofuel producer and the fact that we handle many of the compliance elements of the LCFS program on behalf of that producer, we are in a much better position to provide a timely and complete response to a CARB inquiry. I do not ever recall petitioning a state or federal agency to make sure I was would be regulated by them, but in this particular instance, I believe the option for entities such as ourselves to be included in the process is in the best interest of the program itself and all parties involved. It is within this context, we request that the staff consider modifying Section 95481 (a) 25 A to read as follows:

- (A) The transportation equipment that held or carried the product at the point the equipment entered the state of California;
- or

This language, or something similar, would still afford the transloading import to occur as suggested by CARB and allow position holders in the terminal to be the Importer if they desired, but it would also give the other entities the ability to be a regulated party if the product and information flow compelled them to do so.

Alternatively, I am familiar with the approach being developed by Houston BioFuels Consultants and RPMG to correct this situation. Their concept also successfully addresses the complications with the existing approach mentioned above. Poet Ethanol Products would be equally supportive of their modification if it is found to be more desirable by CARB.

Section 95481 (a) 42. Transloading Facility Definition – While we have no disagreement with CARB’s updated definition of a Transloading Facility, we believe our suggested rewording of Section 95481 (a) 25 obviates the need for this paragraph.

Section 95486 (f) 3 B. Certification of a Fuel Pathway – Poet Ethanol Products understands the need for CARB staff to review and validate the assertions made in applications for fuel pathway registrations, but the requirements proposed in this section are onerous and partially repetitive of what many biofuel producers would have already paid for a third party engineer to review under RFS2.

While there may be certain circumstances where requiring a 2 year history of sales and purchases of raw materials and finished products is appropriate, for the most part, the information regarding the plant production processes will be independently confirmed through the 3rd party Engineering Reviews required by the EPA under RFS2.

We would encourage the staff to modify this section and instead of requiring 2 years’ worth of data be submitted with each application, that 2 years of data be available for ARB review on an as-needed basis. U.S. EPA now requires renewable fuel producers registered under RFS2 to report the type, volume, and moisture content of co-products on a quarterly basis on the RFS0701 report (reference <http://www.epa.gov/otaq/regs/fuels/rfsforms.htm>). EPA requires the information in their RFS0701 report for the same reason that CARB asserts it needs the values for; to measure compliance with fuel pathways approved on the basis of the ratio of wet to dry distiller’s grains. But the level of detail provided to the EPA is much more appropriate for making this determination than what is being proposed in the LCFS Regulatory Amendment. If CARB finds information on co-product generation to be necessary for the administration of the LCFS, we would encourage the use of these existing reports for that purpose rather than the much more detailed and confidential sales data requested in Section 95486 (f) 3 B.

Section 95488 Banking, Trading, and Purchase of Credits:

(a) 2. - Credit ID’s – This paragraph introduces the concept of specific identification numbers for credits. Poet Ethanol Products would strongly encourage CARB to reconsider this element of its framework given the complexities it would introduce into the system. The EPA began tracking RINS this way under RFS1 and ultimately abandoned the approach in RFS2 in favor of a generalized “banking system” as described by Bob Anderson from Chevron. When credits are tracked down to specific transaction identifiers, revisions or retirements upstream (say by the Producer or Importer), can have a cascading effect through all parties who have ever owned the credit, even though the transaction those entities were a party to were completely unrelated to the transaction being revised or retired. This is a very complex issue that warrants discussion. I would welcome the opportunity to speak to CARB staff regarding our experiences with Credit ID’s under the RFS program if this is an idea that staff believes is worth pursuing.

(b) 1 B 9., (d) 1 D, and (d) 2. Credit Prices – As stated in our comments to the Advisory Panel, we believe the price where credits trade is the proprietary and confidential information of the parties to the transaction, and has no relevance in the reporting or administration processes of the LCFS. CARB and other interested parties have the benefit of referring to public pricing services which already publish daily pricing quotes that allow readers to determine the value per CI that is presumably transacting in the marketplace. Hence, we believe at most that this information should be voluntary, but preferably not part of the data CARB collects at all.

We may have additional comments on other portions of the staff’s proposed revisions as the review process continues. In the meantime, please let me know if you have any questions or would like to discuss any of these topics at greater length.

Sincerely,



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CFO
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