



September 26, 2011

Mr. Floyd Vergara
Chief, Alternative Fuels Branch
California Air Resources Board
1001 I Street
Sacramento, CA 95814

RE: Comments of Renewable Products Marketing Group (RPMG) in regard to LCFS Proposed Regulation Amendments

Mr. Vergara,

RPMG would like thank the Air Resources Board for the chance to provide comment on the proposed LCFS regulation amendments. Further we appreciate the effort CARB staff has put forth in designing this regulatory program and their willingness to work with industry participants. In the following sections we wish to address these specific topics: definition changes to Import Facility and Importer, Opt-in Provisions for out-of-state producers and suppliers of fuel, Multiple Parties claiming to be the regulated party for the same volume of fuel, Method 2A/2B application document requirements, Method 2A/2B certification requirements, Product Transfer Document (PTD) requirements and the definition of transaction date.

Section 95481 Definitions and Acronyms found on page 15

(24) "Importer" means the person who owns an imported product when it is delivered at the import facility in California

(25) "Import facility" means, with respect to any imported liquid product, a facility or equipment in California that meets one of the following criteria:

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

RPMG is in full support of the proposed definition changes for both importer and import facility. By amending these definitions the regulations allow the entity directly responsible for supplying the liquid fuel to the California market from an out-of-state source to be the regulated party for any liquid fuel they supply within California. This will provide a level playing field for industry participants to engage in fair contract terms and transparent price discovery.

However, these definition changes do not allow for any participant in the chain of custody prior to the transport equipment entering the state of California to participate in this level playing field. These definitions will exclude production facilities and marketers that do not deliver fuel directly to customers in California, even for product they know is designated for use in California. For this purpose RPMG points to the proposed amendments for opt-in provisions as a relief.

Section 95480.2 Persons Eligible for Opting into the LCFS Program found on page 4

RPMG strongly supports the proposed amendment to allow out-of-state producers and persons who are in the distribution/marketing chain between out-of-state producers and the importer to opt-in as an



initial regulated party. When transferring renewable fuel, the chain of custody is very rarely as simple as party A at point A selling to party B at point B. It is our opinion the regulation must allow for every transaction scenario as well as provide all upstream title holders the opportunity to participate in the LCFS compliance model. The opt-in provisions fairly provide both opportunities, while also allowing CARB the ability to exercise authority and jurisdiction.

Section 95480.4 Multiple Parties Claiming to Be the Regulated Party for the Same Volume of Fuel found on page 9

It is a requirement for all regulated parties to provide to their downstream counterparts a product transfer document indicating obligation status of the fuel they are receiving. All counterparties should be held responsible in honoring all contractual agreements and product transfer documents (PTDs) for the fuel(s) they are transacting. In all transactions, the regulated party is either transferring or retaining obligation, all subsequent transactions of this fuel must honor the original obligation status(es) transferred for the volume of fuel supplied in the California market. This is true whether the chain of custody begins with an out-of-state production facility or with the designated importer of the fuel into California. Because regulated parties cannot transfer CI values or carbon credits for which they did not receive, it is extremely important for all counterparties to pay close attention to contract agreements and PTDs received. If everyone in the chain of custody is receiving accurate information, by default there cannot be multiple parties claiming regulated party status for the same volume of fuel.

For instances when multiple parties claim to be the regulated party for the same volume of fuel, we agree it is important for CARB staff to have a method for deciphering the appropriate regulated party. In our opinion it is appropriate for CARB to “lock” all credits generated for these specific volumes of fuel in a holding account by the Executive Officer until such a time the appropriate regulated party is identified. In addition to considering enforceable written contracts between counterparties, we would encourage CARB to also consider all PTDs between the parties involved. This suggestion would be consistent with CARB’s proposal to “release the credits at issue to the regulated party that was first to report” or first to transfer title according to title transfer date.

Section 95486 (e) (2) and Section 95486 (f) (3) Method 2A/2B Certification Requirements found on page 75 and 77

The regulations call out minimum volume requirements for new production pathways established under the Method 2A and 2B application procedures. We question how these requirements assist CARB in meeting the state’s annual greenhouse gas reduction mandates? It may be advisable for CARB to remove these minimum volume requirements to ensure that new technologies and niche market opportunities are not excluded from use in lowering California’s greenhouse gas emissions today and in the future. New advanced technologies are explored every day for commercial implementation. RPMG feels it would serve the LCFS program to adapt and accept these new technologies as early as possible to optimize credit generation and overall compliance obligations.

Section 95486 (f) (3) (B) Method 2A/2B Application Document Requirements found on page 79



As an industry participant that has submitted numerous compliance program applications, we feel it to be excessively burdensome and unnecessarily time consuming for both applicants and CARB staff to gather and review the sheer volume of proposed documents.

The federal Renewable Fuel Standard 2 (RFS2) Third Party Engineer Reviews, required for all federally registered biofuel producers, would encompass certain separately requested items. These include: description of feedstocks that may be utilized by the existing facility, description of process heat fuel sources, process heat fuel supply plan review, list of combustion-powered equipment used at the facility, description of facility production processes (including process diagrams), and a description of all co-products, by-products and waste products associated with production.

We wish to further emphasize that the origin of feedstocks (including transportation distances and modes) are not often known by the production facility. This is also true for descriptions of agricultural practices, energy and chemicals used to produce said crops. Not all production facilities know or have working relationships with the feedstock producers, and rather purchase feedstocks on the open market.

Audited financial statements and reports are not shared between counterparties today for non-publicly traded companies. For these companies to be required to provide these documents to CARB is viewed as invasive and unnecessary. If the aim of reviewing these documents is to verify co-product sales against CI values reported, RPMG suggests reporting co-product sales volumes to CARB on a quarterly basis, as all registered production facilities are currently required to do for all RFS2 quarterly reporting activities. For our purposes this could be accomplished by forwarding the same document that is submitted to EPA today.

Section 95484 Requirements for Regulated Parties– Product Transfer Document Requirements found on pages 27, 28 and 29, 32, 34, 35, 36, 38, and 42 and the Published LCFS Guidance Documents

The current PTD requirements for CARBOB and oxygenates are generally described as; volume and average CI, a statement that the recipient is now the regulated party or a statement that the regulated party transferring ownership of the fuel elects to remain the regulated party. The published LCFS guidance document states PTDs must identify, at a minimum, the name of the transferor and transferee, the date of the transaction, whether the CI obligation is retained by the transferor or passed to the transferee, the type of fuel, the volume of fuel, and the CI value of the fuel (which is directly linked to the facility ID of the production facility).

We wish to propose that all Product Transfer Document Requirements for oxygenates and biofuels specified in the regulations be amended to include the outlined information below. Please note all italicized and bold font identifies existing language and all underlined items identify proposed amendments.

95484 (a)(1) (C) 1.

- a. The name of the transferor and transferee,***
- b. The date of the transaction,***
- c. The type of fuel,***
- d. The feedstock used,***



- e. The Fuel Pathway Code,
- f. The Physical Pathway Code,
- g. EPA Company ID of originating production facility,
- h. EPA Facility ID of originating production facility
- i. ***The volume and carbon intensity of the transferred oxygenate; and***
- j. ***The recipient is now the regulated party for the acquired oxygenate and accordingly is responsible for meeting the requirements of the LCFS with respect to the oxygenate.***

We request the above information be standardized for biofuel PTDs to ensure transparency in product verification procedures. Today, without this information provided from each counterparty, it puts the recipient of the biofuel in an uncertain position in performing his or her due diligence to maintain accurate and truthful records. Without this information a receiving party has no way to verify the CI value they have received is valid through the most basic checks and balances.

Section 95481.1 Definition of Transaction Date found on page 21

(18) "Transaction Date" is the date on the Product Transfer Document associated with the transfer of title.

Currently per the product transfer document requirements established by the regulations, there is no requirement for the PTD to include a transaction date.

Within this same vein, there are certain complications identified within the industry in pin pointing and reporting title transfer dates. Common industry practice utilizes offload as the accepted title transfer activity. Unfortunately this date or activity is rarely documented. For this reason it is very difficult for counter parties to be completely accurate in ascertaining the title transfer date. In our experience and through our communications with other industry parties (both biofuel and petroleum counter parts) it is preferable to use the known and easily distinguishable invoice date for all PTD and reporting purposes.

For these reasons, we wish to propose a new definition for LRT Transaction Dates;

(18) "Transaction Date" is the invoice date, known and distinguishable by both parties, associated with the sale of the applicable fuel

We sincerely thank for your time and consideration,

A handwritten signature in black ink, appearing to read 'Jessica Wiechman'. The signature is fluid and cursive, with a long, sweeping underline.

Jessica Wiechman

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