Western States Petroleum Association
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Catherine H. Reheis-Boyd
President

September 28, 2011

Mr. Floyd Vergara, Chief Alternative Fuels Branch
California Air Resources Board
1001 I Street
Sacramento, CA
Via e-mail to fvergara@arb.ca.gov

Re. **Western States Petroleum Association Comments on September 14 ARB Workshop on LCFS Regulatory Amendments**

Dear Mr. Vergara:

Attached are the Western States Petroleum Association's (WSPA) comments on staff's proposed LCFS regulatory amendments as discussed during the September 14th workshop. WSPA is a non-profit trade association representing twenty-seven companies that explore for, produce, refine, transport and market petroleum, petroleum products, natural gas and other energy supplies in California, and five other western states.

WSPA has ongoing significant concerns relating to the issues raised in the July and September workshops. Our concerns do not appear to be receiving adequate consideration by staff, so we'd like to request a meeting to discuss our comments to assist ARB in understanding our positions. In addition, there may be a number of other significant proposed revisions by WSPA to the regulation that we will share in subsequent correspondence.

We look forward to working with you in coming months on appropriate revisions to the program.

Sincerely,

c.c. R. Corey – ARB
M. Waugh – ARB
A. Sideco – ARB
J. Courtis – ARB
W. Ingram – ARB
S.Esterhazy – ARB
G. O'Brien - ARB
H. Chowdbury - ARB
K. Cleary - ARB
J. Duffy - ARB
M. Singh - ARB

Method 2A/2B Certification

WSPA previously submitted comments expressing our concern that any change to a certification process must follow the prescribed public rulemaking process. We believe changes to the Lookup Table contained in the regulation constitute a rulemaking. Since that time, staff has indicated their intention to resolve this issue by removing the Lookup Table from the regulation. WSPA strongly objects to this proposal.

The carbon intensity values of fuels and fuel components are the currency of the LCFS. All compliance determinations are based on these values. Investment decisions will be made based on these values, and changes to them will create the risk of stranded capital. Therefore, these values should remain explicitly included in the regulation, the same way that the Predictive Model equations are included in the CaRFG regulations. Any permanent changes to these values should only be possible through a public rulemaking process.

Low Energy Use Refineries

WSPA is concerned about the lack of detail being proposed relative to this item. Specifically, staff should:

- Specify how refinery efficiency (a key CA GREET input) should be determined.
- Describe how byproducts are to be treated. It should be noted that materials that are merely transferred to another refinery are not byproducts and the originating refinery should not receive credit merely for not processing them; that would be the equivalent of allowing integrated refineries to sub-divide into corresponding "low energy" process units and other units that process the "byproducts".
- Review the calculation of the refining carbon intensity in the original rulemaking to determine whether it is accurate enough and precise enough to enable a reliable determination of whether an applicant has truly demonstrated a CI difference of 5 g/MJ.

Given that the proposal is to create an ability for refiners to use the Method 2A process, our concerns about the removal of the Lookup Table from the regulation also apply to this issue. Under staff's proposal, applications would be evaluated without sufficient clear, objective criteria and rulings would be made without a public hearing before the Executive Officer.

Energy Economy Ratios (EERs)

At the September 14, 2011 LCFS workshop, ARB staff proposed revising the EER for hydrogen fuel cell vehicles (H2 FCVs) used in light- and medium-duty applications from 2.3 to 1.9 based on more recent data than that available for the 2009 rulemaking. WSPA has three comments related to this modification:

(1) When selecting the baseline gasoline vehicles with which to compare to the H2 FCVs, ARB staff should select vehicles or make the appropriate adjustments so that vehicles with similar attributes (e.g., passenger volume, cargo volume, rated power, 0 - 60 mph time, etc.) and technologies (e.g., low rolling resistance tires, aerodynamic drag improvements, etc.) are being compared. This was the approach used by Energy and Environmental Analysis in its assessment of EERs that ARB had proposed prior to the April 2009 Board hearing. That report, performed under the sponsorship of WSPA, has been previously submitted to ARB.

(2) As H2 FCVs are introduced into the fleet, ARB should monitor the on-road performance of these vehicles to ensure that the test data accurately reflect what happens in customer service. It is important that the EERs be based on on-road vehicle performance.

(3) ARB has continued to adjust the conventional gasoline vehicle baseline to account for fuel economy improvements anticipated as a result of AB1493 and federal CAFE standards. As WSPA has previously commented, such an adjustment is appropriate and should be included in EER estimates developed for future model year vehicles. However, if that adjustment is applied to conventional gasoline vehicles, every effort should be made to ensure that the alternative fuel vehicles being analyzed also reflect the technology anticipated for the same timeframe as the conventional vehicle estimates. In this way, an "apples-to-apples" comparison is made.

Section 95481.1, Definitions for the LCFS Reporting Tool (LRT)

While the addition of this section is necessary for the use of the LRT, we recommend it be included in the LCFS User's Guide rather than the LCFS Regulation. The definitions are focused on the data entry for the calculation and reporting of LCFS credits/deficits, but ignore the other LRT tabs on Organizational Profile, Business Partners and Biofuel Producers.

The definitions that are missing for the required LRT fields are Fuel Pathway, Business Partners and Biofuel facilities. It would be helpful if the sources that the LRT uses to verify these entries would be included in the definition (since it is not the Business Partners and Biofuel Producers tabs in the LRT). It would also be useful to show the linkage between "transaction type" and "obligation indicator" (i.e. sold with obligation transfer has a "-"obligation indicator).

Below are comments on the proposed definitions in section 95481.1:
95481.1 (1), **Aggregation Indicator**- either in this definition or the Guidance document, there should be detailed instructions on how to enter aggregated data at the fuel level within the framework of the required LRT fields.
95481.1 (5), **Credit Splitting** - this is a new definition that is not used elsewhere in the regulation. How and what is it used for within the LRT?
95481.1 (7), **LCFS Credits** - suggest rewording of first sentence to, "LCFS Credits are generated by comparing the obligated fuel CI to the standard for the LRT transaction entries."
95481.1 (9), **LCFS Reporting Tool** - suggest changing "LRT is an accounting system that either adds or reduces the "obligation" " to "calculates the "obligation". "
95481.1 (10), **LRT Reporting Deadlines** - the reporting dates or reference to dates is missing.
95481.1 (13),**Report Status** - the reference to the "1-6 progression" is unclear. If the list was meant to be alphabetical, this definition is out of order.
95481.1 (14), **Not Applicable**- suggest the following definition, "NA is used where the data is not required for required fields for certain transactions. For Business Partners, this applies to.."
95481.1 (16),**"No Activity" Report** - this is a new definition that is not used elsewhere in the regulation. How and what is it used for within the LRT?
95481.1 (21), **Transaction Type** – suggest the following rewording "Transaction type means the supply chain transactions for the LCFS obligation of the fuel. Initial transactions that generate the obligation for regulated parties are "Production" and "Imports". Subsequent transactions can transfer or not transfer the LCFS obligation. If a seller,…" . This would be the appropriate place to show the impact on LCFS obligation for transaction types. The other transaction types of export/loss of inventory/not used for transportation should also be included.

Enhanced Regulatory Party Provisions

WSPA has concerns about the concept of permitting procedures and requirements which govern the manner in which out-of-state biofuel producers or marketer/distributors are given the ability to opt-in as regulated parties under the LCFS. The problem with staff's proposal is that it would allow opt-ins for a producer or marketer/distributor under the LCFS without any specific ties to delivered product. This creates a potential disconnect between the opt-in parties and the regulated parties receiving the biofuel in California. Potential problems could arise where an opt-in party could claim credits for renewable fuel that was never delivered to California, or where credits could be generated for the same volume of fuel by both the opt-in party and also by a party who is acting as an importer of the fuel.

WSPA supports revisions that allow parties that opt-in to become the initial regulated party for the fuel under the following conditions and requirements:

- Opt-in parties must generate LCFS credits only through the act of bringing fuel into the state, not simply from producing it. This is vital to maintain the integrity of LCFS credit generation.

- An opt-in party can only sell product to another party who is either another opt-in party outside of California or a regulated party inside of California. An opt-in party is not allowed to sell product to a company who has not opted-in or who is not a regulated party.

- Sales from the opt-in parties to other regulated parties would be treated like any other in-state fuel transaction.

- Opt-in parties should be the initial regulated party for all of the fuels they deliver to California, subject to all reporting and recordkeeping requirements, as long as no previous party in the ownership chain has opted-in as the initial regulated party for the fuel.

- An opt-in party must provide product transfer documentation that clearly states the product being delivered to California should not be subsequently "imported" by another party, since the original LCFS credits will be generated and claimed by the opt-in party as the initial regulated party.

- Such opt-ins should carry a requirement for mandatory registration of all production facilities used to supply product to California.

- ARB should publish a list of all parties that have elected to opt-in so that regulated parties in California are aware of their status.

WSPA can support provisions that reflect the principle that opt-ins carry all of the responsibilities of being a regulated party and not just the rights, and we believe that certainty is provided by: 1) clearly knowing who bears the initial responsibility for a specific quantity of fuel; and 2) knowing whether obligation for such product is being passed on as part of the transaction.

Definition of PTD

We would suggest that the definition of the term "Product Transfer Document", or "PTD" be defined in the regulation consistent with the definition in the Guidance Document 1.0.

> "Product Transfer Document", or "PTD" means a document or combination of documents that authenticates the transfer of ownership of fuel from the transferor to the transferee. The PTD

may include, but is not limited to, one or more of the following: contract, invoice, bill of lading, RFS2 product transfer document, meter ticket, and rail inventory sheet. The PTD should be a document or combination of documents that is commonly used and accepted in the industry for the subject fuel. If multiple documents are used for an authentication, each document must contain information that identifies their association to each other.

Definition of Regulated Party

We would recommend the following change to the term "Regulated Party" in the definitions to further clarify the reference to the term "person".

"Regulated Party" means a person as defined in H&S Section 39047 who, pursuant to section 95484(a), must meet the average carbon intensity requirements in section 95482 or 95483.

Definition of Import Facility

In the proposed regulatory language, the definition of Import Facility has been changed to allow either the rail car entering the state to be the import facility (95481(a)(25)(A)) or the first storage tank inside of California to be the Import Facility (95481(a)(25)(B). These are not mutually exclusive, as a party could sell product in a rail car after it had entered the state and before it is offloaded into a tank. In this scenario, two separate parties could rightly claim to be the importer. The definition of Import Facility should be clear and unambiguous to eliminate the possibility of double counting.

Multiple Parties Claiming to be the Regulated Party for the Same Volume of Fuel.

The new section 95480.4 should be revised to indicate that the LCFS Regulations and written guidance should be the primary reference for determining who holds the valid credits. Any existing contract should be used as a secondary reference and only if the regulations allow for the regulated party status to be transferred via contract. Section 95480.4(c)(3) should be removed, since a "tiebreaker" mechanism would not be required if the regulatory requirements are clear and unambiguous.

Credit Trading [The section below on credit trading has been taken largely from WSPA's August 8 comment letter, but several revisions have been incorporated so we request staff review this carefully]

WSPA supports a LCFS credit trading process where clearing of trades is simple, all participants in each transaction are required to report, where required information is processed in the LRT, and where periodic aggregated reports are generated to assess program health and provide participants general market information. We are disappointed the comments we presented for the 7/22/11 workshop concerning credit trading did not generate more change to the proposal. We request a face-to-face meeting with staff to discuss these and other issues.

WSPA supports the following proposed changes to the credit trading part of the regulation including:

- The clarification of the distinction between credits and deficits, and the separation of their respective calculations.
- The new work in 95488 to define the credit transfer process, inclusive of the new, temporary credit transfer form and the longer term (should be done as soon as possible) plan to incorporate all credit trade information in the LRT system. In 95488(b)(1)(C)(3) ARB should provide notification of receipt of the credit transfer form to both the buyer and seller. Also in

section 95488(b)(3) – ARB should clarify what constitutes "authorization" for a facilitator. Is this an email? A contract? A registration in the LRT?

- The new work in 95488 to define and implement the carry back credit concepts - both on a temporary and longer term basis. However, we do not believe there should be any distinction on credit generation date, i.e. 2012 credits should be able to be used for 2011 reconciliation. A company who needs carry back credits should be able to purchase credits from a company who generated those credits in following year 1Q, provided the company filed their report with ARB prior to the annual compliance report deadline. Staff should also delete the proposed section 95488(a)(3)(C) restrictions on "Carry Back Credits", because there is no need to restrict use, identify number and source of credits, or be forced to meet 100% of compliance obligation just because credits were purchased in this window.
- The mandatory credit retirement provisions to cover compliance obligations and the public disclosure proposal to periodically release aggregated trade data only, inclusive of the number of credits traded, and number of trades on a quarterly basis. Public disclosure of Credit and Deficit Balances and Credit Transfer Information in Section 95488(d) needs to clarify that summary data will only be on an aggregated basis and not disclose information regarding any particular regulated party or parties.

WSPA disagrees with the following provisions:

- The need for RPs to be able to specify which credits are to be retired to meet mandatory retirement obligations under 95488c. All credits are in units of MTCO2eq. It does not make any difference which tons are used. Therefore, section 95488(c)(2) regarding "retirement hierarchy" which so far is unspecified should be eliminated.
- We suggest that the process for generating and transferring of credits all be handled in one section of the regulation. Staff should insert 95485(b-d) into 95488(a).
- ARB staff also mentioned during the discussion the possibility of specifically identifying credits with unique ID numbers or by some other method (see Section 94588(a)(2)). WSPA sees no need for this added work. It is unnecessary, will require detailed tracking systems and associated manpower, and it supplies no helpful information to a market that trades credits for metric tons of CO2eq. The suggested use of unique identification numbers for credit tracking is similar to the original RIN program under RFS1 which proved to be unworkable and was abandoned by the U.S. EPA. There is no reason to expect that such a program under the LCFS would be any less problematic. ARB should not consider adding this unnecessary complexity to the LCFS. A credit trade transaction confirmation number linking the buyer and seller for the particular transaction is acceptable, but a unique ID number for the credits themselves is unnecessary. We recommend that ARB develop some examples to understand how such a system would work.
- ARB staff has also suggested that the LCFS credit tracking mechanism will be used to ensure that the buyer of a credit is ultimately responsible for the validity of the credit. We strongly believe that this is misplaced. We believe the responsibility of validating a credit is best with the original regulated party (the importer or the in-state producer) that first generated the credit. The initial regulated party has the direct responsibility (for in-state producers) or the contractual relationship (importer) needed to validate a credit. Placing the responsibility for credit validation on the first regulated party results in a responsibility party for every credit, and ensures the integrity of the system. If a credit was later determined to be invalid, the change should be placed on the balance of the original producer or importer.

  Placing the responsibility on subsequent credit buyers creates additional problems. First, it would now be a requirement to disclose to all LCFS credit buyers the identity and plant location for the credit. This is generally information that would be kept confidential.

Additionally, the credit buyer would then need to verify the validity of the original generation of the credit, although they have no contractual relationship with the original producer. It is unclear what documentation the credit buyer would need to obtain from the credit seller to adequately defend the validity of the credit. The original transaction BOL's, copies of contracts, and invoices are all documents that the original regulated parties possess, but are not something that would be shared to the credit buying party.

- WSPA also suggests a change to 95488 (a)(2) that the EO review/verification of a credit transfer occur within 6 months of the transfer. In the absence of an explicit review/verification by ARB, the credit should be deemed valid after 90 days. This will add certainty for the credit transactions and will limit the impacts of corrections and additional credit demand during future market cycles.

- While the latest version incorporated our comments on credit balance language, there are still some inconsistencies. *Compliance Obligation* equation are specified to be for specific compliance periods, while the terms in the *Credit Balance* equations have had all references to specific compliance periods stricken. This inconsistency is magnified in paragraph (3), where the compliance demonstration is specified to be determined by comparing the $Credits^{Retired}$ (which are not ted to a specific compliance period) to the *Compliance Obligation* (which is tied to a specific compliance period).

  Did staff really intend for the terms in the *Credit Balance* equation to not be tied to a specific compliance year? This would seem to result in those terms being cumulative, correct? Does staff really expect regulated parties to report cumulative quantities (which in future years could potentially be billions of metric tons of credits that have been accounted since the beginning of the program) for the terms in the *Credit Balance* equation?

  WSPA believes that all of the terms in the *Credit Balance* equation at 95484(b)(2) should be specified to be applicable to the current compliance period. A $Credits^{CarriedOver}$ term should also be added to the *Credit Balance* equation, with the specification that it is equal to the final credit balance from the previous compliance year.

  Other inconsistencies include:
- 95488(b)(1)(A) uses the term "Total credits" which is the same as "Credit Balance" in 95484(b)(295484(b)(4) – By the definition of a cumulative Credit Balance, it should not be possible to have a negative credit balance.
- 95488(c)(1) – credit retirement should use the definitions in 95484 to reduce ambiguity.
- Staff's proposal to require regulated parties to provide price information associated with the trading of credits in 95488(b)(1)(B) and the draft "credit transfer form". The price of credits traded between two companies is not relevant to a regulated party's compliance with LCFS carbon intensity reductions requirements. All references/requirements for any price information regarding credit trades and the fuels used to generate the credits for the credit trade needs to be removed from the proposed regulation and associated draft reporting forms.

Comments on the draft "Credit Transfer Form"

- Section 1 Reporting Period – Staff should change the word "proposed" to "to be recorded". So the instruction would then read as "Enter the period in which the credit transfer is to be recorded".

- Section 2 – ARB should insert the same note "Brokers/facilitators must include submittal of a copy of authorization to act on behalf f the Buyer/Seller or both." in this section like they did in section 3. Alternatively make it clear that this note applies to both Section 2 and Section 3.
- Section 4 – ARB should remove the average price, fuel used to generate, ID numbers, qtr of generation, and name of previous seller from the form. This information is not needed to accomplish the LCFS program goals and in many cases is not defined in a way that could be reported. Credits in a regulated party's bank are fungible.
- Section 5 – ARB should indicate who can sign the transfer form. Does it have to be the same as "sellers rep" and "buyers rep"? Must they be registered in the LRT? Must they be a corporate officer?
- This form should also indicate a date by which a trade should be reported. If a 2Q trade to occurs, does a regulated party need to report within 10 days of the end of the quarter? 30 days? Other?

Comments on the draft "Credit Allocation Form"

Consistent with our earlier comments on the proposed rule changes, the credit allocation form is unnecessary and should be deleted.