



October 3, 2011

Mr. Michael Waugh
Chief, Transportation Fuels Branch
California Air Resources Board
1001 "I" Street
P.O. Box 2815
Sacramento, CA 95812

RE: Informal Comments on Proposed Amendment to the Low Carbon Fuel Standard

Dear Mr. Waugh:

On behalf of Flint Hills Resources, LP ("FHR") and its affiliate companies, we appreciate this opportunity to comment on the amendments to the Low Carbon Fuel Standard ("LCFS") proposed by the California Air Resources Board ("CARB") on September 14, 2011 ("Proposed Amendments").

Opt-in Provisions

Sections 95480.2 and 95480.3:
FHR generally supports the opt-in provisions provided, with some revisions described below.

Regarding out-of-state parties who opt-in to the LCFS program, it will be possible for such a party to sell transportation fuel to a non-opt-in party prior to the transportation fuel arriving in California. In such a case, the regulated parties in California may not have received the necessary product transfer information because the non-opt-in party has no regulatory obligation to pass the information along. Further, and more importantly, the out-of-state opt-in party may intend to retain the regulated party status for a volume of renewable fuel. If the information chain is broken by a non-opt-in party, the eventual importer may perceive *he* is the initial regulated party and will not realize the regulated party status was retained by the upstream opt-in party. In order to address this situation, FHR suggests CARB add a provision in Section 95484 that prohibits an

opt-in party from retaining regulated party status unless he is transferring title of the transportation fuel to another regulated party.

Section 95484:

With the new opt-in provisions, FHR suggests that this section be revised to clarify that these requirements and designations also apply to opt-in parties that may not otherwise be regulated parties.

Definitions

Section 95480.2 and elsewhere throughout:
FHR suggests the term "person" be defined.

Section 95481(a)(25):

The proposed change to the definition of "Import Facility" effectively supports the existing definition of "Import," meaning that transportation fuel has been brought from outside California into California, by adding the concept that transportation fuel is imported when it is carried across the state border. This proposed change also supports guidance CARB has given in the past. However, it appears there was an attempt to preserve some of the previous regulatory definition regarding a "storage tank" and a "cargo tank." FHR supports changing the definition to account for import "facilities" that are crossing the border, but we believe that once the definition accounts for "facilities" crossing the border there is no longer a need to mention "storage tank" or "cargo tank" as part of the definition. FHR suggests replacing CARB's proposal for Section 95481(a)(25) with the following:

"Import facility" means a stationary tank or mobile tanker, truck, pipeline, vessel or similar mobile equipment that held, carried, or conveyed transportation fuel at the point the transportation fuel entered the state of California.

Section 95481(a)(24):

Based on the suggested revisions to Section 95481(a)(25) above, FHR suggests the following revision to Section 95481(a)(24):

"Importer" means a person who initially owns a volume of transportation fuel in an import facility in California.

Section 95480.4(d):

This section provides that it is a violation of the regulation for a person to register as the regulated party if doing so would be "unreasonable." It is unclear

what "unreasonable" means. FHR suggests "unreasonable" be defined or otherwise expanded upon.

Section 95481:

FHR suggests moving Section 95481 (Definitions and Acronyms) directly after Section 95480.1 (Applicability).

Section 95481.1:

This new section is titled "Definitions for the LCFS Reporting Tool." Unlike Section 95481, which defines terms used throughout the LCFS regulations, many terms in Section 95481.1 are not used elsewhere in the LCFS regulations. As the title implies, these terms appear to relate to the LCFS Reporting Tool ("LRT"). If that is true, FHR suggests removing these terms from the LCFS regulations and capturing them in LRT system documentation and/or user guidance. To the extent any of these definitions apply to terms as used throughout the LCFS regulations, FHR suggests moving them to Section 95481.

Section 95488(a)(3)(C)(1):

This section requires a regulated party to identify the "source of credits." It is unclear what information would be necessary to identify the "source of credits." FHR suggests "source of credits" be defined or described more fully.

Compliance Demonstration

Section 95484(b)(3):

This section provides the requirements for the annual compliance demonstration. However, Section 95484(b)(4) allows a deficit carryover, without penalty. To reconcile these two sections, FHR suggests revising 95484(b)(3) to read:

"Compliance Demonstration. Unless an obligated party is meeting the requirements for deficit carryover in Section 95484(b)(4), a regulated party's annual compliance obligation is met when the regulated party demonstrates via its annual report that it possessed and has retired a number of credits from its account (established pursuant to Section 95488) that is equal to its compliance obligation."

Section 95484(b)(5)(B):

This section provides for penalties in the event that the deficit carryover provisions are not met. However, these provisions only apply if the regulated party has opted to avail itself of this option. FHR suggests the following revision:

"If a regulated party has not met the compliance demonstration requirements of Section 95484(b)(3), and has also not met the conditions of deficit carryover as specified in Section 95484(b)(4), then that regulated party is subject to penalties to the extent..."

Method 2A/2B Certification

Section 95486(f)

FHR supports the codification of the Method 2A/2B certification requirements. With only a couple of exceptions, the proposed certification requirements appear to reflect the kinds of documentation and demonstrations that LCFS staff currently require under the existing regulations. Codifying these requirements increases the transparency and certainty of the certification process.

One exception, compared to the current process used by LCFS staff, is at Section 95486(f)(3)(A)3. where the applicant is required to demonstrate to the Executive Officer's satisfaction that the volume of fuel that would be sold in California under the proposed pathway would be "not less than 10 million gallons per year for Method 2A applicants" and "not less than 5 million gallons per year for Method 2B applicants." The 10 million gallon requirement appears to relate to the Section 95486(e)(2) "*5-10 Substantiality Requirement*" of "more than 10 million gasoline gallon equivalents per year (1,156 MJ)." FHR suggests the proposed demonstration requirement at Section 95486(f)(3)(A)3. be expressed in the same units as the Section 95486(e)(2) requirement (i.e. gasoline gallon equivalents (1,156 MJ)). Further, the proposed 5 million gallon demonstration requirement for Method 2B applicants does not appear to be a regulatory requirement at this time. FHR suggests that if CARB will require this 5 million gallon demonstration, the "*5-10 Substantiality Requirement*" in Section 95486(e)(2) be updated to reflect the requirement.

Another exception, compared to the current certification process, is the requirement at Section 95486(f)(3)(C)9. requiring the applicant to provide CARB with a copy of the federal RFS2 Third Party Engineering Review Report ("Report"). This is a document required by the US Environmental Protection Agency ("EPA") for fulfillment of specific registration requirements in 40 CFR 80 Subpart M. These Reports are prepared for renewable fuel producers under a variety of commercial arrangements between renewable fuel producers and independent Professional Engineers, many of which likely did not contemplate the Reports being distributed to any other entity besides the EPA. These Reports satisfy documentation and verification requirements spelled out in EPA's regulations. To the extent CARB desires to require one or more of the same documentation and verification elements, FHR suggests CARB list those elements as requirements in the proposed regulations. While it would be appropriate for CARB to give an applicant the *option* to use the Report to fulfill one or more of

the requirements, the applicant should also be allowed to fulfill the requirements with other documentation if it chooses.

Other Comments and Suggestions

Section 95484(c)(5):

FHR supports the elimination of the rounding requirements in (C) and (E). Rounding requires an additional step in the report preparation process that decreases precision and increases the chance of reporting errors. This change will provide for more precise, accurate, and efficient reporting.

Section 95488(b)(1)(B)8:

One of the required elements when documenting a proposed credit transfer is to provide "the fuels used to create the credits." For a party that transacts in a variety of fuels, it is doubtful he or she can reliably identify the exact fuel(s) that generated a specific quantity of credits being transferred. FHR does not believe this level of precision is required and suggests this element be stricken.

Published Guidance

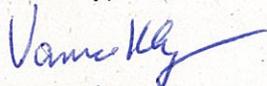
Over the past year, CARB has reached out to many in the industry who are positioned to provide low carbon intensity ("CI") transportation fuels to California. CARB has worked through many of the logistical complexities of getting these low CI transportation fuels to California – complexities that were not contemplated when the original LCFS regulations were drafted. As a result, CARB has addressed numerous questions and issued formal guidance in the form of the Question and Answer Guidance Document (version 1.0, June 10, 2011) ("Guidance") for dealing with the complexities. FHR views this Guidance as critical to regulated parties' continued compliance with the regulations, and just as critical as CARB is considering the proposed changes to the regulations.

After reviewing CARB's proposed regulation changes, it is FHR's observation and belief that the Guidance CARB has issued is still materially applicable to the proposed regulations. Accordingly, these informal comments are being offered under the assumption that the Guidance will remain effective after the proposed regulation changes take effect. To the extent any of the Guidance needs to be modified in order to be consistent with the regulatory changes, FHR urges CARB to publish revisions to the Guidance concurrently with the formal proposed regulation changes so regulated parties can be fully informed during the formal comment period.

In addition to the substantive comments and suggestions above, attached is an Appendix A that lists several technical corrections and suggestions.

Thank you for your time and consideration.

Sincerely,



Vance Klager
Flint Hills Resources, LP
Fuels Compliance Manager

Copy via email:

Floyd Vergara/CARB, Chief, Alternative Fuels Branch
Rita Hardy/FHR, VP, Quality and Compliance

Appendix A – Technical corrections and suggestions

Section 95480.2 and 95480.3

FHR suggests replacing "fuel" with "transportation fuel" since the latter is defined.

Section 95480.3(b):

A reference is made to "subsection 95480.1(b)(1)(A)-(F)." That subsection does not exist in the Proposed Amendments. It likely should read "subsection 95480.1(b)(1)-(6)." Similarly, in Section 95480.3(c), a reference is made to the exempt status of the opt-in fuels under "section 95480.1(b)(1)." This likely should read "section 95480.1(b)."

Section 95481.1(7):

The first sentence is missing a period. In the second sentence, it refers to credits that are received "annually." This should read "quarterly."

Section 95481.1(10):

The second sentence is incomplete.

Section 95484(b)(5)(A):

A reference is made to "section 95481(b)(4)". It likely should read "section 95484(b)(4)."

Section 95484(b)(5)(B):

A reference is made to "section 95481(b)(4)". It likely should read "section 95484(b)(4)."

Section 95486(a):

FHR suggests replacing "fuel" with "transportation fuel" since the latter is defined.

Section 95486(f)(2):

A reference is made to "section 95486(f)(5)" which is a section that has been struck in the Proposed Amendments. Also, FHR suggests replacing "fuel" with "transportation fuel" since the latter is defined.

Section 95486(f)(3):

FHR suggests replacing "fuel" with "transportation fuel" since the latter is defined.

Section 95486(f)(2)(B):

The semicolon at the end of the section should be replaced with a period.

Section 95486(f)(3)(I):

A reference is made to "[cite previous paragraph]." The proper reference needs to be inserted.

Section 95486(f)(3)(J)1.b. and c.:

References are made to "paragraph [i]." It is unclear to what paragraph this is referring. In the last sentence of c. the word "that" should be "than". Also, the word "and" should be inserted between "maintained" and "shall".

Section 95488(a)(1):

FHR suggests replacing "fuel" with "transportation fuel" since the latter is defined.

Section 95488(b)(3):

FHR suggests capitalizing the first letter of "buyer" and "seller."