



PRESIDENT & CEO

JOEL ANDERSON

ELECTED LEADERSHIP

Chairman of the Board
JERE VAN PUFFELEN, CLP
PRISM Team Services, Inc.

Vice Chairman/Chairman Elect
GARY MAYFIELD, CLP
Kenco Logistic Services

Secretary
LINDA HOTHAM, CLP
Matson Global Distribution

Treasurer
ARTHUR BARRETT, CLP
Barrett Distribution Centers

Immediate Past Chairman
BRUCE ABELS, CLP
Saddle Creek Corporation

DIRECTORS

WILLIAM BUTLER, JR.
Weber Distribution

W. PAUL DELP, CLP
Lansdale Warehouse Company

ROBERT DOYLE, CLP
Amware Logistics Services

CAMERON JOYCE
McKesson Logistics Solutions

VICTORIA KING
UPS Supply Chain Solutions

DARREL LAKE
Saddle Creek Corporation

JACK LIPIN, CLP
Madison Warehouse Corporation

JOHN MCKENNA
McKenna Logistics Centres

CHRIS OECHSEL
Zethcon Corporation

JEFF PENNINGTON
LeSaint Logistics

CAROLYN PIZZUTO
ASW Global, LLC

ROBERT RUSSO, CLP
Port Jersey Logistics

HERB SHEAR
GENCO Supply Chain Solutions

CHIP SCHOLZ
Scholz & Associates

PAUL VERST, CLP
Verst Group Logistics

JOHN WAGNER, JR., CLP
Wagner Industries, Inc.

JERRY WRIGHT, II
Brokers Logistics, Ltd.

**119th ANNUAL
CONVENTION
March 7-9, 2010
San Diego, CA**

International Warehouse Logistics Association

2800 River Road, Suite 260 • Des Plaines, IL 60018-6003
Phone 847.813.4699 • Fax 847.813.0115
www.iwla.com

April 22, 2009

Clerk of the Board
Air Resources Board
1001 I Street
Sacramento, CA 95814

Via electronic submittal to <http://www.arb.ca.gov/lispub/comm/bclist.php>

Re: Notice of Public Hearing to Consider Adoption of a Proposed Regulation to Implement the Low Carbon Fuel (LCFS) Standard: IWLA Comments

Dear Clerk of the Board:

The International Warehouse Logistics Association (IWLA) represent the value-added warehousing and logistics industry, representing third-party logistics and warehousing service providers. IWLA members are committed to warehousing and protecting the free flow of products across international borders. Our members have participated in a number of workshops held by the California Air Resources Board (CARB) regarding the LCFS. IWLA members have asked simple questions to which we have not received adequate answers and we have come to the conclusion that this regulation is not ready for adoption.

CARB is asking IWLA to waive the tried-and-true state administrative procedures used for rulemaking in California and trust that a skeleton diesel fuel reformulation will go smoothly. The staff has presented an outline of a regulation for adoption as a substitute for a well researched, properly tested and economically viable fuel standard. We ask that you complete the rulemaking, adhere to the Administrative Procedures Act and remove diesel fuel from the LCFS until such time that an adequate rulemaking takes place.

In summary, we have eight concerns that need to be addressed before the adoption of California-only diesel LCFS:

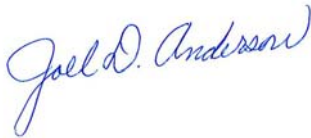
- The LCFS is a fuel reformulation and is subject to a multimedia review
- CARB failed to review other alternatives that provide quantifiable reductions in greenhouse gas emissions and are currently available to the end user at a lower cost
- CARB failed to accurately assess the “cost impact” of the LCFS
- CARB is misusing the term “performance standard” to avoid the required multimedia evaluation required by state law
- If CARB believes the LCFS is not a fuel reformulation, how could there be violations of the regulation?

- A LCFS for diesel fuel relies exclusively on fuels (not vehicles) that are currently not commercially viable and must be addressed differently than passenger car fuels.
- CARB cannot conduct a hearing that adopts a diesel LCFS in April when the elements required by the Administrative Procedures Act will not be completed until December, when almost all the regulatory elements are required to be ready.
- IWLA requests that CARB publicly review the regulation every 6 months until 2020 to ensure that vehicles and equipment are not impacted by reformulated fuels

IWLA agrees with CARB that this is the most transforming fuel regulation ever undertaken. Adequacy, reliability and affordability of transportation fuels are essential to the success of this extremely complex program and without the above-mentioned issues addressed, the program has the potential to cause serious economic harm to California businesses as early as the fourth quarter of 2010.

We ask that you stop, develop a rulemaking that complies with the Administrative Procedures Act and that can be adopted by the Office of Administrative Law based on completeness, do the implementation properly, and protect California from going down a path with a clear scientific record of causing disparate economic harm to every California-domiciled business.

Sincerely,



Joel D. Anderson
President & CEO

Enclosure

Comments of International Warehouse and Logistics Association (IWLA) on the public hearing to consider adoption of a proposed regulation to implement the low carbon fuel standard (LCFS)

1. The LCFS is a fuel reformulation and is subject to a multimedia review.

The proposed regulatory action reduces greenhouse gas (GHG) emissions by reducing the carbon intensity of transportation fuels used in California. Past fuel reformulations provided the same mechanisms for reformulation which place a numeric standard on a fuel property. CARB diesel was first introduced to limit the aromatic content of diesel fuel; this reduction required a reformulated diesel. Ultra low sulfur diesel fuel (LCFS) limited the sulfur component in diesel fuel to 15 parts per million. The LCFS requires reduction of the carbon intensity and the reformulation of current diesel to transition from fossil fuel to renewable fuel.

CARB avoids regulatory requirements by avoiding the terms “reformulation” and “fuel specification.” California Health & Safety Code section 43830.8(a) prohibits CARB from adopting a regulation that establishes a specification for motor vehicle fuel unless the regulation undergoes the multimedia review process specified in the statute.

The multimedia requirement does not apply if the regulation does not establish a motor-vehicle fuel specification. Clearly, a carbon intensity standard is a fuel specification as are limits on aromatics and sulfur. The semantics assessment in the staff report sets a standard for carbon intensity and, because it is a motor vehicle fuel specification, triggers a multimedia evaluation.

Although the submitted proposal is incomplete, at its core is a fuel transformation that impacts the state’s supply of diesel fuel specifications. CARB details its expectation that, as new, lower-carbon intensity fuels are developed, it will need to establish fuel specifications to allow the sale of such fuels in California.

CARB recognizes that the need to conduct multimedia evaluations for the specific fuels and has started a multimedia evaluation for biodiesel and renewable diesel fuel. The new fuel specifications are planned in a future rulemaking.

Moving forward without completing the multimedia evaluations on biodiesel and renewable diesel violates the plain language of the statute and must be completed before the regulation is adopted pursuant to Health & Safety Code section 43830.8 – a law designed protect the public and end users from this very situation.

2. CARB failed to review other alternatives that provide quantifiable reductions in GHG emission and are currently available to the end user at a lower cost

The most expensive regulatory scheme that can be placed on the goods movement sector is diesel fuel reformulation. Without the standard 5-year lead time and appropriate in-use testing, a technology forcing-fuels mandate will end up damaging engines and perpetuating market cartel dominance for a few, favored providers. With no compliance option, the state will repeat the harm done to businesses during the 1993 California-only diesel fuel reformulation, which

severely reduced engine life and introduced market exploitation of California-situated businesses.

Other alternatives that provide real reductions of GHG are available at a lower cost to the end user, yet CARB has selected a high-cost fuel reformulation that provides little if any reductions before 2015 and has failed to complete the required multimedia analysis.

The California Government Code section regulates what a complete record shall contain:

11346.9. Every agency subject to this chapter shall do the following:

(a) Prepare and submit to the office with the adopted regulation a final statement of reasons that shall include all of the following:

.....

(4) A determination with supporting information that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation.

(5) An explanation setting forth the reasons for rejecting any proposed alternatives that would lessen the adverse economic impact on small businesses.

There are numerous ways to reduce GHG emissions from diesel users. Energy efficiency measures are the single-most cost-effective measure, provide immediate and significant reductions in GHG emissions. The least costly measures were not evaluated and the LCFS provides little if any GHG reductions in first years post-adoption at a very high cost to the end-user. Adopting the high-cost LCFS sends a political message to other states that CARB has completed its regulations and therefore the science. And, as with CARB diesel, states that border California saw the increased price of the reformulated fuel, the inherent price volatility it created for businesses and consumers, and those states declined to follow CARB's lead.

3. CARB failed to accurately assess the “cost impact” of the LCFS

Government Code section 11342.535 defines “cost impact” as:

[t]he amount of reasonable range of direct costs, or a description of the type and extent of direct costs, that a representative private person or business necessarily incurs in reasonable compliance with the proposed action.

Forcing fuel standards within an 18-month lead time creates provider cartels, and cartels, by their very nature, exploit the end-users. If the only compliance path available is a variance or “tax” on each gallon of fuel sold, CARB must be transparent and include this as part of the rulemaking, as was the case in the history of CARB's own record of the single-state diesel fuel, as follows:

California's refineries normally produce sufficient amounts of diesel to meet in-state demand. Diesel fuel also can be imported into California as long as it meets ARB's requirements. If a refinery is unable to produce sufficient California diesel due to unforeseen circumstances beyond its control (such as a refinery accident), it can request a temporary variance from ARB to produce or import diesel that does not meet ARB's requirements as needed to ensure minimum adequate diesel supplies in California. (*Fact Sheet: California Diesel Fuel*, updated Oct 6, 2000)

With no diesel compliance path in sight, the only option is a variance, which is a known price per gallon of fuel sold in California. Neither the variance cost impact nor the premium cost for a renewable or biodiesel blend is reflected in this rulemaking. The cost impact provided by CARB does not meet the requirements of the Administrative Procedures Act.

IWLA urges CARB to develop a rulemaking that complies with the Administrative Procedures Act and that can be adopted by the Office of Administrative Law based on completeness, do the implementation properly, and protect California from going down the same path, a path with a clear scientific record of causing disparate

4. CARB is misusing the term “performance standard” to avoid the required multimedia evaluation required by state law

CARB has determined that the proposal, by itself, does not establish motor-vehicle fuel specifications. The concept of setting a performance standard that is prescriptive for carbon intensity (CI) makes it a standard. Companies with compliance obligations must meet the CI standard or face enforcement penalties. CARB states they “expect that as new, lower-carbon intensity fuels are developed over time, ARB may need to establish fuel specifications to allow the sale of such fuels in California”.

Government Code section 11342.570 provides the definition of a *performance standard* and *prescriptive standard*. "Performance standard" means a regulation that describes an objective with the criteria stated for achieving the objective. The CI standards are set by CARB and decline over time, creating a declining prescriptive standard, not a performance standard. This prescriptive standard defines a specific action that has a quantifiable limit for CI in fuels.

Government Code section 11342.590 better assesses the objective of this rulemaking as a "prescriptive standard" defined as “a regulation that specifies the sole means of compliance with a performance standard by specific actions, measurements, or other quantifiable means.” The only way to reduce the CI in diesel fuel is to add renewable fuel or biofuel to the existing refined product. Doing so does not differ from adding cetane to diesel fuel to reformulate it or to make CARB diesel. The only difference is that the recipe for the LCFS requires a renewable additive.

5. If CARB believes the LCFS is not a fuel reformulation, how could there be violations of the regulation?

CARB plans to assess penalties and mete out other remedies for violations of regulations adopted pursuant to AB 32, found in Health & Safety Code section 38580. If this rulemaking is not a fuel reformulation, how can fines be levied against obligated parties?

Further, Health & Safety Code section 43029 provides additional penalties designed to eliminate the economic benefits gained from a regulated party’s noncompliance. CARB cannot have it both ways: either CARB is effecting a fuel reformulation with an enforcement mechanism or there is no fuel reformulation and, if so, no compliance requirement.

6. A LCFS for diesel fuel relies exclusively on fuels (not vehicles) that are currently not commercially viable and must be addressed differently than passenger car fuels.

CARB attempts to characterize diesel LCFS as a performance standard because it is designed to spur innovation in fuels. Goods movement fuels differ from passenger vehicle fuels. Creating a technology-forcing regulation that relies on fuels and vehicles that are not yet commercially viable may force passengers into electric vehicles; a similar technology leap is not currently viable for goods movement fuels or vehicles.

Treating diesel fuel as if it is part of the Zero Emission Vehicle (ZEV) program creates uncertainty in the marketplace. Early optimism for ZEV technology advancements did not materialize in the marketplace and the program had to be modified periodically during contentious hearings, hearings that created uncertainty about the compliance obligations of manufacturers.

A process that creates uncertainty in the supply and price of diesel fuel is bad public policy. The CI standard for diesel fuel must be verified before it is adopted as a standard.

7. CARB cannot conduct a hearing that adopts a diesel LCFS in April when the elements required by the Administrative Procedures Act will not be completed until December, when almost all the regulatory elements are required to be ready.

This proposed regulation lacks supporting documents for the LCFS program. This program is not ready for a workshop, much less adoption, which triggers compliance obligations and increases prices for diesel fuel.

IWLA members (representing California businesses) attended three workshops and have raised concerns about the completeness of the rule. CARB could not answer members' questions, which in itself is acceptable in the workshop proceedings. Moving ahead with the regulation and checking the "public hearing box" is an inaccurate descriptor of where CARB is in the public process. The last workshop did not present a definable agenda or disseminate any pertinent information to the public regarding the regulation.

The proposed regulation indicates a review of the program is scheduled in 2012; however, significant data and information will be incorporated in December 2009, which is after the rule is already in place. How can a skeleton rule be adopted and never reviewed? IWLA requests that adoption of the diesel LCFS be finalized after completion of the work – as is the case with every other regulation and agency rule adoption in California.

IWLA fears that CARB is using the fuel regulation as a political message to other venues. Most of the regulatory work will not be completed until the end of 2009. If CARB moves ahead without the legally required documentation, in an effort to spur other states to opt in, the economic harm caused will do just the opposite. While adopting a skeleton rule may provide a political benefit for attempts to leverage other states to adopt the LCFS and send a message to the U.S. Congress about California's program, it places the California's goods movement sector (a significant state employer) in great economic harm and subjects this sector (and California

consumers who purchase goods delivered to market by this sector) to price volatility and provides no GHG emission reduction.

8. IWLA requests that CARB publicly review the regulation every 6 months until 2020 to ensure that vehicles and equipment are not harmed by reformulated fuel

Adopting a skeleton regulation is unprecedented for diesel fuel and, if CARB proceeds, the regulation must be evaluated annually every 6 months (1) to determine supply, price, and volatility, (2) to determine whether existing equipment and vehicles are compatible with the new fuel, (3) to evaluate trends for market leaders and market dominance. If only two fuel providers stay in the market, CARB needs to be aware of this and correct the rule.

A review in 2012, as CARB proposes, eliminates any hope of a full public process that is open to all stakeholders. A review conducted only by the executive officer, rather than the full board, is suspect and limitations on public interaction will spill over into legislation hearings.

CARB's proposed restrictions regarding public reviews suggests that CARB anticipates market disruption associated with the diesel LCFS.