

WSPA Comments on Topics Discussed During the Fourth Low Carbon Fuel Standard Advisory Panel Meeting

The comments of the Western States Petroleum Association (WSPA) regarding the fourth meeting of the Low Carbon Fuel Standard (LCFS) Advisory Panel are presented below.

Overall, WSPA's greatest concern is that the LCFS Periodic Review Report will fail to provide a credible assessment and forecast of the availability, California supply, and costs of fuels that ARB has assumed will be available in its "illustrative compliance scenarios." It is imperative that ARB, as part of the Advisory Panel process, complete a credible and balanced determination of availability of gasoline and diesel substitutes that would be necessary for LCFS compliance over the next 4-5 years.

In particular, ARB staff must justify why assumptions that the bulk of the nationwide supply will be delivered to and used in California are reasonable. It is also imperative that this analysis include the expected added costs for compliance, including those associated with fuel distribution and refueling infrastructure and specialized vehicles (e.g., battery electric vehicles).

ARB and the Advisory Committee have a responsibility to the citizens of California to complete this analysis in order to understand and quantify the ability of, and cost to, the state to implement this landmark regulation as part of the Advisory Committee process.

It is also critical that ARB staff and the Advisory Panel advise the Board of all environmental effects—including the GHG impacts—of the LCFS. In particular, ARB staff must quantify the potential impacts of GHG emissions resulting from "shuffling" of biofuels as a consequence of the LCFS program.

Meeting the Targets and Assessment of Need to Adjust Compliance Schedule

WSPA is strongly opposed to the concept of alternative compliance mechanisms that was discussed at the last meeting. Rather than incorporating any "alternative compliance mechanism" in the LCFS regulation, ARB needs to establish reasonable and feasible compliance targets. If compliance with the LCFS targets is not possible, then those targets need to be revised so that compliance is possible.

WSPA suggests that compliance "off-ramps or triggers" be analyzed and potentially included in the LCFS regulation so that if the California supply and consumption of low CI fuels do not hit specific benchmarks during the early years of the LCFS program, the compliance targets are automatically revised. As indicated in the attached markup of the outline for this section, any mechanism for revising the LCFS targets must include leadtime that is sufficient to prevent disruptions in the California transportation fuels market. This means all program infeasibilities that may occur in the next 4 -5 years need to be included in the Periodic Review report, and addressed in the upcoming December Board LCFS review hearing.

Harmonization

WSPA believes that state and regional programs, such as California's LCFS, are inherently inefficient as they will generally promote the "shuffling" of certain types of biofuels from one area of the U.S., or even the world, to California. To the extent that these fuels would otherwise be produced and consumed near their production sources, this "shuffling" leads to increased, rather than decreased, greenhouse gas emissions—a result directly at odds with the stated purpose of the LCFS regulation. Furthermore, as Dr. Malins pointed out in his presentation at the Panel meeting, the inherent potential for shuffling will be further exacerbated by the differences in the carbon intensity (CI) values associated with different regulatory programs. Given this, the primary goal of any LCFS harmonization effort should be to eliminate fuel shuffling.

A second issue with respect to harmonization that ARB should consider is that the primary nationwide program promoting biofuel use—the federal RFS2 regulations—is volume based and subject to adjustment depending on the pace at which biofuel production technology develops, whereas the ARB LCFS program focuses on reducing the CI of transportation fuels. WSPA believes the LCFS approach is counter-productive because it also imposes requirements for current transportation fuel providers to buy credits from providers of electricity and other non-liquid fuels - over which current transportation fuel providers have no control.

Lifecycle Analysis

During the Panel meeting, ARB staff indicated it planned to develop a "certification process" for the assignment of pathway-specific CI values under the Method 2a/2b provisions of the LCFS regulation that would not require a public hearing in order for these CI values to become part of the LCFS regulation. WSPA is strongly opposed to the incorporation of any CI values into the regulation without a public hearing, and supports the continued use of the current regulatory processes for approving new CI values. A tracked-changes markup of the draft outline is also attached.

Technology Assessment, Supply, and Availability

Although WSPA is pleased to see that the technology assessment, supply, and availability sections have been combined, WSPA is disappointed to see the draft chapter does not include a forecast of the total nationwide supply and/or California availability of each gasoline and diesel substitute that is addressed in the draft chapter.

Also missing from the chapter are forecasts of the availability of specialized vehicles (e.g., battery electric vehicles) required to use some fuels, and the associated refueling infrastructure. WSPA urges ARB staff to work closely with the CEC staff, which is developing highly relevant information as part of the 2011 IEPR process, to ensure the most complete and up-to-date information is included in the LCFS Periodic Review Report.

While CEC's work continues, WSPA strongly urges ARB staff to include preliminary data and results presented at the CEC September 9th workshop on the 2011 Transportation Energy Forecast in the LCFS Review Report, both in the technology assessment, supply, and availability section and in the economics section.

ARB and the Advisory Panel cannot rely on CEC entirely, however, to complete the ultimate determination of availability of alternative fuels to meet the LCFS. As noted above, the LCFS is premised on the ratable commercial availability of quantities of alternative fuels in order for the regulation to be viable. ARB has a responsibility to the state to complete a thorough evaluation of alternative fuel availability before making a recommendation to move forward and implement the LCFS. ARB and the Advisory Panel must understand and quantify the ability of the state to implement this landmark regulation as part of the Advisory Panel process.

Again, a markup of this section of the draft report is attached.

Environmental Impacts and Compliance Scenarios

At present, the environmental impacts section of the draft report focuses almost exclusively on issues associated with the development of biofuel production facilities in California. While these impacts are important, the potential environmental ramifications of the LCFS are much more far reaching.

For example, potential shuffling of ethanol from Brazil and from the Midwest through the port of Houston would lead to increased GHG emissions due to tanker transport, as well as increased emissions of criteria pollutants in an area that is in nonattainment with the National Ambient Air Quality Standard (NAAQS) for ozone. Increased GHG emissions from shuffling could entirely offset the apparent GHG emission reductions from the LCFS. These projected effects need to be calculated as best possible, and reported to the Board via the Periodic Review report.

Another obvious issue is the assumptions and parameters associated with any "compliance scenario" must comport with the finding of the analysis performed as the basis of the technical assessment, supply, and availability section.

Again, a markup of the draft report section on this topic is attached.

HCICO

WSPA continues to support the use of the CI values for CARBOB and Diesel that are incorporated in the existing LCFS regulation for all gasoline and diesel fuels.

Renewable Diesel

Renewable diesel is indistinguishable in terms of its hydrocarbon structure from conventional petroleum diesel. The US EPA describes renewable diesel as follows: "The term renewable diesel covers fuels made by hydrotreating plant or animal fats in

processes similar to those used in refining petroleum. Renewable diesel is chemically analogous to blendstocks already used in petroleum diesel, thus its use can be transparent and its blend level essentially unlimited.” See 58 Federal Register 14755 (March 26, 2010).

Notwithstanding EPA’s correct explanation regarding the physical characteristics of renewable diesel, there is an artificial limitation on the use of renewable diesel that arises from the labeling requirements in section 205 of the Energy Independence and Security Act. The Federal Trade Commission recently issued a final rule that concludes that blends of renewable diesel above 5% must be labeled. 76 Fed. Reg. 19684 (April 8, 2011) (“Specifically, 42 U.S.C. 17021, which is titled “Biomass- based Diesel and Biodiesel Labeling,” defines biomass-based diesel as any “diesel fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency,” without limitation, including limitations regarding co-processing. Thus, all renewable diesel blends discussed in the record are “biomass-based diesel blends” under EISA, and there is no inconsistency in treatment.”).

The practical impacts of this interpretation combined with the fact that there is no standard test method referenced by ASTM D975 that will reveal renewable diesel content means that the use of renewable diesel is limited to 5% in the distribution system. Given FTC’s interpretation of the law, it will require a revision of EISA to remove this artificial limitation on renewable diesel use.

Comment on E2’s Advanced Biofuel Market Report 2011

E2 stated publicly and candidly that they do not have the technical capability to evaluate the feasibility of the technologies that would be employed by the companies they surveyed. And they do not claim in their report “Advanced Biofuel Market Report 2011” that the aggregated estimates of low CI biofuel production from companies will come to California or even be produced. But they do conclude that “investment, not technology, is the biggest market barrier” to this happening.

We would like to point out that without a thorough and accurate assessment of the feasibility of the appropriate technologies and the investments required to implement them, it seems premature to predict what the biggest market barrier may be or how the market for biofuels may develop over time.