

Western States Petroleum Association's Comments on the CARB Draft Advisory Panel Report – November 2011

Process

WSPA was instrumental in the 2009 LCFS adoption hearing Resolution requirement for Periodic Reviews. We are therefore pleased that the first Advisory Panel has been arranged and staff has attempted to develop a report that is reflective of the variety of views expressed during the Panel meetings. We are hopeful, and will be requesting of the Board in December, that staff of the ARB and the CEC will conduct annual reviews of the LCFS program to assess, via the same parameters listed under the Advisory Panel's purview, the state of the program and the need for additional revisions.

We are disappointed, however, in the timeline of the Advisory Panel. We expected the dialogue, information, and results of the Advisory Panel to inform the selection of issues that needed revising within the December regulatory amendment hearing. Whereas some of the least important issues were addressed first by the Panel and were therefore completed in a timely way for informing the regulatory amendment needs, there were some of the more critical issues – such as the updated economic impact analysis and the review of meeting the compliance targets – that were discussed well after the staff documents on the regulatory amendments were already out for 45 day review, and in fact were not even finished during a post-final Panel meeting on November 17. Staff merely indicated work would be ongoing.

We believe there should have been sufficient time between the final work of the Advisory Panel and the release of staff's ISOR and regulatory amendments.

Compliance Scenarios and Meeting the Targets

WSPA will be submitting comments on these issues by the deadline next week.

Comments Previously Submitted that were Not Addressed

WSPA reviewed comments it previously submitted to ARB in response to draft Periodic Review Report chapters and the overall Review Report Work Plan. Based on this assessment we have compiled a list of comments that were not incorporated into the draft Review Report released October 25, 2011. We request that staff review the omissions and either make additional revisions to the Panel report, or provide responses as to why they were not incorporated. The summary is presented below.

Comment #34: Advisory Panel Draft Work Plan and Topic 5 – Ultra Low Carbon Fuel Comments

This comment was submitted by WSPA on May 6, 2011 in response to the April 26th Panel Meeting, and focuses on the general aspects of the Review Report Workplan, specifically on the points of agreement and areas of concern to ARB's LCFS review approach. In addition, WSPA provided comments on the outline for Topic 5 that was discussed at the Panel Meeting.

With respect to general comments on the Workplan, the current draft Review Report incorporates the majority of the issues noted by WSPA in some form. The list below highlights WSPA's concerns that the Report fails to address at this point:

- The current Report does not address LCFS credit prices. Granted the Economic Analysis section was left incomplete, but we believe staff needs to address the issue of credit prices that is fundamentally important to assessing the projected health and feasibility of the program. Currently, to show how LCFS targets will be met, staff has developed “illustrative” compliance scenarios that do not account for fuel costs, but merely rely on unrealistic projections of biofuel volumes and alternative fuel vehicles in California. Moreover, ARB is planning to rely on these scenarios in the forthcoming economic analysis.
- WSPA notes that fuel shuffling needs to be addressed in a “holistic sense” by reviewing GHG emissions change on a global scale. This type of environmental assessment was not done for the 2011 Review Report, as ARB staff does not believe that the transportation fuel usage in California has changed significantly since 2009 to warrant a new environmental analysis. We continue to disagree and point out that CEC and others have referred to the current fuel shuffling occurring as a result of the program.
- The current economic analysis is incomplete, but from what was provided in the draft report it does not seem that ARB is considering impacts on California employment as part of its assessment, as was requested by WSPA.

Regarding Topic 5 Ultralow Carbon Fuels (ULCF), at present ARB acknowledges WSPA’s request to treat these fuel equally within the program without picking “winners and losers”. However, ARB has not abandoned the concept of including a mechanism that would incentivize ULCF and is planning to revisit the ULCF provision in 2012. The draft Review Report specifically states on Page 95 that ARB is planning to intervene if the development of ULCF is not sufficiently stimulated by the LCFS program. It is also not clear whether ARB is considering the 90% CI reduction definition for ULCF fuels as proposed by WSPA.

Comment #48: WSPA Comments on ARB LCFS Program Review Advisory Panel

This comment was submitted by WSPA in response to the third Advisory Panel Meeting that took place on June 30 and July 1, 2011. The two-day meeting covered a broad range of topic outlines, as well as the first emerging draft Review Report chapter. The following list summarizes unincorporated WSPA comments provided to ARB based on the June/July Panel Meeting discussion.

1. Topics 6 and 7 – Supply and Availability

WSPA provided a detailed analysis of the U.S. biofuel projected use based on data obtained from the Energy Information Administration (EIA) with a specific focus on ultralow carbon fuels (ULCF) in the 2015 timeframe. The estimate was then compared to ARB’s projections presented at the June Panel meeting and was found to substantially differ from that based on EIA data. To date, ARB has not considered EIA volume projections in ULCF availability analysis. The availability of ULCFs remains a question due to conflicting projections between the state and federal energy agencies and does not give the necessary certainty in the program to regulatory parties. IF ARB decides not to incorporate the EIA data it should at a minimum explain why this was not done.

2. Topics 8 and 12 – Economic Impacts

In contrast to WSPA's comment that the 2009 economic analysis of the LCFS program assigned all costs related to biofuel infrastructure to the federal Renewable Fuel Standard, ARB claims, on page 117 of the Review Report, that this impact was assigned to LCFS. The WSPA suggested "incremental" economic analysis to track the additive impact of LCFS to the federal fuels program has not been completed. However, it seems that ARB is planning to use a new assessment approach relying on the "illustrative" compliance scenarios to drive the economic analysis. At the very least, ARB has included language in the current draft chapter that hints at high costs for low carbon fuels that will drive LCFS credit prices and their availability. No discussion of crude oil price projections was included in the Economic Analysis draft chapter at this point. In contrast to WSPA's suggestion, vehicle technology-related costs were not included in the list of assumptions for the 2011 economic analysis.

3. Topics 9, 10, and 12 – Environmental Impacts

WSPA's comments that relate to the Environmental Analysis chapter were largely focused on the need to quantify GHG emissions impacts from the LCFS program. For example, the expected fuel shuffling specifically for fuels like sugarcane ethanol from Brazil, as well as indirect effects due to diversions of crops to biofuel production needs to be analyzed and included.

4. Topics 14 – HCICO Outline

In contrast to the no crude differentiation approach preferred by WSPA, the Review Report Chapter 9 describes current HCICO treatment within the program and other potential approaches that were being evaluated by ARB staff. However, the Chapter fails to note the California Average Approach was already chosen by ARB staff as part of the LCFS regulatory amendment process. Again this highlights the inappropriate process that was followed.

5. Draft Report Chapter 4 – Technology Assessment

This chapter was grouped together with the Supply and Availability topic of the Review Report, thus organizational concerns noted by WSPA were addressed. However, the chapter does not discuss barriers to biofuel availability in terms of higher fuel or infrastructure costs. Specifically, there is no discussion or evaluation of difficulties and costs to construct the necessary electric vehicle infrastructure as pointed out by WSPA. Additionally, there is no discussion on the need and effects of certain biofuel blends to receive a waiver under Clean Air Act in order to be used as transportation fuels.

Comment #60: on Topics Discussed During the Fourth LCFS Advisory Panel Meeting

A set of WSPA comments was provided to ARB in response to draft chapters released for the August 25 and 26, 2011 Advisory Panel Meeting. Besides the comments prepared by our consultant, Sierra Research, WSPA provided four attachments that included specific suggested language to be incorporated in the Review Report. The revised language addressed the following topics/sections:

- Meeting the Targets;
- Harmonization;
- Lifecycle Analysis;
- Technology Assessment, Supply and Availability.

WSPA has compared the language to the current Report draft and noted that none of the proposed revisions were incorporated. In addition, some of the major comments provided by Sierra Research were also not addressed, including:

- Justifications for compliance scenarios assumptions;
- Projections of alternative technology vehicles for each analysis interval;
- Renewable Diesel limitations; and
- Environmental impacts due to fuel shuffling.

Comment #64: Background on the 2011 LCFS Advisory Panel

WSPA comments were provided in a format of suggested language for Chapter 2 – Background on the 2011 LCFS Advisory Panel of the Review Report released September 21, 2011. After a review of both the WSPA-suggested language and the draft Review Report chapter, we noticed that language revisions for Section A, B, C, E, and F of the Chapter were not incorporated. An exception is Section D – Scope of Work, where WSPA language was included in the Report except for the following:

“The Panel provided comments and feedback to ARB staff for incorporation into this report, however the inclusion of these comments was made at the sole discretion of staff.”