

December 11, 2009

Dean Simeroth
Chief, Criteria Pollutants Branch
California Air Resources Board
1001 "I" Street
Sacramento, CA 95812

Dear Mr. Simeroth,

I am writing to seek clarification on several issues related to reporting and compliance obligations for the Low Carbon Fuels Standard (LCFS). As the planned implementation date for the LCFS is rapidly approaching, our member companies who would be considered regulated parties under the LCFS are increasingly concerned about their ability to fulfill required reporting and compliance obligations under the program. This is because the reporting mechanisms and compliance tools apparently still have not been completed.

Further, the California Air Resources Board (CARB) has not specified how and when to submit key pieces of information, such as physical pathway demonstration documentation. While we understand 2010 is a "reporting only" year under the LCFS and actual enforcement doesn't begin until 2011, it is imperative that the mechanism for compliance is completed and made available to regulated parties in a timely manner. It is incomprehensible that implementation of a regulation could occur before the means of demonstrating compliance is completed and accessible to regulated parties. For these reasons and others, we believe the Office of Administrative Law will be forced to return the LCFS package to CARB and require the agency to complete its unfinished work related to the compliance and reporting system.

Many of our member companies, including both ethanol producers and marketers, have raised numerous questions regarding LCFS reporting and compliance requirements. Unfortunately, the final regulation order and the supporting materials released Nov. 25, 2009, did little to address these lingering questions and concerns. Therefore, we are requesting responses to each of the specific questions outlined (in bold italic print) below, so that our member companies may more adequately prepare for implementation of the program.

REPORTING OBLIGATIONS

It is our understanding that, as producers of oxygenate, ethanol producers are defined as regulated parties under Section 95484(a)(1)(A) of the final regulation published Nov. 25, 2009. However, CARB has failed to specify what reporting and compliance requirements, if any, are ultimately applicable to ethanol producers who transfer ownership of the oxygenate once the fuel is inside of the state of California. Section 95484(a)(1)(C) states "...when a person who is the regulated party for oxygenate to be blended with CARBOB transfers ownership of the oxygenate before it has been blended with CARBOB, the recipient of ownership of the oxygenate (i.e., the transferee) becomes the regulated party for it." This appears to indicate that reporting and

compliance would be the responsibility of the transferee and that the ethanol producer would not be obligated to complete quarterly or annual reports. However, this is not explicitly stated and statements by CARB staff have implied ethanol producers who transfer ownership of the fuel may still be subject to certain reporting requirements.

- ***What, if any, are the specific quarterly or annual reporting obligations for ethanol producers who transfer ownership of the fuel and the related compliance obligations once inside the state of California?***

Further, CARB's use of inconsistent definitions and terms to describe fuel ethanol leads to additional confusion. Table 3 on page 35 of the final regulation shows all quarterly and annual reporting requirements apply to "neat ethanol." The U.S. Department of Energy defines "neat alcohol fuel" as "Straight or 100% alcohol (not blended with gasoline), usually in the form of either ethanol or methanol."¹ Further, DOE's general definition of "neat fuel" is: "Fuel that is free from admixture or dilution with other fuels." CARB does not define "neat ethanol" in the final regulation; rather, it defines E100 as "denatured fuel ethanol" meeting ASTM D4806.

As "neat ethanol" is generally assumed to refer to fuel alcohol that has not been denatured with gasoline, it is not explicitly clear in the final regulation who is responsible for reporting the required information for quarterly and annual reports. U.S.-produced fuel ethanol that is transferred from producers or marketers to gasoline blenders in the marketplace is *always* denatured fuel grade ethanol, not "neat ethanol." As "neat ethanol" is *always* denatured before leaving the U.S. production facility (the act of which transforms the fuel in a way such that it is no longer considered "neat"), the only owner of "neat ethanol" at any point in the supply chain is the ethanol producer. Since downstream gasoline blenders technically never take ownership of "neat ethanol," we seek clarification on CARB's use of the term "neat ethanol" as it applies to the party responsible for reporting and compliance for fuel ethanol.

- ***How does CARB define "neat ethanol"? Is "neat ethanol" considered by CARB to be synonymous with denatured fuel ethanol as defined by ASTM D4806? What bearing, if any, does the conflicting use of terminology have on who is ultimately responsible for reporting and compliance for fuel ethanol?***

Table 3 on page 35 also indicates RINs (Renewable Identification Numbers) associated with fuels used under the federal Renewable Fuels Standard (RFS) must be reported quarterly and annually by LCFS regulated parties. It is common practice that a specific RIN doesn't always follow the specific gallon of ethanol that generated the RIN from the production facility to the buyer. Rather, RINs may go through a marketer's central "RIN pool" and they are later allocated in a "first-in, first-out" manner to buyers. CARB does not specify in the final regulation how this issue will be handled. It is unclear whether CARB is requiring the RINs that are reported to be the same RINs that were generated by the regulated fuel.

¹ <http://www.afdc.energy.gov/afdc/glossary.html>

- ***Is CARB requiring that the RINs reported quarterly and annually be the same RINs that were generated with the actual ethanol that is purchased by the end buyer, or simply the RINs that are transferred to California buyers that may have come from a central “RIN pool”?***

EVIDENCE OF PHYSICAL PATHWAY

Section 95484(d)(2) of the final regulation establishes that regulated parties must demonstrate “evidence of physical pathway” for each transportation fuel and blendstock for which they are responsible. Because ethanol is a highly fungible energy commodity, different shipments of fuel coming from a single ethanol facility may enter the California marketplace via a variety of physical pathways. That is, the physical pathway to market—even from a single ethanol facility—is not always the same. While certain physical pathways (e.g. combinations of rail routes, highways, etc.) are used more commonly than others, it is not accurate to suggest ethanol from a certain manufacturer will always follow the same pathway to California.

Freight rates, regional variation in ethanol prices, scheduling, and a variety of other factors ultimately dictate what pathway a shipment of ethanol will take to market. The increasing use of product exchange agreements, in which two parties owning product in different locations agree to use one another’s products to satisfy their own market demands, further complicates the physical pathway issue. It is highly unlikely that ethanol producers, particularly those that deal in larger volumes, will know every possible combination of transportation routes and modes that will be used to ship ethanol to California far in advance of the shipment occurring. Understanding this, we seek clarification from ARB regarding the level of detail required for the initial demonstration of delivery methods.

- ***Is CARB requiring detail on every possible combination of physical pathways that may be used to ship ethanol to California, or just those physical pathways that are most likely and/or most frequently used by the ethanol producer/marketer?***

Another question arising from the fact that both the transferor and the transferee of ethanol are defined as regulated parties at different points along the supply chain is:

- ***Who is ultimately responsible for submitting the “evidence of physical pathway” in the case where ownership of ethanol is transferred from the producer to the CARBOB blender inside the state of California?***

Section 95484(d)(2)(A) is fairly specific in defining what documentation must be provided to make the initial demonstration of delivery methods. However, it is unclear if CARB is developing a standardized format (e.g. an application form) that regulated parties will use to provide the documentation constituting the initial demonstration of delivery methods. To ensure the uniformity of physical pathway demonstrations by regulated parties, it would seem appropriate for CARB to generate a standard method of application and data transmission.

- ***Is CARB developing a standardized application and mechanism for transmission for this documentation, or is there no standard format or means of submission of this information?***

Given that implementation of the LCFS is scheduled for Jan. 1, 2010 (reporting only), it seems logical that CARB would need physical pathway information from regulated parties soon. However, no deadline or specific details for submission have been publicized.

- ***Does CARB plan to issue a deadline and more specific details for submission of “evidence of physical pathway” applications?***

Further, given the volume of physical pathway demonstration applications that CARB is likely to receive, it seems highly unlikely that all physical pathways will be approved prior to the deadline for the first quarterly report (May 31, 2010) and certainly not by Jan. 1, 2010.

- ***What is CARB’s contingency plan if all physical pathway applications have not been approved by May 31, 2010?***

COMPLIANCE AND REPORTING TOOL

It is our understanding that the online Compliance and Reporting Tool (CRT) that will be used by regulated parties is still not publicly available so that regulated parties may familiarize themselves with the tool.

- ***When does CARB plan to make the CRT available to regulated parties?***

CARB also stated that, “An accompanying step-by-step user guide will be available online,” (ISOR, IX-1).

- ***Will this guide be available at the time of release of the CRT? Will the CRT and user guide be available in a timeframe that would allow regulated parties to have enough experience with the tool to facilitate completion of the first quarterly report (due May 31, 2010)?***

The LCFS regulation will require many regulated parties and their suppliers to retool internal accounting and automation systems. Even if the CRT itself is not made available soon, it would be beneficial to regulated parties and their suppliers if CARB would provide, as soon as possible, pertinent codes, reference numbers, and conventions (i.e. numerical, alphabetical, or alphanumerical) that will correspond with key input fields (e.g. various fuel pathways, approved physical pathways, etc.) that will be used in the CRT.

- ***If release of the CRT itself is further delayed, can CARB release, as soon as possible, pertinent codes, reference numbers, and conventions to enable regulated parties and their suppliers to make necessary changes to internal accounting and automation systems?***

The CRT presentation given by CARB staff during an Aug. 26, 2009 workshop appears to indicate Product Transfer Documents (PTD) must be uploaded to the CRT to correspond with every transaction of a regulated fuel. This would likely require significant modifications to existing internal accounting and automation systems operated by regulated parties and their suppliers.

- ***Are regulated parties required to submit PTDs via the CRT for every regulated fuel transaction?***

METHOD 2A/2B APPLICATION PROCESS

Section 95486 of the final regulation discusses the use of different methods for determining the carbon intensity of regulated fuels. Under Method 2A, the regulated party may propose modifications to one or more inputs to the CA-GREET model used to generate the carbon intensity values in the Method 1 Lookup Table. Under Method 2B, the regulated party proposes for the Executive Officer's written approval the generation of a new pathway using the CA-GREET as provided for in this provision. While this section is fairly clear in describing what types of data and information must be submitted, it is unclear as to whether CARB is developing a standardized application and mechanism for transmission of the information required for Methods 2A and 2B. To ensure the uniformity of applications for carbon intensity values derived under Methods 2A and 2B, it would seem appropriate for CARB to generate a standard method of application and data transmission.

- ***Is CARB developing a standardized application and mechanism for transmission of this information, or is there no standard format or means of information submission?***

On page 57 of the final regulation, CARB references that Method 2A/2B information could be submitted via "...an online web-based interface."

- ***Does this mean CARB is developing an online tool to facilitate submission of Method 2A/2B applications?***

TRADE SECRETS AND BUSINESS CONFIDENTIAL INFORMATION

In response to the Initial Statement of Reasons and subsequent recommended modifications, many stakeholders submitted comments that voiced concern about the treatment of data and information submitted through mandatory LCFS reporting procedures. Specifically, concerns focused on the potential disclosure of trade secrets and confidential business information. The Final Statement of Reasons does not sufficiently address these concerns.

Though the actual means of submitting data and information to CARB is not always explicitly clear in the final regulation, it is apparent that much or all of the information submitted by regulated parties via the CRT should be treated confidentially and withheld from public disclosure. Further, we are greatly concerned that information submitted in support of Method 2A or 2B applications will not be sufficiently protected from public disclosure. This concern is exacerbated by the requirement that all Method 2A and 2B applications will be subjected to the public review and comment process.

- ***What specific steps will CARB take to ensure that trade secrets and confidential business information related to physical pathway demonstrations, quarterly and annual CRT reports, and Method 2A and 2B applications are not inadvertently disclosed?***

Your assistance in expeditiously answering these questions is appreciated. As the planned implementation date is just two weeks away, we look forward to a prompt response to the above inquires. Ideally, we would like clarification on these issues no later than Dec. 23, 2009. If you prefer, we can set up a conference call or webinar with our member companies to discuss these questions and your responses. Please don't hesitate to contact Geoff Cooper at (636) 594-2284 with any additional questions or comments.

Sincerely,

A handwritten signature in black ink that reads "Bob Dinneen". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Bob Dinneen
President & CEO
Renewable Fuels Association

CC:

Bob Fletcher
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