



**Tanya DeRivi**

Senior Director, California Climate and Fuels

June 6, 2023

Dr. Cheryl Laskowski  
Branch Chief – Low Carbon Fuel Standard  
California Air Resources Board  
1001 I Street  
Sacramento, CA 95814

*Sent via upload to:*

<https://ww2.arb.ca.gov/public-comments/public-comments-regarding-auto-acceleration-mechanisms-low-carbon-fuel-standard>

**Re: WSPA Comments on CARB’s Proposed Low Carbon Fuel Standard Auto-Acceleration Mechanism and May 23, 2023 Workshop**

Dear Dr. Laskowski,

The Western States Petroleum Association (WSPA) appreciates the opportunity to comment on potential changes to the Low Carbon Fuel Standard (LCFS), to add a mechanism that would accelerate the carbon intensity benchmarks if certain conditions are met, and the associated staff presentation at the California Air Resources Board (CARB) workshop held on May 23, 2023. WSPA is a trade association that represents companies that provide diverse transportation energy resources throughout the west, including California. These include the transport and marketing of petroleum, petroleum products, natural gas, renewable fuels, and other energy supplies.

**General Comments**

In considering potential LCFS regulation amendments, it is essential to recognize that the LCFS adds approximately 11 cents per gallon to the cost of California gasoline according to the California Energy Commission (CEC).<sup>1</sup> As California continues to face serious transportation fuels supply constraints, the California legislature and the Governor recently approved legislation<sup>2</sup> attempting to address this fuel supply concern. This new statute requires CARB and CEC to prepare a Transportation Fuels Transition Plan “in consultation with the state’s fuel producers and refiners” that “shall include, at a minimum, a discussion of how to ensure that the supply of petroleum and alternative transportation fuels is affordable, reliable, equitable, and adequate.” WSPA looks forward to working closely with CARB and CEC to inform the Transition Plan’s development – where fuel affordability and equity must be central considerations to help inform policies under the baseline assumption that internal combustion engine vehicles (including hybrid vehicles) will be used and needed by Californians for decades to come.

While the LCFS program has a maximum credit sale or transfer price of \$200 (2016\$) it is important that CARB ensure the potential LCFS amendments recognize the impacts of a change to costs uniquely impacting California fuels. WSPA is extremely concerned with proposed amendments that could further compromise the supply reliability of critical transportation fuels and destabilize the program – a consequence of which could be increasing energy costs at a time when energy affordability is a pressing priority for many Californians. Proposed amendments like a one-way auto-

<sup>1</sup> Based on OPIS data; CEC staff presentations at <https://www.energy.ca.gov/event/workshop/2022-11/commissioner-hearing-california-gasoline-price-spikes-refinery-operations>.

<sup>2</sup> Senate Bill SB X1-2 (Skinner, 2023) [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202320241SB2](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320241SB2).

acceleration mechanism, among other potential changes, will likely increase California fuels costs. Newly inserting an automatic mechanism would be wholly inappropriate and set a bad precedent for a program that was developed through and has been amended multiple times since by formal rulemaking processes.

WSPA members have made significant investments to help make the LCFS program both successful and replicable. WSPA supports the LCFS and believes the program should continue to provide an appropriate market signal that incentivizes the production of low-carbon intensity (CI) fuels. This market-based program should focus on providing clear, meaningful, durable, and timely market signals for the reduction of greenhouse gas emissions through investments in the production of lower CI technologies, with sufficient time from adoption to implementation for obligated parties to plan for investments and deploy technologies.

### **Specific Comments – CARB Staff Presentation**

Provided below is WSPA's feedback regarding the auto-acceleration mechanism under consideration for potential LCFS amendments and the CARB staff presentation<sup>3</sup> from the May 23<sup>rd</sup> Workshop. WSPA previously submitted comments pursuant to CARB's July 7, 2022, August 18, 2022, November 9, 2022, and February 22, 2023 LCFS Workshops. Those comments are incorporated into this letter by reference.<sup>4,5,6,7</sup>

**Slide 7 – Scope of Rulemaking.** The second bullet point on Slide 7 identifies mechanisms to auto-adjust CI targets to accelerate investment if the LCFS program is overperforming. WSPA recommends against including a (one-way) auto-adjustment of the CI targets. We believe that rulemaking is the appropriate process to update the CI targets, because it is what is expected under the basic principles of California administrative law,<sup>8</sup> and because such a mechanism would defeat the spirit of the LCFS regulation, which is to allow banking of LCFS credits for future use as the program becomes increasingly more stringent over time.

Instead of an auto-adjustment of the CI targets, WSPA suggests that CARB consider utilizing annual fuels forecasting to determine the need to adjust CI targets. For example, the Oregon Department of Administrative Services (DAS) annually completes a fuels forecast (pursuant to Oregon Administrative Rule 340-253-2100) to inform the Oregon Department of Environmental Quality (DEQ) as to the performance of the DEQ's Clean Fuels Program. A similar independent approach by CARB is encouraged for transparency and consistency.

An auto-adjustment of the CI targets would also appear to not account for exceptional circumstances – such as the COVID pandemic nor a recessionary-driven slowdown – that have demonstrably significant impacts on the fuels market. Instead, such an auto-acceleration mechanism may lead to

<sup>3</sup> [https://ww2.arb.ca.gov/sites/default/files/2023-05/LCFSPresentation\\_052223\\_0.pdf](https://ww2.arb.ca.gov/sites/default/files/2023-05/LCFSPresentation_052223_0.pdf)

<sup>4</sup> Western States Petroleum Association. "WSPA Comments on CARB Workshop to Discuss Potential Changes to the LCFS", August 8, 2022.

<sup>5</sup> Western States Petroleum Association. "WSPA Comments on the August 18<sup>th</sup> CARB Workshop to Discuss Potential Changes to the LCFS", September 19, 2022.

<sup>6</sup> Western States Petroleum Association. "WSPA Comments on the November 9<sup>th</sup> CARB Workshop regarding Potential Changes to LCFS", December 21, 2022.

<sup>7</sup> Western States Petroleum Association. "WSPA Comments on the February 22<sup>nd</sup> CARB Workshop regarding Potential Changes to LCFS", March 15, 2023.

<sup>8</sup> See Cal. Gov't Code § 11346.2 (discussing the notice-and-comment process); *POET, LLC v. State Air Res. Bd.*, 218 Cal. App. 4th 681, 744 (2013), as modified on denial of reh'g (Aug. 8, 2013) ("agencies must . . . (1) give the public notice of the proposed regulatory action; (2) issue a complete text of the proposed regulation with a statement of reasons for it; (3) give interested parties an opportunity to comment on the proposed regulation; (4) respond in writing to public comments; and (5) maintain a file as the record for the rulemaking proceeding").

an excessive use of LCFS credits in the short-term to the detriment of long-term compliance options. Further, such a mechanism fails to provide the market certainty necessary to ensure petroleum and alternative transportation fuel supplies are affordable, reliable, equitable, and adequate as California's leaders seek to achieve.

**Slides 11-12 – Compliance Target Step Down and Acceleration Mechanism Concepts.** This was the first workshop where CARB officially discussed details of an “acceleration mechanism.” Previously, there was only one workshop where a broad concept was presented. WSPA finds the concept (and the late introduction of details) that introduces a complex structural change to the LCFS program at the very end of the informal rulemaking process concerning. Because such a mechanism could remove credits from the bank too quickly, it risks rendering the LCFS program infeasible in the later years when the CI standards become ever more stringent for regulated entities to comply with. Yet CARB provides no mechanism to *reverse* any unintended consequence of this action as the only options presented to date (including by third party stakeholders without compliance obligations) operate only to *increase* CI benchmarks.

WSPA believes this would be a significant enough structural change that further stakeholder discussion, analysis, and modeling is required. We strongly encourage CARB not to include the concept in the upcoming 45-day package to be released within the next several weeks and to instead separate it from the forthcoming rulemaking to allow for further discussion and evaluation.

**Slides 15-25 – Different Ways to Implement the Auto-Acceleration Mechanism.** WSPA believes incorporating an auto-acceleration mechanism into the LCFS program now would be premature. Compromising the health of the program without sufficient analysis, in an effort to artificially inflate LCFS credit prices, would be inappropriate and highly problematic by unnecessarily increasing programmatic and market complexities at a time when the transportation sector is already working through dramatic transformation. It also presumes that fuel supply and demand scenarios will perform as envisioned to meet the ambitious 2022 Scoping Plan Update goals – that supply will phasedown in line with demand – despite known uncertainties in the energy market itself rather than seeking to ensure supply and demand for liquid fuels remains harmonious.

The credit bank is and should continue to be looked to as real emission reductions that regulated entities may use as a long-term compliance option. We also believe that any market indicators identified could result in serious unintended consequences such as credit shortages or market volatility. With the concept under consideration, such consequences could only be addressed through emergency actions by CARB, followed by an immediate rulemaking.

Should CARB proceed with incorporating this concept into the program through the upcoming formal rulemaking process, WSPA believes that additional work and stakeholder engagement is necessary. This should also include incorporating a means to reverse or “release” an auto-accelerator mechanism to avoid cementing overly ambitious forward CI benchmarks in place if the market would struggle to comply and compromise the integrity of the program. As the CARB Governing Board has exercised with multiple regulations before, we would encourage the Governing Board direct CARB's Executive Officer to work with stakeholders and perform additional analysis and then return later for formal approval.

We encourage CARB to provide regular periodic review of the program's performance to assess what additional changes would be required and discussed through a formal rulemaking process where all stakeholders can participate.

WSPA appreciates the opportunity to provide comments on this important regulatory process. If

Dr. Cheryl Laskowski  
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you have any questions regarding this submittal, please contact me at via email at [tderivi@wspa.org](mailto:tderivi@wspa.org).

Sincerely,

A handwritten signature in blue ink that reads "Janja Derivi". The signature is written in a cursive, flowing style.

Senior Director, California Climate and Fuels