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Clerk of the Board
California Air Resources Board
P.O. Box 2815
Sacramento, CA 95812

Submitted electronically via: <https://ww2.arb.ca.gov/public-comments/low-carbon-fuel-standard-workshop-april-10-2024>

RE: POET COMMENTS ON APRIL 10, 2024 LCFS RULEMAKING WORKSHOP

Dear CARB Board Members:

POET appreciates the opportunity to provide comments on the recent workshop held to discuss potential refinements to the California Air Resources Board's ("CARB") December 2023 Proposed Low Carbon Fuel Standard ("LCFS") Amendments ("Proposed Amendments"). POET has participated actively in CARB's ongoing rulemaking and submitted detailed [comments](#) on February 20, 2024 regarding the Proposed Amendments. We write now to offer feedback specific to the matters discussed and presented during the April 10, 2024 workshop.

Our continuing concerns with CARB's Proposed Amendments principally relate to the proposed sustainability requirements for crop-based and forestry-based feedstocks. We appreciate CARB's willingness to share more details regarding these proposed requirements during the April 10, 2024 workshop. Unfortunately, the proposed program features that CARB shared in further detail confirm and deepen the concerns we raised in our February 20 comment letter.

Specifically, we remain concerned that the proposed sustainability requirements (1) fail to distinguish between low-risk domestic feedstocks like corn and higher risk oil-based feedstocks that are actually driving policy concerns; (2) ignore sustainability guardrails already in place for American-grown corn starch ethanol; (3) attempt to regulate social and other non-climate related factors that lie outside the ambit of AB 32; (4) wrongfully delegate to the European Union and other third parties the responsibility to establish and certify conformance with sustainability standards; (5) impose costs on bioethanol production that will restrict the supply of bioethanol to the California market and raise gasoline prices.

POET urges CARB to reconsider and abandon its proposal to impose further sustainability requirements on corn starch ethanol. In the alternative, POET urges CARB to re-evaluate its proposed approach to sustainability requirements and as part of a future rulemaking, and consider crediting for climate smart agricultural practices as a policy to encourage sustainability.

I. CARB’s Proposed Sustainability Requirements are Unnecessary As Applied to Corn Starch Ethanol

As discussed in our written comments submitted on February 20, California has already implemented safeguards that address perceived concerns regarding the potential land use consequences of domestic corn ethanol production. Indeed, California’s GREET model imposes an indirect land use change (“ILUC”) penalty of 19.8 g/MJ, which is among the highest such penalties imposed in U.S. biofuels programs, and higher than ILUC values reflected in studies conducted since 2015 when California adopted its policy.¹ As POET has commented previously, we believe this ILUC penalty overestimates the land use impacts of domestic corn production. In all events, it is unclear what further perceived environmental harms, if any, would be addressed by additional regulations on domestic corn production as part of the LCFS.

Rather, as Canada’s Environment and Climate Change agency (“ECCC”) has determined as part of its newly adopted Clean Fuel Regulations, corn production in the United States is already subject to rigorous state and federal environmental laws addressing impacts to air, water, land use and wildlife. For this reason, ECCC has exempted certain U.S. grown crops, including corn, from compliance with additional land use and biodiversity criteria that is otherwise imposed on crop based feedstocks. *See* Clean Fuel Regulations, SOR/2022-140 §§ 53(1), 55(1).² To the extent that CARB continues to believe sustainability requirements are necessary to control for the perceived environmental impacts of certain crop and forestry-based feedstocks, POET urges CARB to adopt Canada’s approach to corn starch ethanol, which is well regulated by existing law.

II. The Policy Considerations Apparently Driving CARB’s Proposed Sustainability Requirements are Focused on Perceived Effects of Increased Oil-Based Crop Production

The stakeholder feedback that appears to be driving CARB’s policy approach is focused on oil based feedstocks. For example, during the workshop on April 10, CARB’s presentation devoted several slides to the concerns underlying the proposed sustainability requirements. *See* California Air Resources Board, *California Low Carbon Fuel Standard Workshop*, (April 10, 2024), <https://ww2.arb.ca.gov/sites/default/files/2024-04/LCFS%20April%20Workshop%20Slides.pdf> (“CARB April 10 Workshop”). Each of these slides focused on matters concerning biodiesel, renewable diesel and the oil-based feedstocks necessary to sustain production of these fuel types.

For example, Slide 52 raised the following topics for discussion: “How has crop-based oil seed demand and production changed as biomass-based diesel (BBD) volumes increased?; Does

¹ Notably, the United States Department of Treasury recently adopted a GREET model for purposes of determining qualifying feedstocks for sustainable aviation fuel (SAF) production tax credits. *See* U.S. Department of Treasury, Notice 2024-37, §§ 40B SAF Credit Guidance (April 30, 2024) available at <https://www.irs.gov/pub/irs-drop/n-24-37.pdf>. That model assigned an ILUC penalty of 9.0 CO₂eg/MJ for corn starch ethanol-to-jet-fuel pathways and a total indirect effects penalty of 11.1 CO₂eg/MJ for corn starch based SAF. *See* U.S. Department of Energy Guidelines to Determine LCA using 40BSAF-GREET 2024 at p. 19, Table 3b.

² As discussed in our previous comment, Canada’s version of the GREET model also does not impose an ILUC penalty on corn starch ethanol for purposes of calculating the carbon intensity (CI) of fuels participating in the CFR. *See* Canada’s Fuel Lifecycle Assessment Model available at <https://www.canada.ca/en/environment-climate-change/services/managing-pollution/fuel-life-cycle-assessment-model.html>.

evidence show that BBD production is increasing cropbased oilseed demand and/or prices?; Is the increase in BBD production resulting in deforestation and/or food system impacts?” *See id.* (Slide 52). Slide 53 focused on trends in biomass based diesel production, noting increases in oil based feedstocks. *Id.* (Slide 53). Slide 54 noted trends in “crop-based oil prices.” *Id.* (Slide 54). Slides 55-56 noted trends in domestic and foreign soy-oil markets. *Id.* (Slides 55-56); Slide 57 summarized the several preceding slides. CARB noted that “biomass-based diesel volumes [are] increasing and likely to increase in the future, given announced capacities” but that “it is uncertain if substantial increases in virgin oil fuel use in California will occur over long-term.” *Id.* (Slide 57). CARB concluded that “guardrails [are] still warranted to reduce risks of potential impacts from increased demand of virgin oils in CA LCFS.” *Id.*

Nowhere in this presentation was corn starch ethanol mentioned as a feedstock of concern that would warrant the imposition of further “guardrails.” Nor was corn ethanol mentioned during the workshop’s public comment period as a feedstock that presented the types of concerns animating CARB’s proposed sustainability requirements. In short, CARB’s proposed sustainability certification program is apparently aimed at solving problems that have not been identified with respect to corn starch ethanol.

Despite corn starch ethanol being absent from CARB’s discussion of feedstocks of concern, the proposed rule’s broad-brush approach treats non compliance by any feedstock, including feedstocks that displace gasoline, by assigning a diesel fuel CI that would result in ethanol having a higher CI than gasoline. POET urges CARB to tailor its proposed policy in a manner that appropriately distinguishes among feedstocks and to refrain from imposing unnecessary and punitive restrictions on corn starch ethanol.

III. The Complexity and Burden of CARB’s Proposed Certifications Will Restrict the Supply of Ethanol to California and Raise the Cost of Gasoline

As POET explained in its written comments submitted on February 20, obtaining sustainability certifications under the proposed rules is likely to be burdensome and costly. CARB’s presentation on April 10 ratified this concern. During the workshop, CARB explained that it “would leverage existing certification programs” such as “ISCC, RBS, REDcert, Bonsucro, etc. (Most already approved under EU Renewable Energy Directive).” CARB April 10 Workshop (Slide 60). CARB elaborated that these certifications would require auditors “perform site visits” to farms during which they would confirm the history of agricultural use on the farm, ensure that “cropping practices” meet as-yet-undefined “sustainability requirements,” “review management systems,” “review social practices (e.g., worker treatment),” “review compliance with all applicable regional, national laws and international laws,” and “review economic sustainability of the farm.” *Id.* (Slide 63).

Although some farmers in the United States currently participate in certification programs that require some level on on-farm auditing and are paid a premium to do so, this level of scrutiny and regulatory burden is unknown to the vast majority of American corn farmers, who would likely have to make costly changes in their operations meet the requirements of an audit. Many farmers would likely refuse to participate in such a program, and those who might choose to do so would demand premiums that could translate to an increase of several cents per gallon in gasoline prices.

Moreover, as POET explained in its February 20 comment, it is not even clear that there are enough qualified certification bodies available to certify the corn supply chain in America by 2028, let alone the supply chains of all other crop-based fuels subject to the proposed sustainability requirements. Completing a multidimensional audit of every LCFS-participating farm by the beginning of 2028 is a complex and likely infeasible task, the consequences of which CARB does not appear to have acknowledged in its rulemaking record. Realistically, significant volumes of crops would not be certified by 2028 even though such sites satisfied whatever substantive sustainability criteria CARB may choose to adopt, resulting in ethanol being treated as a deficit-generating fuel regardless of efforts to comply with the proposed sustainability requirements.

Although POET and other stakeholders previously explained the burdens associated with the proposed certifications, CARB still has not presented any evidence that it has modeled or studied the costs and consequences associated with its proposed certification, nor did it discuss or address any of these challenges during the April 10 workshop.

IV. CARB’s Proposal also Suffers Legal Infirmities

A. CARB’s Proposal Unlawfully Delegates Substantive Policymaking to the European Union and Third Party Certification Bodies

The April 10 Workshop confirmed that CARB intends to rely upon ISCC-type certifications that were created to ensure compliance with EU’s RED standard. *See* CARB April 10 Workshop (Slide 60) (“CARB would leverage existing certification programs” such as “ISCC, RBS, REDcert, Bonsucro, etc. (Most already approved under EU Renewable Energy Directive).”). In other words, it appears CARB intends to abdicate its role in adopting substantive sustainability criteria and to incorporate into California law standards established by the EU and third party non-governmental organizations. As POET explained in its February 20 comment, this is prohibited under California’s non-delegation doctrine.³

B. CARB’s Proposal to Incorporate Employment Law and Other Non-Climate Related Criteria into the LCFS Regulations Exceeds the Scope of the Agency’s Rulemaking Authority Under AB 32

AB 32,⁴ the authorizing legislation for the LCFS Program, directs CARB to adopt market-based measures to achieve the GHG reduction goals of the law.⁵ The law does not, however, authorize CARB to establish criteria for participation in the program that are aimed at achieving policy goals outside the ambit of AB 32’s climate-related goals. During the April 10 Workshop, CARB showed slides indicating that the agency apparently intends to regulate the “social practices,” “management systems,” and “economic sustainability” of farms whose crops are sourced as low carbon fuel feedstocks. *See* CARB April 10 Workshop (Slide 63). This type of regulation is ultra vires under AB 32.

³ *Monsanto Co. v. Office of Environmental Health Hazard Assessment*, 22 Cal. App. 5th 534, 556 (5th Dist. 2018) (citing *International Assn. of Plumbing etc. Officials*, 55 Cal.App.4th 251, 254 (3rd Dist. 1997) (holding that legislation violated the nondelegation doctrine when it delegated regulatory determinations to individuals)).

⁴ California Global Warming Solutions Act, Cal. Health & Safety Code § 38500-38599.

⁵ Cal. Health & Safety Code § 38570.

V. CARB Should Consider An Incentive Based Approach to Sustainability

CARB's proposed sustainability requirements present an all-or-nothing mandate for crop-based feedstocks to conform to certain as-yet-undefined standards of sustainability. As discussed above and in our prior comments, POET believes this approach is misguided, and will lead to the unintended consequence of excluding low carbon biofuels and their associated climate and public health benefits from the California market.

As POET has observed in its frequent engagements with CARB over the last several years, agricultural sustainability could be better achieved through clean fuels programming that provides incentives for farmers to adopt climate smart agricultural practices—an approach recently undertaken by the U.S. Treasury Department in its implementation of the Inflation Reduction Act. *See* U.S. Department of Treasury, Notice 2024-37, §§ 40B SAF Credit Guidance (April 30, 2024) available at <https://www.irs.gov/pub/irs-drop/n-24-37.pdf>.

Treasury's recently adopted guidance, aimed at incentivizing the production of sustainable aviation fuel, recognizes that no-till farming, planting cover crops, and applying enhanced efficiency nitrogen fertilizer are all climate smart agricultural practices that help reduce CI for crop-based feedstocks such as corn. *Id.* CARB should consider following the Biden Administration's lead in promoting agricultural sustainability through economic incentives rather than adopting mandates that may undermine CARB's climate goals and lead to unpredictable and unfavorable fuel market consequences.

VI. CARB Should Approve E15 for Sale in California

POET appreciates and agrees with CARB's acknowledgement for the "[p]otential role of E15 to reduce costs at the pump." *See* CARB April 10 Workshop (Slide 66). As California public university research shows, E15 also offers significant climate and public health benefits. Indeed, shifting from E10 to E15 in California would cut annual GHG emissions by approximately 1.8 million metric tons. For these reasons, POET continues to urge CARB to approve E15 for use in California.

CONCLUSION

POET appreciates the opportunity to comment and looks forward to working with CARB to make the LCFS a continued success for California. If you have any questions, please contact me at Josh.Wilson@POET.com or (202)756-5612.

Sincerely,



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