October 22, 2024

Via electronic submittal

Chair Liane Randolph and
Members of the Board
California Air Resources Board
1001 I Street
Sacramento, CA 95814
cotb@arb.ca.gov

Re: EJAC Comments on Proposed Changes to the Low Carbon Fuel Standard Regulation and Second 15-Day Change Proposal

Dear Chair Randolph and Members of the Board,

We, the undersigned Environmental Justice Advisory Committee (EJAC) carbon markets workgroup members and allied organizations, write to urge the California Air Resources Board (CARB) to **vote NO** on the proposed Low Carbon Fuel Standard (LCFS). While we understand that CARB staff is updating the chart that references where EJAC recommendations were responded to, we have reviewed the proposed changes and, given the urgency of these deliberations, did not want to further delay responding. We additionally request a substantive written response to the issues raised in EJAC's resolution and those highlighted below.

CARB established a permanent Environmental Justice Advisory Committee (EJAC) in 2023 so that the committee could more consistently "advise the Board on environmental justice considerations, prioritizing racial equity, related to implementation of AB 32."[1] Since then, the EJAC and the carbon markets workgroup have regularly convened to discuss matters impacting frontline communities. In several of these discussions, including the recent Joint EJAC/CARB Board Meeting on September 12th, 2024 the EJAC shared its concerns regarding CARB staff's proposed amendments to the LCFS. Several board members echoed these concerns, and expressed a desire to initiate rulemaking for livestock methane. This rulemaking should be acted on by the board at the November meeting as a separate item from LCFS.

For years, groups have sounded the alarm that the proposed LCFS would negatively impact Californians and harm communities across the country and the world.[2] Recognizing that the

[1] AB 32 Environmental Justice Advisory Committee Charter as taken from CARB's website: https://ww2.arb.ca.gov/sites/default/files/barcu/board/books/2023/032323/23-3-4ejaccharter.pdf on February 1, 2024.
[2] FixLCFS website: https://www.fixlcfs.com/

LCFS has, and as currently proposed would continue to, exacerbate and entrench pollution in environmental justice communities, the EJAC joined these calls and issued our "Comprehensive EJ Scenario" recommendations, which reflects the best available climate science and centers the voices of the communities and workers at the frontlines of the energy transition.[3]

Despite explicit advice from the EJAC and clear direction from Board Members, CARB staff's First 15-Day Change Proposal failed to address our grave concerns about the program's lopsided support for combustion fuels that are harming California communities, threatening sensitive ecosystems, exacerbating global hunger, and worsening the climate crisis. CARB staff's Second 15-Day Change Proposal, unfortunately, doubles down on these grave mistakes. Rather than restricting bogus credits, the proposal focuses entirely on increasing credit demand. Absent our recommended changes, the LCFS will remain a regressive, outdated, and combustion-focused program, prioritizing the demands of powerful fossil fuel and agribusiness industries over public health and environmental integrity.

CARB Staff's Second 15-Day Change proposal continues to **FAIL** to do the following:

- **Eliminate distortionary avoided methane emissions crediting and initiate rulemaking for livestock methane.** Despite repeated and vehement concern from public health, environmental justice, environmental organizations, academic experts—and Californians with lower incomes and People of Color directly impacted by these decisions—the proposal fails to end the LCFS's exceptional treatment of livestock methane pollution as a lucrative offset. Nothing about livestock methane's chemistry makes it better than landfill or wastewater methane at fighting climate change. These inflated credits are premised entirely on CARB's reluctance to use its clear authority to regulate livestock methane like any other major pollution source. The Second 15-day Change Proposal maintains excessive avoided methane emissions crediting for livestock gas and, worse still, undercuts CARB board members' direction to initiate rulemaking for livestock methane. The 15-day changes essentially grandfather in at least 20 years of avoided methane credit generation for any livestock operation that breaks ground on a methane digester by 2030, even if CARB adopts regulations for the reduction of livestock methane. This exceptionalism is essentially an attempt by CARB staff to legislate and create authority the agency does not have. Apparently this exceptionalism knows no bounds: livestock operations that install digesters will enjoy lavish subsidies and windfall profits for the intentional generation of methane for decades, and a regulatory framework - if adopted - that will have no impact on the ability of those livestock operations to generate profits from their methane emissions, effectively protecting this class of dairies

[3] EJAC LCFS Comments 2.20.2024 as taken from CARB's Public Comment Docket: https://www.arb.ca.gov/lists/com-attach/6871-lcfs2024-UTQHawBgWGgAWQdr.pdf

and livestock operations from both the impact of regulations and additionality requirements attached to other emissions reductions strategies.
The culture at CARB increasingly appears to favor industry while silencing critics. Take, for example, the revolving door between CARB staff and regulated industries, while leadership has outright dismissed and internally barred communication with former staff raising valid critiques.[4] This pattern is deeply concerning, and appears to be contributing to favoritism toward particular industries, such as the "natural" (fossil) gas industry.

The long timeline for avoided methane emissions crediting, and the proposal to allow ongoing credit generation of for avoided methane for decades irrespective of the adoption of regulations, perpetuates harm to environmental justice communities adjacent to these operations and runs counter to recommendations of members of the public, the direction of the Board, and the demands of our warming planet. The board must course correct or these problems only stand to get worse.

- **Eliminate the loophole allowing fossil fuel-based hydrogen and end avoided methane crediting.** Despite overwhelming testimony from refinery communities about the dangers of hydrogen produced at refineries from fossil fuels, the proposal extends credit generation for hydrogen made from fossil fuel feedstocks to 2035. This further entrenches harm to communities adjacent to refinery corridors, such as those in Richmond and Wilmington. Further, staff's stated restriction on credits for fossil fuel-derived hydrogen is misleading. The restriction still allows fossil-gas derived hydrogen to generate lavish credits so long as producers purchase unbundled environmental biomethane attributes. Similarly, the recent change in the 15-day changes misleads the reader by noting a requirement that hydrogen must be 80% renewable by 2030. The definition of renewable allows for a host of polluting hydrogen, including fossil hydrogen paired with the environmental attributes of livestock biogas. This bogus credit generation increases revenue for dirty hydrogen producers and other emission sources including factory farms, harms pollution-burdened communities, and undercuts the incentive to invest in genuinely green hydrogen production.

- **Impose an adequate volume limit on lipid biofuels** or at minimum, expand the LCFS to cover all lipid biofuel feedstocks and treat overusages as ultra-low sulfur diesel**.** CARB's own modeling in the 15-day Change Proposal projects volumes of renewable diesel will be <u>50% higher</u> than those projected in staff's Initial Statement of Reasons (ISOR). These higher projections come <u>despite</u> the addition of the newly proposed 20% -per-producer limit and the additional authority to consider future adjustments to land use change values. Accordingly, by CARB's own data, the newly proposed measures—while

[4] See for example California Climate Agency Bars Staff from Contact with Former Agency Scientist: https://capitalandmain.com/california-climate-agency-bars-staff-from-contact-with-former-agency-scientist

well-intentioned—will not prevent or even mitigate the LCFS's role in driving deforestation and rising global food prices. Moreover, increased production volumes of renewable diesel will extend the pollution burden of refining in fenceline refinery communities across California.

- **Ensure that all major polluters are covered under the LCFS and restore intra-state fossil jet fuel as a deficit generator.** Airport workers were assured in the rulemaking process that CARB would attempt to leverage the LCFS to tackle pollution from jet fuel. But by excluding fossil jet fuel from generating deficits, there is little incentive for airlines to invest in cleaner fuels, or support higher credit prices that accelerate zero-emissions investments in cargo handling or airport ground support equipment. CARB's backsliding on this key reform reduces the effectiveness of the LCFS and stalls progress on the challenge of reducing pollution from jet fuel, all while absolving the profitable airline industry—a transportation segment catering primarily to more affluent consumers—of paying its fair share.

- **Prioritize electrification funding for medium- and heavy-duty vehicles and grid upgrades that lower air pollution and ratepayer costs.** In a step backwards, the 15-Day Change Proposal reallocates up to 45% of credits from utilities that are beholden to laws and standards in service of the public interest to subsidize OEMs. The proposed changes do not include any parameters or guardrails to address the inequitable distribution of zero-emission vehicles (ZEVs) in California, nor any requirements that deployments be "additional" to existing requirements. Such alterations may perversely incentivize OEMs to miss regulatory targets, while siphoning much-needed investments away from medium- and heavy-duty electrification that would have been surplus of required deployments. Siphoning funds from accelerating medium- and heavy-duty electrification towards mere compliance for light-duty electrification will reduce desperately needed air quality benefits for freight communities while perpetuating historic barriers to electric vehicle access for low-income communities of color.

CARB staff's latest proposal does not make the LCFS more equitable, and does not align the program with CARB's own air quality standards and ZEV goals - instead, it perpetuates reliance on outdated combustion fuels and continues harm to environmental justice communities bearing the brunt of these impacts.

We urge Board Members to **vote NO** on the proposed amendments. As outlined, necessary changes to protect environmental justice communities were almost completely disregarded and much more must be done to make LCFS more effective and equitable.

Sincerely,

Dr. Catherine Garoupa
Executive Director, Central Valley Air Quality Coalition

Martha Dina Argüello
Executive Director, Physicians for Social Responsibility-Los Angeles

Grecia Orozco
Staff Attorney, Center on Race, Poverty & the Environment

Kevin Hamilton
Senior Director Government Affairs, Central California Asthma Collaborative