October 31, 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 Response to Staff Chart re: Resolution on the Low Carbon Fuel Standard Regulation and First and Second 15-Day Changes

Dear Chair Randolph and Members of the Board,

We, the undersigned Environmental Justice Advisory Committee (EJAC) carbon markets workgroup members and allied organizations, reiterate our call for the California Air Resources Board (CARB) to **vote NO** on the proposed Low Carbon Fuel Standard (LCFS). Attached is a responsive analysis of the updated chart created by CARB staff, that references where EJAC recommendations were responded to in the First and Second Proposed 15-Day Changes. We continue to have grave concerns that the changes proposed by staff further entrench deeply problematic elements of the program, particularly regarding dairy digesters and avoided methane crediting. Furthermore, the board must consider how changes to the Low Carbon Fuel Standard, California's carbon market for fuels, interplays with changes to the cap-and-trade program, particularly in regard to adverse impacts on environmental justice communities and the implications of pass-through costs on retail energy prices.

While we continue to be capacity constrained in responding to the volume of information staff has presented, we have dedicated many hours, during and outside of public EJAC meetings, to hear from expert speakers and thoughtfully develop an evidence-based resolution adopted in August 2023, which we subsequently discussed during our joint meetings in September 2023 and 2024. The attached analysis demonstrates that EJAC recommendations continue to be disregarded by staff, hindering our efforts to advise CARB, and perpetuating the harms caused to frontline environmental justice communities by California's climate policies. These issues warrant your urgent and ongoing attention. Please contact Dr. Catherine Garoupa at catherine@calcleanair.org with questions or for further information.

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

EJAC LCFS Recommendations Resolution August 2023	CARB Proposed Amendments to the LCFS October 2024 Second Notice of Modified Text	EJAC Response to CARB's Response October 2024
Full Lifecycle Assessment of Emissions: *Recommendation #1. Conduct and incorporate a full life cycle assessment of all air pollution and greenhouse gas (GHG) emissions for all pathways, and their implications for environmental justice communities.*	**No changes to the GHG lifecycle assessment done for individual fuel pathways.**	**Not implemented.**
Accounting for Livestock and Dairy Manure: *Recommendation #2. Conduct a full accounting of GHG and air pollution emissions associated with pathways relying on the production of fuel from livestock and dairy manure.*	**No changes to the GHG lifecycle assessment done for individual fuel pathways.**	**Not implemented.** ● **CARB's proposal explicitly allows crediting for herd size expansion and less public review.** CARB is proposing an updated Tier 1 calculator Dairy and Swine Manure that explicitly allows expansion of herd size[1] and will allow these pathways to not be subject to any public review.[2]

[1] See new text in https://ww2.arb.ca.gov/sites/default/files/classic/fuels/lcfs/ca-greet/t1_biomethane_ad_dairy_swine_manure_instruction_manual_v08122024.pdf **(**"The monthly average livestock population entered in Fields L1.(1-6).8 must not exceed the herd size limits set by any applicable local or state regulatory or other legal requirements." Most air permits outside of California do not include any constraints on herd size. Per LCJA second 15-day comment letter, this change "accommodates the many jurisdictions that do no limit factory farm herd sizes.")

[2] Pathways using a Tier 1 calculator are not subject to public posting or comment prior to certification, unlike Tier 1 pathway applications (compare Section 95488.6 for Tier 1 Pathway Applications and Section 95788.7 for Tier 2 Pathway Applications).

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Avoided Methane and Credit Generation: *Recommendation #3. Eliminate avoided methane credits effective January 1, 2024.* *Recommendation #4. Eliminate credit generation for pathways relying on the production of fuel from livestock and dairy manure for emissions reductions that otherwise would have occurred or were legally or contractually required to occur.*	● The proposal updates the requirements for crediting periods for avoided methane emissions for RNG used in combustion vehicles in response to public comment. Any existing projects before the new regulation would take effect come into the Program with three crediting periods. Any new projects after the Regulation comes into effect and before 2030 would be limited to two crediting periods. Any new projects after 2030, would only get through the end of 2040. The current regulation limits projects to three crediting periods but is silent on any limits specific to avoided methane crediting. ● The proposal phases out avoided methane crediting in three ways: 1) For pre-2030 projects for RNG to combustion, the crediting periods phase out avoided methane crediting by 2049, following no more than 2 crediting periods.[3] 2) For post-2030 projects for RNG to combustion, the avoided methane crediting ends in 2040.[4] 3) For post-2030 projects where RNG is used for hydrogen or electricity, avoided methane crediting ends in 2045.[5] ● While this does not eliminate avoided methane crediting by 1/1/24, the proposal provides an off-ramp for RNG that could have gone to combustion for the transportation sector while putting in place an incentive to take action by 2029 to help achieve the SB 1383 methane target.	**Not implemented and CARB's proposal extends AMC crediting.** ● The current proposal is counter to Board input at multiple meetings, beginning in 2023. The proposal includes additional subsidies that were never discussed publicly, nor has CARB been transparent on them. ● The existing regulation is clear that if methane control is required, additional crediting periods are not allowed. CARB's current proposal allows **continued crediting for most projects, even when methane capture is required**. This also allows existing landfill projects to now claim much greater avoided methane benefits, further diluting the credit market without delivering benefits. ● Projects certified before the regulation may get AMC until **2055** (with 30 years of crediting). These projects **never** have to demonstrate deliverability. ● Most AMC projects are out-of-state, **hindering investment in California projects to meet SB 1383 goals**.

[3] Section 95488.9(f)(3)(A); page 170 of the August 2024 15-day proposal
[4] Section 95488.9(f)(3)(A); page 170 of the August 2024 15-day proposal
[5] Section 95488.9(f)(3)(A); page 171 of the August 2024 15-day proposal

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Lipid Biofuels: *Recommendation #5. Cap the use of lipid biofuels at 2020 levels pending an updated risk assessment to determine phase out timelines for high-risk, crop-based feedstocks.*	● The proposal modifies the twenty percent crediting eligibility limitation on certain virgin crop-based feedstocks used to produce biomass-based diesel. This provision will now include sunflower oil in addition to soybean and canola oil, such that biomass-based diesel from virgin soybean, canola, and sunflower oil in excess of twenty percent will be assigned the carbon intensity of the carbon intensity benchmark for that year, or the certified carbon intensity of the applicable fuel pathway; whichever is greater. The provision will not apply to any biomass-based diesel pathway certification applications submitted before the effective date of the regulation until January 1, 2028.[6] The proposal would require that biomass-based diesel produced from virgin soybean, canola, and sunflower oil is limited to LCFS credits for up to twenty percent combined of total crop and waste-based diesel annual production reporting, by company.[7] ● Proposal would apply sustainability requirements to all non- waste biomass, not just crops.[8] ● Would requires attestation to no deforestation by 2026; certification for no deforestation by 2028;[9] and full sustainability certification by 2031.[10] ● Proposal would allow the Executive Officer, starting in	**Not implemented and CARB's proposal does not address the problem.** ● We and the scientific community raised concerns when 2022 volumes reached 1.7 BG, up 94% from 2020 volumes.[12] Staff proposed sustainability provisions in 2024, which did not limit volumes and modeled volumes of 2.2 BG by 2026. Since then, CARB's revised 2026 estimates are 3.1 BG by -**a 350% increase from 2020 levels.**[13] ● The feedstock market is global and one oil is easily replaced with another, so **including only some oils is ineffective**. ● Assigning the CI benchmark for that year makes **the policy only a short-term one that will last 3-5 years. A ULSD CI would send a more appropriate long-term signal**. ● Proposal to stop accepting new pathway applications in the future is not guaranteed and does not limit fuel volumes. ● Given the rate of virgin oil use increase,

[6] Modifications to Section 95482.(i); page 3 of the September 2024 Second 15-day proposal

[7] Section 95482(i); page 37 of the August 2024 15-day proposal

[8] Section 95488.9(g)(1)(A); page 171 of the 15-day proposal

[9] Section 95488.9(g)(2) – (g)(3); pages 172-175 of the 15-day proposal

[10] Section 95488.9(g)(4); pages 175-176 of the 15-day proposal

[12] Using CARB's LCFS Quarterly Data Spreadsheet.

[13] Using CARB's Supplemental 2023/2024 LCFS Modeling Documentation.

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	2031, to stop accepting new biomass-based diesel fuel pathway applications, if in 2029 California achieves the level of ZEV and NZEV deployment set by the ACT/ACF regulation.[11]	sustainability issues are of concern today, not in 2028 or 2031, when the most impactful provisions begin.
Enhanced Oil Recovery: *Recommendation #6. Prohibit enhanced oil recovery as an eligible sequestration method.*	SB 905 prohibits enhanced oil recovery activities to be associated with a geological carbon sequestration project in California. Staff will have a separate process to workshop the requirements in SB 905 as part of future SB 905 rulemaking efforts.	**Not implemented and CARB's response is Misleading.** ● CARB did not require legislation to allow CCS into LCFS and does not require any process other than the current rulemaking to disallow significant credit generation from processes extending the life of fossil sources. ● SB 905 requires CARB to develop a unified statewide permit application process, not to evaluate out-of-state project eligibility for subsidies.[14] ● By allowing out of state projects to receive subsidies, CARB is acting against the legislature intent of prohibiting EOR[15] and the Governor's directives[16] to phase out of fossil fuels, and providing a financial advantage to out-of-state projects.

[11] Section 95488(d); page 120 of the 15-day proposal

[14] Additionally, SB 905 was enacted in 2022 with a requirement for CARB to adopt regulations by 2025, yet a rulemaking process has not begun, raising uncertainty for the content and timing of a potential future regulation.

[15] SB 1314, the legislation that effectively banned in-State EOR, stated its intent to "not to facilitate continued dependence upon fossil fuel production." The State Legislature cannot prohibit activities outside of its borders, but through the LCFS, can align legislative intent and not further subsidize out-of-state fossil fuel production.

[16] https://www.gov.ca.gov/wp-content/uploads/2022/07/07.22.2022-Governors-Letter-to-CARB.pdf and https://www.gov.ca.gov/wp-content/uploads/2020/09/9.23.20-EO-N-79-20-Climate.pdf.

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LCFS Credits for CCUS and DAC: *Recommendation #7. Do not issue LCFS credits for carbon removal projects such as Direct Air Capture*.	Direct Air Capture (DAC) is a key component of CARB's plan to reduce greenhouse gas emissions and meet carbon neutrality by 2045. Eliminating credits for DAC projects would eliminate one of the key incentives to deploy this technology and jeopardizes the feasibility of achieving California's long-term decarbonization targets and the 2045 carbon intensity target proposed under this project.	**Not implemented and CARB's response is Misleading.** ● The Scoping Plan is clear that DAC is meant to address so-called "legacy" emissions, not to offset emissions that can otherwise be reduced.[17] However, there are no provisions to use DAC credits only as a last option. ● No limits are placed on credit limitation from projects that do not even deliver transportation fuel or provide other potential benefits such as reduced air pollution. ● CARB shows fossil fuel use increases when DAC is credited in the LCFS. Therefore, the proposal jeopardizes transportation decarbonization goals by allowing unlimited offsets.

[17] CARB, Scoping Plan (2022) at 67 https://ww2.arb.ca.gov/sites/default/files/2023-04/2022-sp.pdf.

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Jet Fuel: *Recommendation #8. Consider the inclusion of intrastate jet fuel and marine fuels as a deficit generator and provide analysis of this option as part of the LCFS.*	Existing exemption for conventional jet fuel from deficit generation under the Program remains unchanged in the proposal.[18] Staff evaluated inclusion of conventional jet fuel as a deficit generator, but determined that this approach would not mandate, nor necessarily incentivize, airlines to use the cleaner fuel. Instead, fuel producers would have generated the deficits. CARB committed to evaluate approaches for zero-emission airport operations as part of the recent US EPA, CARB, and SCAQMD announcement. Zero emission operations at airports in California would reduce harmful air pollution in the sector and improve air quality for airport workers and nearby communities.	**Not implemented and CARB's response is Misleading.** ● Staff initially included jet fuel as a deficit generator, but subsequently removed it. In its inclusion, they assessed a significant increase in SAF production. ● Deficits placed on fuel producers would be passed on to their customers, similar to other LCFS costs. In this case, the airlines, or passengers, would bear the costs. ● Airlines would likely face pressure to purchase SAF, but if they did not, the provision still places some of the program cost on higher-income individuals, making the regulation less regressive. ● The joint agency announcement does not address the significant public harms faced by airport workers from fossil jet fuel pollutants. In fact, this announcement was the result of CARB withdrawing a section 182(e)(5) contingency measure plan for the South Coast Air Basin that would have committed to reduce Nitrogen Oxide (NOx) emissions from the LCFS program.

[18] Section 95482(a); page 34 of the 15-day proposal