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August 27, 2024

Chair Liane Randolph & Members of the Board
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Via electronic submission

Re: Proposed 15-Day Changes to the Proposed Regulation Order

Dear Chair Randolph and Members of the California Air Resources Board,

On behalf of the North Dakota Soybean Growers Association (NDSGA), thank you for the opportunity to comment on the proposed 15-day changes (15-Day Changes) to the Low Carbon Fuel Standard (LCFS) program. NDSGA represents soybean farmers across North Dakota on public policy issues important to the soybean industry. Growers across North Dakota have long been committed to producing the world's food, feed, fuel, fiber, and thousands of bioproducts in an environmentally and economically sustainable way.

CARB's 15-Day Changes to revise the LCFS was quite surprising, as the final package diverged significantly from what was included in the Initial Statement of Reasons (ISOR) and the April 10 public workshop. Of top concern for farmers across our state and the rest of the nation is a proposal that would cap the use of soybean oil and canola oil as feedstocks for biofuels at 20 percent by company.

Placing an artificial limit on the market, combined with the inclusion of sustainability guardrails, as proposed will fail to reduce emissions and will only increase costs. North Dakota farmers remain frustrated that CARB insists on using data and methods that are over two decades old to set carbon intensity (CI) scores for soy, while refusing to consider new economic data and failing to consider the potential indirect emission impacts their expanding preference for waste is having.

NDSGA opposes the proposed discretionary authority provided to the Executive Officer to stop accepting new pathways for biomass-based diesel. In addition to discriminating against the lipid-based fuel platform, we are concerned this could have unintended impacts for non-lipid pathways which could produce biomass-based diesel as a co-product. We are also concerned that the aggressive step-down of CI benchmarks, which partially result from the removal of the proposed regulation of fossil jet fuel, combined with other changes, will reward importers of waste feedstocks while penalizing farmers across North Dakota and the broader United States.

As CARB seeks to finalize updates to the LCFS program in the coming months, we strongly encourage the agency to ensure these updates are based on science as required by AB-32. The determination to make such drastic changes to previous CARB proposals so late in the game was

shocking to the soybean and biofuels industries. For CARB to move from arguing that, based on the modeling, a vegetable oil feedstock cap was detrimental to the goals of the LCFS at the April public workshop, to now recommending a wildly stringent cap on those feedstocks without data or science, is quite difficult to comprehend. CARB's own April 10th analysis showed that a feedstock cap would increase greenhouse gas (GHG) emissions in California, which is contrary to requirements in AB-32.

Vegetable Oil Feedstock Cap

The inclusion of a virgin vegetable oil feedstock cap in the 15-Day Changes was alarming to farmers and the entire biofuels value chain, as reflected in market activity. You may understand our surprise based on the April 10 workshop in which CARB noted that liquid fuels would continue to be needed in the transportation sector in California for at least the next decade. In that same workshop, CARB also argued that the imposition of a virgin vegetable oil feedstock cap would increase the utilization of petroleum diesel in the transportation sector. In the staff's own presentation on April 10, staff noted that nearly 80 percent of vehicles on the road in California to still use combustion engines by 2030. Further, they noted that such a stringent cap on virgin vegetable oils may result in 2.8 billion gallons of fossil diesel utilization in 2030, versus 1.9 billion gallons using a scenario that does not impose the cap proposed by the Environmental Justice Advisory Committee.

In a full reversal of staff's prior analysis, which is only four months ago, staff is now essentially recommending to the board that more fossil diesel be sold into the market in 2030. This recommendation appears to not only go against the goals of AB-32, but also science. This recommendation seems to flatly disagree with the Intergovernmental Panel on Climate Change, which notes in its sixth assessment report that using existing low carbon technologies is a crucial component to avoiding catastrophic temperature increases, stating that "biodiesel and renewable diesel fuels…could offer important near-term reductions" for several technologies, including buses, rail, and long-haul trucking.[1]

In our current interpretation, the cap may lock out of the market producers of the lowest cost, lowest carbon intensity soybean oil-based biofuel (soy methyl esters). Most soy methyl esters are produced at biodiesel plants adjacent to soybean processing plants. Often, the companies which own operate these soybean processing are not involved in the procurement and processing of non-crop-based oils, such as UCO and tallow. They exclusively make biofuels out of soy oil or canola oil. The current language limits crediting of soy and canola to 20 percent of reported gallons. This leaves integrated agriprocessing/biofuel producers two choices: 1) exit the market entirely, or 2) be denied a government benefit on 80 percent of their fuel. If this is the current interpretation of the proposed provision, it would significantly and arbitrarily disadvantage the sustainable oilseed biodiesel community.

We echo the concern of the American Soybean Association that new requirement appears to contradict the statutory guidance laid out in AB-32 to minimize costs.

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[1] Jaramillo, P., S. Kahn Ribeiro, P. Newman, S. Dhar, O.E. Diemuodeke, T. Kajino, D.S. Lee, S.B. Nugroho, X. Ou, A. Hammer Strømman, J. Whitehead, 2022: Transport. In IPCC, 2022: Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change. https://report.ipcc.ch/ar6wg3/pdf/IPCC_AR6_WGIII_FinalDraft_Chapter10.pdf

Sustainability Guardrails

NDSGA was surprised to find that not only was a feedstock cap in the 15-Day Changes, but the sustainability guardrails were also retained. The cap, sustainability guardrails and Indirect Land Use Change score all additively, and redundantly, address land use change. This has the equivalent effect of giving soy and canola a much higher CI score increasing the compliance cost associated with delivering the product, despite the lack of direct evidence.

Broadly we are concerned that the requirement proposed by CARB is unneeded given the longstanding, excessively high ILUC figure (relative to more recent modeling efforts). Furthermore, we are extremely disheartened that CARB has not followed the example of governments across North America, where farmers who submit data for compliance are also given the opportunity to be incentivized for conservation efforts. This additional cost without benefit contradicts language authorizing the LCFS. Section 38562 (b)(7) of AB-32 directs CARB to, "Minimize the administrative burden of implementing and complying with these regulations." Adding supply chain traceability to a bulk delivery system adds significant administrative burden without changing the GHG emissions of the pathway.

CARB's efforts could be improved and enhanced by outreach to U.S. Department of Agriculture (USDA) personnel who have engaged in activity regarding climate-smart farming practices. USDA recently closed a comment period on its Request for Information on Procedures for Quantification, Reporting, and Verification of Greenhouse Gas Emissions Associated with the Production of Domestic Agricultural Commodities Used as Biofuel Feedstocks. With the information received, USDA seeks to quantify and qualify the benefits of climate smart agriculture practices for biofuel programs at the state, national, and international level. Communication between CARB and USDA could be enlightening regarding ongoing agricultural sustainability practices.

Through the current sustainable aviation fuel (SAF) federal tax credit (40B), the CI of soy-based biofuels can improve through no-till and cover cropping on the field that the soybeans were produced. Other farming practices like low-till, nutrient management, enhanced efficiency fertilizers, buffers, wetland and grassland management, tree planting on working lands, planting for higher carbon sequestration, and soil amendments all can and should be accounted to assign a lower CI score to an agricultural feedstock. USDA already tracks all these practices through several of their managed conservation programs. In addition, there are a variety of other practices that scientifically lower the CI score of soybean feedstocks for biofuels, and USDA is actively working to develop mechanisms to account for those.

Given the work being undertaken by USDA and EPA as part of the implementation of the Inflation Reduction Act, NDSGA urges CARB to reconsider its proposed sustainability requirements to allow soybean growers the opportunity to participate in the California biofuels market through innovative and climate smart agriculture practices.

Outdated Scoring

For the last several years, state soybean associations, national associations, and biofuel producers have urged CARB to consider updating its scoring methodology for crop-based biofuels. CARB has refused to even consider the request.

We remain deeply concerned that without a comprehensive update to the Global Trade Analysis Project model for biofuels (GTAP-BIO) that CARB utilizes, soy-based feedstocks will be phased out of the LCFS even without the additional limitations being proposed in the 15-Day Changes. Current data indicates a much lower CI score for soybeans, as growers continue to improve soil practices, limit water use, lower on-farm emissions and more. On the one hand, CARB is recommending stringent sustainability guardrails for U.S. soy, but on the other hand is still on track to likely phase-out soy-based biofuels from credit generation by approximately 2035 or sooner.

CARB has indicated plans to update all major models for lifecycle emissions calculations except for GTAP-BIO in the updated LCFS rulemaking. The soy industry has made vast improvements in sustainability and efficiency over the past two decades, with even greater improvement goals ahead. At the same time, CARB continues to rely on a 2014 model that uses data from 2004. The ILUC score accounts for half or more of the CI score for soy-based biofuels. CARB's current modeling assigns soy biomass-based diesel with an ILUC impact of 29.1g CO2e/MJ whereas updated results from the model used to calculate ILUC scores indicate a value of between 9 and 10 gCO2e/MJ for soybeans[2]. The recently released 40BSAF-GREET 2024 model has an ILUC score of 12.2 for soy-based sustainable aviation fuel in federal programs.

The benefits of the LCFS can only be achieved if CI values are accurately captured. If land use change concerns are large enough to justify sustainability guardrails and capping virgin vegetable oil feedstocks, then the modeling should also be updated to reflect current land use change data.

Entities Eligible to Apply for Fuel Pathways

We are concerned about CARB's 15-Day Changes to give the Executive Officer discretion to stop accepting new pathways for biomass-based diesel starting in 2031. We do not understand what provision of AB-32 statue is served, or justifies, this arbitrary and highly selective change. CARB must under statute minimize costs and maximize GHG reductions. It is unclear how this is served by rejecting new pathways. In fact, the requirements of current law are met by allowing the most available pathways. If these pathways cannot achieve cost-effective GHG savings, they will not be utilized by the market in the LCFS. In essence, an increase in pathways can only serve to improve GHG benefits in California. Singling out a single fuel for prejudicial treatment is baffling given the goals of the LCFS and the authority that establishes it. Executive Order S-01-07 establishing the LCFS specifically cites diversity of fuels as a motivation for the program, and this proposal contradicts one of the stated purposes of the program. In addition, this provision if implemented could also significantly disadvantage other biofuel production processes which may produce biomass-based diesel as a co-product, for example in system where SAF is a main product.

Conclusion

NDSGA is encouraged by the continued successes of programs that support the development of cleaner, low-carbon fuels. However, it is critical that CARB finalizes updates in a way that does not arbitrarily exclude agricultural feedstocks through policies that are not science-based and run afoul of CARB's mandate, including capping vegetable oil feedstocks and applying onerous sustainability guardrails that add cost without rewarding farming practices that lower CI.

[2] Taheripour, F., Karmai, O., and Sajedinia, E. (2023). *Biodiesel Induced Land Use Changes: An Assessment Using GTAP-BIO 2014 Data Base*. Purdue University

CARB's 15-Day Changes, released in August 2024, is deeply concerning. CARB has singled out soybean and canola oil for adverse, prejudicial treatment. No scientific evidence is ever given for this treatment. In fact, CARB has refused to update the science as required by law for these feedstocks. This alone calls into question the integrity of a performance-based LCFS. On top of this, CARB is now proposing feedstock caps, traceability requirements and authority to reject applications for these fuels produced from them. Again, CARB has not shown any scientific justification. In fact, the LCFS is already over penalizing soy for any land use change requirements.

Farmers across North Dakota remain eager to continue working with CARB to support the role of agriculture in diversifying the fuel supply while reducing GHGs and increasing clean air in California and beyond. On behalf of North Dakota soybean farmers, we appreciate the opportunity to comment and look forward to collaborating with CARB and other relevant stakeholders on implementation of policies that expand the use of soy-based biofuels and market opportunities for soybean farmers.

Sincerely,

Justin Sherlock
President, North Dakota Soybean Growers Association