



August 26, 2024

Braya Renewable Fuels
Refinery Road, P.O. Box 40
Come by Chance, NL A0B 1N0

California Air Resources Board
1001 I Street
Sacramento, CA 95814

RE: August 12, 2024 Proposed Low Carbon Fuel Standard Amendments

Dear California Air Resources Board,

Braya Renewable Fuels (Newfoundland) LP (“Braya”) is the owner of the Come By Chance refinery in Newfoundland, Canada. In the first quarter of 2024 Braya completed the conversion of the previously idled conventional oil refinery to a world-class renewable diesel production facility. The refinery is strategically located to deliver renewable fuels to various end markets, including California, and has the ability to meet LCFS demand and California’s broader greenhouse gas initiatives. Renewable diesel helps decarbonize the heavy transport sector – a sector that is key to economic activity and has few other near-term, executable decarbonization solutions.

We appreciate the opportunity to provide feedback on the Proposed Low Carbon Fuel Standard Amendments published on August 12, 2024 (the “Proposal”).

The Proposed Method of Limitation on Soybean and Canola Oil as Feedstocks is Arbitrary and Discriminatory

Braya strongly believes that the proposed limitations on biomass-based diesel produced from virgin soybean and canola oil (the “BBD Limitation”) under subsection 95482(i) are misguided, arbitrary and should not be implemented. As a threshold matter, we note that this topic will be incredibly complicated to implement, implicates complicated supply chain logistics and contracts, will cause material unintended consequences in both the renewable fuel and agriculture markets and will negatively impact California consumer energy prices. Soybean oil and canola oil collectively represent approximately 53%¹ of the US-based biomass-based diesel feedstock mix and approximately 434 million gallons (20%) of the 2023 feedstock mix in California.² The subject matter of this proposal is of a magnitude that it demands adequate notice, planning and vigorous debate to ensure the proposed amendment is consistent with the goals and strong history of the Low Carbon Fuel Standard.

Braya’s understanding of the BBD Limitation is that it will limit the eligibility of biomass-based diesel produced from soybean oil and canola oil to produce LCFS credits to no more than twenty percent of the biomass-based diesel annual production reporting, by company. The BBD Limitation would apply as soon as the Proposal becomes effective unless a producer falls into a specific grandfathered

¹ <https://advancedbiofuelsusa.info/clean-fuels-alliance-america-clean-fuels-and-california-advanced-biofuels-alliance-caba2-comments-california-low-carbon-fuel-standard-lcfs-workshop>

² https://ww2.arb.ca.gov/sites/default/files/classic/fuels/lcfs/dashboard/Fig6_2023.xlsx



exception. We read the Proposal as deferring the implementation of the soybean and canola oil LCFS credit generation limitations until 2028 (the “2028 Deferral”) for producers that (i) produced at least 20% of their 2023 annual production from soybean and canola oil, collectively, and (ii) had a “certified” pathway for biomass-based diesel prior to the effective date of the Proposal. Braya assumes for the purposes of this letter that the effective date of the Proposal will be on or around the beginning of 2025. As discussed below, Braya believes that not only is the BBD Limitation fundamentally misguided, but the 2028 Deferral mechanism in particular is arbitrary and will result in unjust and undesirable outcomes.

CARB states in the Proposal that the rationale for the 2028 Deferral is “to provide time to adjust feedstock supply contracts as needed.” However, the proposed implementation of the BBD Limitation and the 2028 Deferral is fundamentally flawed in that it does not achieve CARB’s stated goal of allowing sufficient time to adjust for feedstock contracts for producers such as Braya and also omits to consider facility specific feedstock attributes.

Braya began converting its facility to renewable diesel production in 2021 and began producing renewable diesel in February 2024. Thus far in 2024, Braya has supplied the California market with renewable diesel based on a variety of renewable feedstocks, including amounts of soybean oil well in excess of 20% of Braya’s total production, under a temporary pathway issued by CARB. Braya is also preparing a Tier 2 application package for CARB review that will be filed imminently. Nonetheless, Braya will be disqualified from eligibility for the 2028 Deferral due to (i) Braya’s February 2024 production start date as opposed to the Proposal’s 2023 production requirement, and (ii) the Proposal’s requirement that Braya hold a “certified” pathway prior to the Proposal’s effectiveness. Braya notes that whether its imminent Tier 2 Application will satisfy the timing requirements of the 2028 Deferral will largely be dependent on CARB’s review schedule for the balance of 2024- an element that will be out of Braya’s control.

Notably, Braya:

- Began a refinery conversion process in 2021 that cost hundreds of millions of dollars and was specifically designed to accommodate soybean oil feedstock in reliance on the Low Carbon Fuel Standard’s historical technology-neutral approach;
- Produced over 58 million gallons of renewable diesel for the California market in 2024 under an effective temporary pathway applicable to soybean oil;
- Will apply for a fulsome Tier 2 provisional pathway in a matter of weeks;
- Has entered into tens of millions of dollars of soybean oil feedstock contracts for 2025 production that will need to be addressed at substantial cost if the 2028 Limitation is implemented as proposed; and
- Notwithstanding the above, would not qualify for the 2028 Deferral in its current form.

Braya applauds CARB’s acknowledgement that the BBD Limitation should consider producers feedstock arrangements, but also believes it is important that CARB consider facility specific implications of running various feedstocks. Renewable diesel facilities are not universal in respect of feedstocks and the geographic location of a facility has a significant impact on feedstock availability. Many facilities are designed to accommodate specific feedstocks and may require capital investment



and modifications to process additional or different feedstocks. Braya anticipates needing to launch a material capital project to modify its facility to accommodate a different slate of feedstocks should the BBD Limitation be implemented. These modifications will be capital intensive and take time to complete. The BBD Limitation also assumes all producers will be able to source adequate alternative feedstocks without considering geographically imposed logistical challenges that are location and facility specific. Braya strongly believes that these facility specific concerns should be considered in the design and timing of the 2028 Deferral.

As a reference point on overall implementation timing, Braya notes that CARB has recognized a “breaking ground” timeline for avoided methane crediting periods associated with RNG projects and similar concepts have been used in the implementation of the Renewable Fuel Standard to introduce new regulatory concepts without unfairly disadvantaging certain producers. We believe such an implementation approach is superior to the 2028 Limitation and will avoid unjust outcomes for particular producers.

In short, Braya is exactly the type of producer that CARB’s proposal purports to accommodate with the 2028 Limitation, but certain flaws in its design will instead be incredibly punishing to Braya due to a backward-looking timing component that was first announced in August 2024 for virtually immediate implementation. Specific recommendations to address these design issues are at the bottom of this letter.

The BBD Limitation is Ambiguous and Will Be Difficult and Costly to Administer

Braya also believes that the BBD Limitation, as proposed, will be difficult to implement and administer. We believe that changes of this magnitude would benefit from a more fulsome review process as the current proposal contains significant ambiguities, among other material issues.

For example, there is ambiguity with respect to the terms “production reporting” and “company.” Production reporting is not a term used anywhere else in the LCFS and has no clear applicability to volumes of fuel for which the producer is not the first fuel reporting entity. Whether or not CARB’s intent is to create tracking obligations upstream of the first fuel reporting entity or to place new restrictions on non-producers that take on the reporting obligation, it is creating a situation that will significantly disrupt existing contracts and relationships while creating different paths to potentially game the system through creative allocation of feedstocks amongst entities. Compliance with this provision will require duplicate actions by multiple entities to generate the necessary reporting and tracking data.

Organizations are structured in a variety of ways to fulfill various operational and legal needs. There are many situations in which an organization that is colloquially referred to as a single company and operates under common control is nonetheless organized into separate legal entities. Too narrow of a definition of “company” can threaten the ability of an organization to operate in a commonsense manner while too broad of a definition also increases the likelihood of gaming the system and allowing affiliates of large market players to effectively circumvent the intent of the proposed cap at the expense of smaller companies and California consumers.



Even if additional guidance were provided regarding “production reporting” and “company,” to allow parties to adequately evaluate the impact of the Proposal, there will undoubtedly be additional cost and infrastructure required by both CARB and regulated parties that runs counter to AB 32’s statutory mandate to minimize administrative burden. As described further below, none of this is necessary to achieve CARB’s environmental goals because a sophisticated and technology-neutral mechanism is already in place.

Superior Mechanisms Already Exist for Limiting Biomass-Based Diesel in California

To date, the LCFS has maintained an unbiased, technology-neutral approach. CARB already has a stringent and ongoing review process in place to address indirect land use change (“iLUC”) applicable to biofuels. Braya supports stringent reviews of this iLUC mechanism particular to the applicable feedstock in use. CARB staff noted in previous workshops that this mechanism significantly penalizes producers that utilize crop-based feedstocks by elevating CI scores well above those of non-crop-based feedstocks. We note that the Proposal goes even further by increasing the CI scores for temporary pathways applicable to crop-based feedstocks. Braya believes the newly developed specified source feedstock documentation and traceability requirements that are based on actual feedstock data, including iLUC, is a more appropriate and accurate method of achieving meaningful CI reductions without jeopardizing the much-needed renewable diesel supply in California. Finally, Braya also notes that the reducing carbon intensity requirements over time inherent in the Low Carbon Fuel Standard addresses perceived excess of vegetable oil used as feedstocks. CARB’s own modeling shows that virgin oil feedstocks will become deficit generating as early as 2030, before even considering the increased CI step-down of 9% contained in the Proposal.³

The BBD Limitation Implementation Timeline Will Expose California to Fraudulent Feedstocks and Increased GHG Emissions

Braya is supportive of the overall transition to lower carbon intensity feedstocks while moving the state forward toward electrification, but care must be taken to do so in a responsible manner—which is not implementing the BBD Limitation in less than six months. As CARB is no doubt aware, significant concerns have been raised concerning the use of material amounts of fraudulent used cooking oil and palm oil, which is difficult to track. In fact, earlier this month the U.S. Environmental Protection Agency announced that it was auditing renewable fuel producers concerning potential fraudulent use of used cooking oil. In addition, material amounts of used cooking oil may become subject to the imposition of tariffs in the near-future. The rushed nature of the BBD Limitation will force producers into the morass of an ongoing fraudulent feedstock investigation and possible enforcement actions in a part of the feedstock market where verifiable quantities of feedstock are already significantly limited, defeating the purpose of a supposed transition to lower carbon intensity feedstocks.

Counter-intuitively, implementation of the BBD Limitation may increase greenhouse gas emissions. Vegetable oils are a significant portion of the feedstock mix and a significant driver of the impressive volume growth in California’s renewable diesel pool. In particular, we express concern that CARB’s evaluation of a scenario limiting biomass-based diesel contained in the April 10, 2024 California Low Carbon Fuel Standard Workshop resulted in (i) an overall increase of nearly 1,000 MMT CO_{2e} in

³ California Low Carbon Fuel Standard Workshop Presentation, April 10, 2024, slide 40.



greenhouse gases, (ii) an increase in 2030 fossil diesel usage of approximately 1 billion gallons and (iii) extended the overall life of fossil fuels in California, as compared to CARB's proposed scenario.⁴ Fundamentally, a reduction of feedstocks options will almost certainly result in decreased renewable diesel production.

The BBD Limitation Will Distort the California Renewable Fuel Market

As described above, the 2028 Deferral will favor a certain set of historical producers to the detriment of certain other producers based on backward-looking time thresholds. Unsurprisingly, such a design is likely to have unintended consequences on the California renewable fuels market, including the *increase* of biomass-based diesel production by a certain subset of producers advantaged by the BBD Limitation. If implemented, historical producers that are granted deferred compliance under the 2028 Deferral will continue producing biomass-based diesel unabated while other producers are significantly restricted to a 20% limitation on production. This reduction in the number of producers able to process soybean oil and canola oil as feedstocks and still access the California market should lead to distressed prices for these feedstocks as the universe of buyers shrinks. These distressed feedstock prices will encourage this subset of grandfathered companies to produce as much biomass-based diesel from these feedstocks as possible to maximize the artificial advantage granted to them via the design of the 2028 Limitation. As a result, the implementation of the 2028 Deferral as constructed is likely to *increase* the relative supply of biomass-based diesel into California while also reducing the overall amount of renewable diesel coming into California as other producers are forced into other markets or reducing production.

The BBD Limitation Will Increase California Consumer Energy Costs

Braya also believes that the BBD Limitation will result in increased fuel prices for the California consumer. The price of renewable fuels is set in the marketplace by the cost of the marginal barrel produced. The BBD Limitation will force the marginal producer to procure more expensive low CI feedstock due to the aforementioned restrictions applicable to relatively cheaper soybean oil and canola oil. In turn, this increased cost of the marginal barrel will drive up the cost of the associated renewable fuel for the California consumer.

This price increase will be exacerbated by unrelated policy changes at the federal level. The planned elimination of the existing blender tax credit and replacement with the producer tax credit under the Inflation Reduction Act will also increase demand for lower CI feedstocks. The implementation of the BBD Limitation and the producer tax credit at roughly the same time is likely to result in a multiplier effect where the cost of low CI feedstocks significantly increases which will lead to a substantial and sudden increase to the cost of production to the marginal renewable fuel producer and, ultimately, to the California consumer.

Implementation of the BBD Limitation Will Deter Industry Investment in California Renewable Fuels

⁴ California Low Carbon Fuel Standard Workshop Presentation, April 10, 2024, slides 23, 29 & 31.



Finally, Braya asks CARB to consider the message it will be delivering to the market and potential investors in the renewable energy space should the BBD Limitation be implemented as proposed. That message will be clear - upon extremely limited notice and using arbitrary deadlines set in the past that effectively pick winners and losers, your investment in the energy transition could be jeopardized. Instead, a more constructive signal should be sent to existing and potential renewable fuel producers by allowing all producers to adjust to the feedstock supply changes, facility-specific modifications and accommodations to offtake contracts on a level playing field. This message should encourage innovation and investment in the renewable energy space. We firmly believe that message can only be delivered if the BBD Limitation is abandoned entirely or significantly modified as described below to avoid arbitrarily punishing recent and new market participants.

Timing of Implementation Should Reflect Underlying Electrification Progress

Braya understands that a significant contributor to the rationale underlying the BBD Limitation is the expectation of increasing electrification in medium- and heavy-duty transport vehicles. We note that, in this respect, the Proposal also contains limitations on new biomass-based diesel pathway applications under subsection 95488(d), where no new applications may be accepted if a certain threshold of zero or near-zero emission vehicles is achieved by the end of 2029. We believe such a deferred and performance-contingent approach is also appropriate for the BBD Limitation by ensuring the availability of affordable renewable fuels in California prior to mass electrification of these particular transport modes.

Recommendation

Braya strongly suggests eliminating the BBD Limitation completely given that it is (i) arbitrary and unnecessary considering the well-established iLUC mechanism, CI calculations (including proposed step-downs) and stringent feedstock documentation requirements and (ii) likely harmful to CARB's decarbonization goals and to the California consumer. If implemented, the BBD Limitation should be modified as described below to provide a level-playing field for producers.

Braya recommends the following modifications if the BBD Limitation is implemented:

- Either (a) adopt a “breaking ground” concept that would qualify a producer for the 2028 Deferral if physical construction or conversion of a facility began prior to January 1, 2024 or (b) move the required production timing for a producer's eligibility for the 2028 Deferral from the proposed 2023 to 2024;
- Modify the pathway certification requirement to include parties that have applied for a provisional pathway prior to the end of 2024 or have operated under a temporary pathway prior to the end of 2024; and
- Delay the implementation of the BBD Limitation in a manner that considers achievement of electrification milestones similar to those set forth in the newly proposed restrictions on biomass-based diesel pathways as described in subsection 95488(d).

Braya is also a member of the Advanced Biofuels Association (the “ABFA”) and supports and reiterates the recommendations and conclusions set forth in the ABFA's comment letter concerning the Proposal.



Thank you in advance for taking the time to review our comments and proposed solutions concerning these very important issues. We look forward to working with CARB and welcome any opportunity to discuss these matters further and provide additional assistance and insight.

Respectfully,

A handwritten signature in black ink, appearing to read 'TOM'.

Todd O'Malley
Chief Executive Officer
Braya Renewable Fuels