



Linda S. Adams
Secretary for
Environmental Protection

Air Resources Board

Mary D. Nichols, Chairman
1001 I Street • P.O. Box 2815
Sacramento, California 95812 • www.arb.ca.gov



Arnold Schwarzenegger
Governor

June 9, 2010

Mr. David Bearden
General Counsel
Renewable Fuels Association
One Massachusetts Avenue, N.W., Suite 820
Washington, D.C. 20001

Re: Petition for Rulemaking

Dear Mr. Bearden:

Thank you for your letter to Chairman Mary D. Nichols dated May 10, 2010. Chairman Nichols has asked that I respond on her behalf. In your letter, you petitioned, pursuant to Government Code section 11340.6, on behalf of Growth Energy for the Air Resources Board (ARB or Board) to amend the Low Carbon Fuel Standard (LCFS) regulation, codified in title 17, California Code of Regulations (CCR), sections 95480-95490. Specifically, you petitioned for amendments to section 95486.

After careful consideration of the facts associated with your request, pursuant to Government Code section 11340.7(b), I am denying your petition to amend the LCFS regulation at this time. However, pursuant to Board Resolution 09-31,¹ I will consider recommending possible changes to the regulation in the future based upon the work being done in conjunction with the Expert Workgroup we convened to assist the Board in refining and improving the land use and indirect effect analysis of transportation fuels. Below I provide further details on our denial of your petition.

Your requested "amendment 1" would take effect no later than December 31, 2010, and would eliminate the land use change carbon intensity of corn ethanol for two years, 2011 and 2012. With respect to this requested amendment, the Board has previously found that crop-based biofuel production does entail land use change impacts, and that those impacts do result in significant greenhouse gas emissions. See Board Resolution 09-31. In light of those findings, the Board determined that it would be remiss if it did not account for land-use change effects in the carbon intensities of crop-based biofuels. Moreover, in the April 2010 report released by Purdue for Argonne

¹ Resolution 09-31, April 23, 2009. See: <http://www.arb.ca.gov/regact/2009/lcfs09/res0931.pdf>

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National Laboratories that you cited, the authors also conclude that "it is simply not credible to argue that there are no land use change implications of corn ethanol." Your petition does not refute the Board's finding that the land use change impacts result in significant greenhouse gas emissions, nor does it refute the study authors' conclusion noted above. Thus, your petition presents an insufficient basis for eliminating the land-use change carbon intensity value for corn ethanol.

Alternatively, "amendment 2" of your petition would lower the indirect land-use carbon intensity value for corn ethanol to one of two values. This requested change is based on the Purdue study you cited in your petition, which we are currently reviewing. As discussed below, it is premature to make changes to the LCFS regulation based on this study. Our initial observation is that the Purdue model used for this study is not publicly available; as a result, a more detailed evaluation is not currently feasible at this time.

As part of the Purdue study, the authors varied a number of parameters which resulted in a range of land use carbon intensity values that are 1/3 to 1/2 lower than ARB's published average value. However, the values are generally within the range of results that we found in running various sensitivities. ARB believes that this is important work and is being considered by the Expert Workgroup as part of its comprehensive evaluation.

As noted, the Expert Workgroup was established at the direction of the Board in Resolution 09-31 upon the Board's approval of the LCFS regulation. The Expert Workgroup is charged with refining and improving the land use and indirect effect analysis of transportation fuels. The Expert Workgroup includes individuals from diverse stakeholder groups such as government agencies, academic institutes (including Purdue University), national laboratories, the biofuel and oil industries, and environmental groups. The Expert Workgroup has formed eight (and potentially nine) subgroups that are actively evaluating all facets of the modeling, including comparative models. For more information on the Expert Workgroup, see the following link:
<http://www.arb.ca.gov/fuels/lcfs/workgroups/ewg/expertworkgroup.htm>.

At the next Expert Workgroup meeting on June 17, 2010, Purdue University representatives will make a presentation on their work so that the Expert Workgroup members will have an understanding of the study, including the key assumptions. We have asked Purdue and Argonne National Laboratories to make the updated Global Trade Analysis Project version publically available for inspection and evaluation. When it becomes available, it is likely that ARB will use Purdue's new work as one of the two baselines for evaluating the impact of inputs and assumptions. The assessment of the Expert Workgroup will be reflected in a report, including recommendations, that the Board will consider at the end of the year.

Because the Expert Workgroup will be assisting ARB staff in evaluating the Purdue study and that work has not yet commenced, it is premature to adopt Purdue's recent work. And, as indicated, our understanding is that the model and the underlying details

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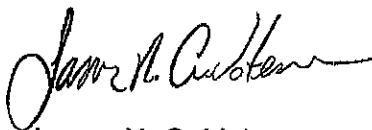
which will need to be considered for a full evaluation are not yet available. However, as mentioned above, we believe that assessing this study is an important part of our effort to evaluate developments regarding the indirect effects issue as directed by the Board.

Finally, you also requested an amendment that would take effect no later than September 30, 2010 and would require the Executive Officer to take final action on a Method 2A or 2B submittal under section 95486 within 90 days of his receipt of a complete submittal pursuant to Method 2A or 2B. In approving the LCFS regulation, the Board considered the need for an expeditious process for reviewing a Method 2A or 2B submittal and weighed that need against the public interest in being able to review the submittal in an open process. While we expect most submittals to be reviewed relatively quickly, in some cases, the complexity of a submittal may warrant a staff review that exceeds 90 days. Therefore, the Board determined that the most appropriate balance of these considerations is reflected in the public review and final action provisions contained in section 95486(f). We believe the existing process in the regulation provides a necessary and appropriate balance between these two considerations and have therefore determined that your requested amendment would be inappropriate.

Based on the reasons discussed above, ARB believes that granting the requested changes specified in your petition would be inappropriate at this time. However, as noted, we are continuing to evaluate the ongoing developments in the field of land use and indirect effect analysis of transportation fuels. ARB will consider revisiting the need for updating the indirect effects carbon intensity value for corn ethanol when the Expert Workgroup completes its analysis.

In accordance with Government Code section 11340.7(d), a copy of this letter is being transmitted to the Office of Administrative Law for publication in the California Regulatory Notice Register. The agency contact person on this matter is Ms. Claudia Nagy, Staff Counsel, Office of Legal Affairs, at (916) 445-5501 or cnagy@arb.ca.gov. Any person who is interested in obtaining a copy of the petition may obtain it from her.

Sincerely,



James N. Goldstene
Executive Officer

cc: Ms. Claudia Nagy
Staff Counsel
Office of Legal Affairs

