

State of California
AIR RESOURCES BOARD

LOW CARBON FUEL STANDARD LITIGATION ORDER COMPLIANCE ACTION

Resolution 17-48

November 16, 2017

Agenda Item No. 17-11-7

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the California Air Resources Board (CARB or Board) to adopt standards, rules and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, section 38510 of the Health and Safety Code designates CARB as the State agency charged with monitoring and regulating sources of greenhouse gas (GHG) emissions that cause global warming in order to reduce such emissions;

WHEREAS, section 38560 of the Health and Safety Code directs the Board to adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective GHG emissions reductions from sources or categories of sources, subject to the criteria and schedules specified in Part 4 of Division 25.5 of the Health and Safety Code;

WHEREAS, section 38580 of the Health and Safety Code requires the Board to monitor compliance with and enforce any rule, regulation, order, emission limitation, emissions reduction measure, or market-based compliance mechanism adopted by CARB pursuant to Division 25.5;

WHEREAS, the Board approved a list of early GHG actions at its June 21, 2007 hearing, and approved additions to the list at its October 25, 2007 hearing, and a subset of nine of these early actions were designated as Discrete Early Action Measures, including a "Low Carbon Fuel Standard" (LCFS) measure to reduce GHG emissions from transportation fuels used in California;

WHEREAS, on July 15, 2013, the State of California Court of Appeal issued an opinion in *POET, LLC v. California Air Resources Board* (2013), 218 Cal.App.4th 681, requiring that CARB take specified actions to correct errors related to the adoption of the first LCFS in 2009, and concluding that the public interests at stake, including the protection of the environment, weighed in favor of preserving the operation of the LCFS while those actions were taken;

WHEREAS the 2013 *POET* opinion ordered CARB to, among other things, further consider whether the LCFS might result in increased nitrogen oxide (NOx) emissions due to increases in the use of biodiesel;

WHEREAS, in February 2014, the Fresno County Superior Court issued a writ of mandate ordering the Board to take the actions directed by the Court of Appeal;

WHEREAS, on September 25, 2015, the Board approved Resolution 15-36, thereby setting aside its approval of, and repealing, the then-current LCFS regulation, and adopting a new LCFS regulation, effective January 1, 2016, published at sections 95480, 95481, 95482, 95483, 95483.1, 95483.2, 95484, 95485, 95486, 95487, 95488, 95489, 95491, 95492, 95493, 95494, 95495, 95496, and 95497 of Title 17, California Code of Regulations;

WHEREAS, on September 25, 2015, the Board approved Resolution 15-41 adopting the Alternative Diesel Fuels (ADF) regulations, designed to, among other things, reduce NOx emissions from the use of biodiesel, published at sections 2293, 2293.1, 2293.2, 2293.3, 2293.4, 2293.5, 2293.6, 2293.7, 2293.8, 2293.9, and Appendix 1 of Title 13, chapter 5, article 3, California Code of Regulations;

WHEREAS, on September 25, 2015, the Board approved Resolution 15-51, thereby certifying the *Final Environmental Analysis for the Low Carbon Fuel Standard and Alternative Diesel Fuel Regulations* and approving the responses to comments;

WHEREAS, on January 5, 2016, the Fresno County Superior Court discharged its February 2014 writ of mandate;

WHEREAS, on May 30, 2017, the State of California Court of Appeal issued an opinion in *POET, LLC v. California Air Resources Board* (2017) 12 Cal.App.5th 52, reversing the Superior Court's discharge of the February 2014 writ, and directing CARB to take specified actions relating to the issue of potential NOx emissions from biodiesel to complete its compliance with a modified writ of mandate;

WHEREAS, an October 18, 2017, writ of mandate from the Fresno County Superior Court, Attachment A to this Resolution, ordered the Board to, among other actions, “[s]et aside its 2015 approval of the parts of the final [LCFS/ADF regulations] Environmental Analysis addressing NOx emissions from biodiesel,” and to “[a]ddress whether the project as a whole ‘is likely to have’ caused an increase in NOx emissions in the past and is likely to cause an increase in NOx emissions in the future”;

WHEREAS, pursuant to the writ of mandate, the LCFS compliance standards for conventional diesel fuel and its substitutes are preserved, by court order, at the 2017 standard until the corrective action is complete and approved by the trial court in an order discharging the writ; and

WHEREAS, Board staff is developing further action to complete compliance with the court's order and this further action is anticipated to be presented to the Board for consideration in 2018.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby sets aside its 2015 approval of the parts of the LCFS/ADF final Environmental Analysis addressing NOx emissions from biodiesel.

BE IT FURTHER RESOLVED that the Board directs Board staff to expeditiously present further corrective action for Board consideration in order to complete compliance with the writ of mandate as soon as is feasible.

I hereby certify that the above is a true and correct copy of Resolution 17-48 as adopted by the California Air Resources Board.

Rana McReynolds, Clerk of the Board

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Identification of Attachments to the Board Resolution

Attachment A: Fresno County Superior Court Order Modifying and Reissuing Writ,
October 18, 2017