

**Supplement to the Responses
to Comments**

on the

Draft Environmental Analysis

for the

**Low Carbon Fuel Standard and
Alternative Diesel Fuel
Regulations**



To be considered at the

September 25, 2015 Board Hearing

PREFACE

The California Air Resources Board (ARB) prepared a draft environmental analysis under its certified regulatory program for the proposed Regulation on the Commercialization of Alternative Diesel Fuels (ADF) and the proposed re-adoption of the Low Carbon Fuel Standard (LCFS) in the document entitled *Draft Environmental Analysis Prepared for the Low Carbon Fuel Standard and Alternative Diesel Fuel Regulations* (Draft EA), included as Appendix D to the respective Initial Statement of Reason (ISOR) prepared for each of the proposed regulations, and circulated for public review and comment for at least 45 days from January 2, 2015 through February 17, 2015. ARB staff reviewed written comments received on the Draft EA from January 2, 2015 through February 17, 2015, at the February public hearing, and additional environmental comments received during the additional 15-day public comment periods provided for the modified regulatory language and supporting documentation, even though the Draft EA was not recirculated for comment, and prepared written responses to all those environmental comments in a document entitled *Response to Comments on the Environmental Analysis Prepared for the Low Carbon Fuel Standard and Alternative Diesel Fuel Regulations* (Response to EA Comments). On September 21, 2015, ARB posted on the rulemaking pages for the proposed ADF and LCFS regulations the Final EA, which includes minor revisions to the Draft EA, and the Response to EA Comments.

This document supplements that document with written responses to additional EA related comments received during the public hearing held on September 24, 2015. A total of 4 comment letters were received during the Board hearing on September 24, 2015, 1 of which included comments related to the EA.

1. RESPONSES TO COMMENTS

The comments were coded by the order, type of submission and the comment period in which they were received, and also tagged for LCFS and/or ADF, along with the name of the commenting organization or individual.

Table 1-1. Comment Codes

Comment Code	Comment Period Received
SB	Comments received as written materials during the second Board hearing, September 24, 2015
ST	Comments received as testimony at the second Board hearing, September 24, 2015

ARB received 1 comment letter that relates to the EA or an environmental issue, as listed in Table 1-2. Comments have been reproduced and bracketed to demarcate specific issues and to allow for thorough responses. Written responses in this document are limited to those comments that raise substantial environmental points. Written responses to comments that do not pertain to the content of the Draft EA are provided in the *Supplement to Responses to Comments prepared for both the Low Carbon Fuel Standard and Alternative Diesel Fuel Regulations*, and provided to the Board for consideration. All written responses will be incorporated in the Final Statements of Reasons prepared for each of the regulations and will be submitted to the Office of Administrative Law with the final rulemaking file for review as required by the California Administrative Procedures Act.

Table 1-2. List of Commenters

Comment Code	Commenter	Affiliation
1-SB-LCFS-GE	John Kinsey	Growth Energy

1_SB_LCFS_GE Responses

LCFS SB1-1

The commenter asserts ARB piecemealed the environmental review which resulted in an inaccurate baseline and inaccurate assessment of the potential air quality impacts of the regulations. As acknowledged by the commenter in its comment letter, these comments are the same, or only a slight variation from, other comments previously submitted by the commenter and are responded to in the Response to EA Comments document. Nonetheless, ARB provides a short response below with reference to the parts of the Response to EA Comments document where the comment was previously fully addressed.

In regard to the concern that ARB's CEQA review of the LCFS and ADF regulations is piecemealed, please see response to comment **LCFS 46-54, LCFS 46-55, LCFS 46-270** through **LCFS 46-273** and the responses referenced in those responses. Briefly, as stated in those responses, the POET decision requires ARB to set aside the existing regulation and consider re-adoption of a LCFS regulation. This consideration of an LCFS regulation in 2015 is a separate action and cannot be analyzed together with the past action taken on LCFS that was challenged in the POET case. ARB is not chopping up one larger project into smaller pieces or "piecemealing" the project to avoid full consideration of the impacts of the project. Rather it is properly considering the LCFS as a project along with the proposed ADF by considering the current proposed LCFS regulation based on current conditions that include the LCFS regulation left in place by the court.

The commenter further states ARB erred in using current conditions as of the time the environmental review is initiated as the baseline. Please refer to response to comment **LCFS 46-54** and **LCFS 46-55**.

The comment further alleges ARB failed to use consistent baselines across the spectrum for fuels regulated under the regulations. The commenter states ARB used a pre-LCFS baseline of 2009/2010 for "some favored fuels" but used a 2014 baseline for others. The commenter confuses the term baseline used in a CEQA analysis for purposes of determining the projects impacts with base years used for other purposes of determining credits within the regulatory scheme. With regard to the base year used to determine credits within the regulatory scheme see response to **LCFS SB1-18**. A single current-conditions baseline was used for the EA impacts analysis.

ARB did not treat Midwest corn ethanol differently or use both a 2010 and current baseline for purposes of the environmental review or in the regulation.

With regard to credits generated for electric forklifts and fixed guideway systems, staff explains the treatment of this issue on pages III-8 through III-10 of the Initial Statement of Reasons and response to comments **LCFS 38-21**.

ADF SB1-1

The commenter asserts that the alternative proposed by Growth Energy would lead to emissions reductions sooner and would avoid environmental effects. The commenter also states that ARB should explain why the costs are greater and why it may not be technically feasible (including an explanation of the economic rejection).

The commenter suggests this alternative would avoid environmental effects, and that ARB needs to explain the following:

1. Why the alternative did not need to be included in the EA
2. What evidence there is for why the alternative was not included
3. Why the EA does not have a reasonable range of alternatives
4. Why the regulation is better than the alternative

The CEQA alternatives requirements are addressed in response to comment **LCFS 40-34**. The reasons for rejecting the alternative are found in comment responses **ADF 17-10/LCFS 46-49**. The sufficiency of the explanation is further discussed in comment response **LCFS 46-50**. Additional explanation of the cost-effectiveness can be found in comment responses **ADF 17-46** through **ADF 17-49**. Comment response **LCFS 46-292** through **LCFS 46-297** describes the reason for rejection of the Growth Energy alternative and supports the rejection of the alternative as environmentally inferior.

Specifically, the commenter states that the Growth Energy Alternative would entirely avoid the potentially significant effects described in the EA. While the commenter does not state the specific environmental impacts that would be eliminated, ARB believes that the Growth Energy Alternative could, in fact, result in new or modified fuel production facilities (see page 137, first paragraph, of the Draft EA). This additional infrastructure would be the result of increased demand on additive requirements, as such would also be needed for B1 and greater blends (as proposed in the Growth Energy Alternative), rather than just for B5 and greater blends (as proposed under the ADF Regulation). Further, this

could result in increased truck trips to transport renewable diesel and to support additional blending requirements. As a result, to meet an increased demand under the ADF specification requirements, additional infrastructure and trips may be needed, thereby not reducing any potentially significant environmental effects (e.g., including construction). CEQA focuses on avoiding and mitigating significant impacts, not increasing project benefits as the commenter suggests. For more information, see responses to comment **ADF 17-10/LCFS 46-49** and **LCFS 46-296**.

In response to the range of alternatives discussed in the EA, see response to comment **LCFS 40-30** and **LCFS 40-36**. Commenter also references *Habitat & Watershed Caretakers v. City of Santa Cruz* (2013), which is distinguishable from this EA. Unlike the analysis in that case, this EA analyzed three alternatives that could reduce potentially significant impacts. The EA further considered, but ultimately rejected, three additional alternatives. Therefore, the EA's alternatives analysis is distinguishable from that in the EIR at issue in *Habitat & Watershed Caretakers*. Furthermore, response to comment **LCFS 46-62** addresses the commenter's concerns regarding the relationship between the project objectives and the project alternatives.

ADF SB1-2 through ADF SB1-5

The commenter states the belief that a compromise between ARB and the biodiesel industry was responsible for the difference between an early staff proposal for biodiesel NOx requirements and the proposal included by staff in its proposed ADF regulation. The commenter states there are no documents in the rulemaking file regarding this compromise or communications between the biodiesel industry and ARB staff relating to the compromise; no evidence or other data in either the rulemaking file or the EA explaining why the NOx control levels were reduced dramatically between July 2014 and February 2015; and no technical basis to support what the commenter states is a relaxation of the NOx control levels.

The proposed ADF regulation was developed through a comprehensive and open public process involving a wide variety of interested stakeholders, including petroleum refiners, biofuel producers, engine manufacturers, and environmental and community non-governmental organizations. The proposal is based on well-documented and peer-reviewed scientific and technical information and the conclusions of the statistical analysis of NOx emissions data, as well as reinforced by an independent statistical analysis that ARB requested. These documents are all in the

rulemaking file. The proposal provides appropriate environmental controls while providing flexibility to the industry. For more information on how staff arrived at the current ADF proposal and the technical information supporting this analysis please see response to comment **ADF 8-1**.

Staff has revised the proposal several times since the advent of the rulemaking process to reflect new knowledge, understanding, and data. Staff held a public workshop on November 21, 2014 to discuss the current proposal that was ultimately presented in the formal rulemaking package released on December 30, 2014. This proposal was different from the July 2014 preliminary proposal, which was written specifically for the Standardized Regulatory Impact Assessment (SRIA). That proposal was developed soon after additional emission test results were received and analyzed and reflected a proposal that staff believed would conservatively evaluate the greatest potential economic impacts in the SRIA.

Contrary to the assertion of the commenter, the December 2014 ADF proposal does not reflect revised conclusions on NOx impacts. Instead, the scientific conclusions of the NOx impacts remained the same, but staff's proposal changed after staff analyzed the effect of offsetting factors on NOx emissions. These offsetting factors include consideration of new technology diesel engines and renewable diesel present in the market rather than requiring biodiesel blenders to buy and blend renewable diesel in each gallon, or by contracting directly with renewable diesel providers.

The December 2014 proposal, like the regulation presented to the Board for adoption, is the result of additional staff analysis and establishes in-use specifications that do not increase NOx emissions from current levels and decrease emission over time. As part of a robust regulatory development process, staff met with various stakeholders throughout the process, including between July and November. However, the final proposal is based on staff's assessment of the best approach to achieve the goals of the regulation. In other words, following the submittal of the preliminary rulemaking proposal developed in connection with the SRIA, staff continued to meet with stakeholders and perform additional analyses in order to develop a proposal that would be protective of the environment, including avoidance of any NOx emission increases from biodiesel, while also avoiding unnecessary cost to regulated parties.

The rulemaking file is complete. For more information on the rulemaking file, please see response to comment **ADF 5-3**.

Regarding comments on NOx increases since 2009 please see responses to comments **ADF 17-9** and **ADF B3-112**. For information including the updated NOx analysis in the 15-day changes, please see response to comment **ADF F5-1**.

The comment claims that because NTDEs can include engines that have retrofit SCR systems, their impacts should be included in the analysis of NTDE impacts on biodiesel NOx emissions. Although retrofit SCR systems are included in the NTDE definition, there is only one ARB verified device that includes SCR, and by far the bulk of SCR equipped engines on the road, or expected to be on the road in the future, is OEM systems that are included in the original truck purchase. Thus, the three studies mentioned by the commenter are not relevant. For more information on the effects of NTDEs on biodiesel NOx emissions see response to comment **ADF 17-4**.

LCFS SB1-2

The commenter asserts ARB failed to adequately respond to environmental comments. ARB's certified program requires that ARB summarize and respond to comments either orally or in a supplemental report. CEQA provides additional guidance on the requirements for adequate responses to comments as follows (CEQA Guidelines Section 15088[c]):

The written response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular, the major environmental issues raised when the Lead Agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted. There must be a good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice.

ARB disagrees that responses provided in the Response to EA Comments are not adequate. Each comment that raised substantial environmental issues is summarized and detailed responses were provided. Further, to aid in the clarity of responses, comment letters were bracketed to ensure that specific issues were addressed. The Response to EA Comments contains both the bracketed comment letters and their corresponding responses. Responses were prepared, at a minimum, to provide the same degree of detail as submitted in the comments. This approach provides a well-reasoned, good-faith effort to respond to environmental comments and contributes to the EA's purpose as an information document.

In some cases, the responses refer to text presented in the ISOR. Referenced text is considered to provide substantial evidence that, in many cases, does not need to be expanded upon because adequate facts and evidence have already been discussed. That is, the Response to EA Comments complies with ARB's certified regulatory program under CEQA and presents substantial evidence that includes fact, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

In response to the example provided by the commenter, ARB refers to several discussions used to reject the Growth Energy Alternative (see response to comment LCFS SB 1-2). ARB believes that no additional evidence is needed to support rejection of this alternative, as substantial evidence has already been provided in a well-reasoned, good-faith response.

Regarding the analysis of an alternative to the ADF regulation submitted by Growth Energy, please see response to comment **ADF SB1-1**.

The Lyons Declaration attached to commenter's letter also claims at paragraph 18 that "CARB does not dispute that biodiesel that has been, or is currently being, used under the 2009 LCFS regulation has led to increased NOx emissions, or that biodiesel used under the proposed LCFS regulation will also lead to unmitigated increases in NOx emissions." With regard to the first claim, as noted on p. 61 of the EA, it is unclear and impossible to determine what portion of the increase in use has been attributable to the original LCFS regulation versus other incentive and regulatory programs, as well as voluntary decisions. With regard to the second claim, the EA does not conclude that the proposed LCFS regulation will also lead to unmitigated NOx emissions increases. Table 4-1 in the Final EA shows anticipated progressive *reductions* in statewide NOx emissions, not increases, resulting from implementation of the proposed regulation. See response to **LCFS 46-54**.

LCFS SB1-8

The commenter states that ARB has failed to address previous comments submitted by the commenter and failed to present any data or analysis performed by the commenter. Please see response to comment **LCFS SB 1-2**.

LCFS SB1-11

Attached to Mr. Lyons' declaration as Exhibit C are comments of Growth Energy from March 2014. The commenter wonders how the environmental assessment will be conducted and instructs ARB how to proceed. The comment proposes a 'no project' alternative under which instead of an LCFS, ARB relies entirely on other

regulatory programs to achieve GHG reductions. The comment instructs ARB on what scenarios to analyze in the EA.

This comment is repetitive with others that have been responded to elsewhere. The 'no project' alternative that relies on regulatory programs other than LCFS was addressed in response to comment LCFS 46-62. In response to comments pertaining to the range of alternatives discussed in the EA, see responses to comments LCFS 40-30 and LCFS 40-36. The EA did consider effects from the transportation of fuels, the example given in the comment (see page 33 of the Draft EA where changes to fuel-associated shipment patterns are discussed; and page 96 of the Draft EA where transportation and traffic impacts described).

LCFS SB1-12

Attached to Mr. Lyons' declaration as Exhibit C are comments of Growth Energy from March 2014. The commenter instructs ARB to analyze the regulations' "broader impacts" including hypothetical examples.

The EA considered likely compliance responses and analyzed the associated potential environmental effects. To the extent that the commenter's examples were not speculative, but are reasonably likely to occur as a result of the project, foreseeable impacts were considered.

LCFS SB1-13

Attached to Mr. Lyons' declaration as Exhibit C are comments of Growth Energy from March 2014. The commenter instructs ARB not to double count emission reductions.

The comment is noted. The EA considered the impacts from the project, and clarified projected emission benefits both with and without complementary programs such as the Advanced Clean Cars Regulation.