

A2O Comments on LCFS Regulatory Amendments filed September 28, 2011 using the comment submittal form located at:

<http://www.arb.ca.gov/fuels/lcfs/regamend/regamend.htm>

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Thank you for the opportunity to comment on the proposed amendments to the Low Carbon Fuel Standard (LCFS). The comment period is very limited. Therefore, I will focus on the changes to §95486 that have the greatest potential to make it prohibitive or even create an unintended trade barrier for biofuel producers that wish to supply California with cleaner burning low carbon fuels.

A 2nd Opinion, Inc.'s client, Neste Oil Corporation (Neste) is the world's leading producer of renewable diesel fuel. California is a key potential market for this cleaner burning, NOx reducing, low carbon renewable diesel fuel. Therefore, we all (A₂O, California and Neste) have a vested interest in making sure that changes to the LCFS regulations do not make it prohibitive to improve California air quality while lowering carbon emissions. The proposed changes to §95486 may create unintended trade barriers that make it more difficult to satisfy California's desires for cleaner air and lower carbon emissions and reduce the authority of the Executive Officer. Because things that were legal under the existing regulations may not satisfy the proposed changes, there may be a conflict with Clause 1 of Section 10, Article 1 of the US Constitution.

The most problematic revision occurs in §95486(a)(2). The phrase, "all important respects" is not defined. We will explain why that is a problem and suggest a revision that will not restrict low carbon fuels producers' ability to supply California any more than the current regulations. I will now recap the existing regulations and how the proposed regulations may help or hurt.

The existing regulation §95486(b)(2)(B) requires the regulated party to use the Carbon Intensity value in the Lookup Table that most closely corresponds to the production process used subject to approval by the Executive Officer. §95486(a)(3) of the existing regulation requires that if the Executive officer disagrees with the regulated party's choice, the Executive Officer "shall choose a carbon intensity value, in the Carbon Intensity Lookup Tables for the fuel or blendstock, which the Executive Officer determines is the one that most closely corresponds to the pathway for that fuel or blendstock...." **Under the existing regulation, the Executive Officer must choose a value and does not appear to have the option to determine that Method 1 does not apply.**

§95486(a)(2) of the existing regulation requires a regulated party for any other fuel or blendstock to use Method 1 unless the regulated party is approved for using either Method 2A or Method 2B, as provided in section 95486(c) or (d). In §95486(c) and (d) the regulated party proposes and demonstrates pathways subject to the Executive Officer's approval. **If the regulated party does not propose a 2A or 2B pathway, the Executive Officer cannot**

approve the use of the 2A or 2B pathway. If he does not propose a 2A or 2B pathway the regulated party must use Method 1.

The proposed new language for §95486(b)(2)(B) that requires a regulated party to determine if the Carbon Intensity Lookup Table contains pathways that correspond to the regulated party's fuel pathways and then use the CIs from the table subject to the Executive officer's approval might be a good improvement if the proposed §95486(a)(2) language is revised. It provides a way to deal with feedstocks and processes that are not in the Lookup Tables.

The proposed language in §95486(a)(3) that requires the Executive Officer to rule out the use of Method 1 also provides a way to deal with feedstocks and processes that are not in the Lookup Tables. **It does however, undermine the Executive Officer's authority to choose the Carbon Intensity that most closely corresponds to the pathway for the fuel or blendstock** when the biomass feedstock and conversion process are in the Lookup Tables and save staff man-hours. Let me illustrate by use of a couple of examples.

It is easy to determine that there is no catfish to ethanol pathway in the Lookup Tables. Having **the flexibility to "rule out the use of Method 1"** rather than having to "choose a carbon intensity value, in the Carbon Intensity Lookup Tables" **expands the Executive Officer's authority to deal with feedstocks and processes that are not in the Lookup Tables.**

The existing pathways include renewable diesel from soy beans. The regulated party who converts soybeans to renewable diesel is going to select the same carbon intensities whether he "must use" under the current regulation or "must determine...shall use..." under the revised §95486(b)(2)(B). Without the escape hatch that allows the Executive Officer to "rule out the use of Method 1" the Executive Officer has the authority to observe that most of the carbon intensity of a renewable diesel is determined by the renewable biomass selection and the conversion process used to transform it to a usable motor fuel. He has the authority to observe that because the same work has to be done to produce the biomass regional differences will probably be small and because similar transformations must occur regardless of the sources of the soy oil the energy and carbon inputs required to pretreat and transform it to motor fuel will be of similar magnitude. Without the escape hatch the Executive Officer has the authority and actually the obligation to choose a carbon intensity from the lookup table that corresponds to the feedstock and process. **Without the obligation competitors could file lawsuits arguing that the Executive Officer did not have the authority to choose a carbon intensity and that the Executive Officer exceeded the Executive Officer's authority.**

The proposed change in §95486(a)(3) should be revised as follows:

"If Carbon Intensity Lookup Tables do not contain a fuel pathway with a feedstock and conversion process that closely corresponds with the regulated party's fuel pathway, as specified in 95486 (a)(2), the Executive Officer shall rule out the use of Method 1 for determining the regulated party's fuel carbon intensity."

This change would provide the authority to deal with feedstocks and processes not contained in the Lookup Tables while preserving the Executive Officers authority to move the LCFS forward and keep staff resources focused on substantial Type 2A pathways or Type 2B pathways.

The main problem with the proposed §95486 language occurs in §95486(a)(2) with the sentence:

"In order to closely correspond with a Carbon Intensity Lookup Table pathway, a regulated party's pathway must be consistent in **all important respects** with the technical supporting document behind that Carbon Intensity Lookup Table pathway."

The key cause of the problem is "all important respects" is not defined. If it includes only feedstock selected and conversion process, one can conclude that the practical application of the regulation has not changed and that the language changes are for clarification. On the other hand, if "all important respects" includes all the line items in the typical "Table A. Summary of Energy Use and GHG Emissions for the ..." that occurs in many pathways or in an even worse case, all the entries in the CA GREET model, the revised regulation limits renewable fuel supplies to only those fuels that precisely match Lookup Table fuels. Until a very large number of Type 2A and 2B pathways are completed and approved, this could create a supply shortfall that could significantly increase LCFS compliance and consumer fuel costs, create an unintended trade barrier or make something that was legal under the existing regulation illegal. To avoid excessive staff work load and these potential problems the troublesome sentence should be changed to:

"In order to closely correspond with a Carbon Intensity Lookup Table pathway, the feedstock and conversion process used in the regulated party's pathway should be similar to the feedstock and conversion process used in the technical supporting document behind that Carbon Intensity Lookup Table pathway."

This concludes our comments on §95486. We are examining the other changes and considering missing elements and will file comments as time permits.