



December 15, 2011

Clerk of the Board
California Air Resources Board
1001 I Street, 23rd Floor
Sacramento, CA 95814

Submitted electronically at <http://www.arb.ca.gov/lispub/comm/bclist.php>

RE: Center for Biological Diversity Comments regarding the proposed amendments to the Low Carbon Fuel Standard

Dear Chair Nichols and members of the California Air Resources Board,

On behalf of our more than 300,000 members and activists, the Center for Biological Diversity submits these comments on the proposed amendments (“Proposed Amendments”) to the Low Carbon Fuel Standard (“LCFS”). We commend the staff of the California Air Resources Board (“ARB”) for their work on this rule and their commitment to implementing California’s landmark effort to reduce statewide greenhouse gas (“GHG”) pollution.

The Center for Biological Diversity urges the Board to strengthen the Proposed Amendments with the changes recommended below, and to reject proposals by the oil industry that would weaken the LCFS and exempt dirty, high-carbon fuels. The Proposed Amendments contain certain provisions that should be strengthened to remove incentives to bring extremely dirty and high-carbon fuels, such as those from the Canadian tar sands, into California. Given the controversy surrounding tar sands import projects like the Keystone XL pipeline, it would be both ironic and unfortunate if ARB’s good work in this area came to be associated with dirty, high-carbon sources of crude.

I. The Center for Biological Diversity urges ARB to strengthen the LCFS to require refinery-specific accounting and responsibility for emissions from High Carbon Intensity Crude Oils.

We strongly support ARB’s efforts to account for additional emissions due to high-carbon intensity crude oils (“HCICO”). Proper accounting of HCICO emissions is essential to the success of the LCFS in encouraging the use of lower carbon fuels. The goal of lowering the carbon intensity of California’s fuel mix depends heavily on discouraging the use of higher carbon fuels, as emissions resulting from the widespread use of dirty fuels could easily overwhelm reductions gained from the increased use of cleaner fuels. The entire greenhouse gas emission reduction benefits of the federal Renewable Fuels Standard will be offset by increased emissions from tar sands alone, unless the oil industry dramatically slows investments in these sources or significantly reduces the resulting emissions. The LCFS regulations adopted in 2009 included HCICO provisions to ensure that any increases in gasoline or diesel emissions due to increased HCICO use would be taken into account and offset.

The Proposed Amendments should be strengthened to ensure that all deficits due to the use of HCICOs are assigned to the responsible refinery. Under the Proposed Amendments, an increase in carbon intensity at one refinery is not assigned to the responsible refinery, but is instead spread across the entire sector statewide, and refineries selling higher-carbon products to California will be debited only if

the statewide carbon-intensity of all California refineries and importers increases over time. This substantially dilutes the signal to the responsible parties and effectively punishes those refineries that are doing what the LCFS says they should do, namely reducing or maintaining the carbon intensity of their crude oil slate. Furthermore, this is a divergence from the earlier approach that applied penalties to specific individual refineries utilizing crude oils above a “bright line” of 15 grams CO₂ per megajoule and which were not part of the original 2006 crude oil slate. This undermines the presumed purpose of the incentives and debits to fulfill the goal of the regulations.

The Proposed Amendments should be strengthened to explicitly require refineries to report crude oil use as specifically as possible, including marketing name and production method, as well as the carbon intensity values corresponding to each specific product. Effective implementation of the HCICO provision and the ability to hold either the industry or individual refineries accountable for HCICO use will not be possible without mandatory reporting of such data by all oil companies. Relying on voluntary cooperation from the industry, which has been slow and inconsistent to this point, threatens the implementation of the LCFS and the maximization of its benefits. Reporting must be mandatory and frequent enough to allow for annual updating of the average carbon-intensity of the crude slate, which is necessary to provide a timely signal to oil companies to avoid increases in gasoline and diesel emissions.

II. The Center for Biological Diversity urges ARB to revise the Environmental Impact Analysis to fully evaluate the Proposed Amendments’ potential air quality impacts and potential for increased emissions of criteria air pollutants.

The Environmental Impact Analysis for the Proposed Amendments fails to adequately disclose or evaluate the potential air quality impacts of the processing of "additional volumes of imported, higher-CI crudes" at existing refineries as well as new facilities in California. ISOR at 63.

When the initial rule was adopted in 2009, the Environmental Impact Analysis assumed that the LCFS would not cause any changes in petroleum refining throughput, and thus would not affect emissions from refineries, power plants, or existing ethanol plants. ISOR at 52. At the same time, ARB assumed that new facilities (ethanol, cellulosic ethanol, and biodiesel) would be built according to stringent New Source Review (“NSR”) requirements, and thus would have no significant impact on air quality. ISOR at 53. However, the Environmental Impact Analysis for the Proposed Amendments acknowledges that the baseline has risen, in part because of increased imports of high-carbon crude from various places including Canadian oil sands. ISOR at 60. In particular, the HCICO component has increased substantially between 2006 (the most recent data available at the time of the 2009 environmental analysis) and 2009 (the most recent data now available), and that the resulting carbon intensity baseline in 2009 is therefore higher. ISOR at 58, 63. California refineries are thus processing “additional volumes” of HCICOs, ISOR at 63, and could continue to do so without penalty under the Proposed Amendments’ revised baseline. This fact seems to contradict the conclusion in the 2009 environmental review that the LCFS would not cause any changes in throughput at existing refineries, and suggests that those assumptions can not be relied on in the current Environmental Impact Analysis.

Also, the Environmental Impact Analysis determined that the LCFS would result in no additional adverse impacts due to criteria and toxic air pollutants, based on the assumption that the cleanest available conversion and air pollution control technologies would be used as a result of stringent NSR regulations affecting the permitting of these facilities. ISOR at 53. However, NSR might not capture or prevent increased emissions resulting from changes in the crude slate processed at existing refineries. New Source Review applies only to new and modified facilities. If a facility can expand the slate of crude oils it

processes without modifying the physical plant, the facility might not be subject to NSR. In such a scenario, there could be an increase in emissions due to the change in crudes being processed, and resulting adverse impacts due to criteria and toxic air pollutants. The Environmental Impact Analysis does not discuss this scenario or the potential that adjusting the baseline upward and "grandfathering" HCICOs into the baseline could result in the increased processing of heavier, higher-carbon crudes.

III. The Center for Biological Diversity recommends providing additional time for the Sustainability Working Group to develop environmental sustainability criteria and implementation provisions.

Resolution 09-31 directed the Executive Officer to work with stakeholders to develop a work-plan for sustainability provisions that would be used in implementing the LCFS regulation by December, 2009, and to complete the tasks contained within the work plan by December, 2011. Over the past year, the Sustainability Work Group has made progress in developing sustainability provisions for the LCFS, but much work remains to be done to fully develop the criteria and reporting mechanisms necessary for ensuring the LCFS program does not include or incentivize actions that would result in adverse environmental impacts. More time is also needed to solicit and incorporate feedback from the public who have interests in protecting ecosystems and wildlife habitat but may not have been aware of the potential for the LCFS program to affect the environment beyond the impacts of industrial energy operations and greenhouse gas emissions.

IV. Conclusion

The Center for Biological Diversity strongly supports the Low Carbon Fuel Standard. We urge the Board to strengthen the Proposed Amendments with the changes recommended above, and to reject proposals by the oil industry that would weaken the LCFS and exempt dirty, high-carbon fuels. We commend ARB for its work on this program that is critical to California's efforts to increase the use of alternative transportation fuels, reduce dependence on oil, and reduce California's greenhouse gas emissions.

Thank you for your consideration of these comments. Please contact me if you have any questions.

Sincerely,



Brian Nowicki
California Climate Policy Director
Center for Biological Diversity
(916) 201-6938
bnowicki@biologicaldiversity.org