

# NOYES LAW CORPORATION

September 7, 2018

The Honorable Mary D. Nichols  
Chair, Air Resources Board  
1001 I Street  
Sacramento, CA 95812

RE: Proposed Amendments to the Low-Emission Vehicle III Greenhouse Gas  
Emission Regulation- Suggestion for Modification of Regulatory Action

Dear Chair Nichols:

Pearson Fuels appreciates the opportunity to provide comments regarding the Low-Emission Vehicle III Greenhouse Gas Emission Regulation (“LEV III”) under consideration by the Air Resources Board (“CARB”).

The Notice of Public Hearing To Consider Proposed Amendments to the Low-Emission Vehicle III Greenhouse Gas Emission Regulation states, “The Board also encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.”<sup>1</sup> This initial comment by Pearson Fuels provides suggestions for modification of the proposed regulatory action.

Pearson Fuels is the largest supplier of E85 fuel to flex fuel vehicles (FFVs) in the State of California. The company has an existing network of almost 150 E85 stations, including 101 retail stations and 46 government sites. E85 use is growing rapidly in California, including in disadvantaged communities, with annual E85 consumption more than tripling over the last five years.<sup>2</sup> There are over 1.5 million FFVs registered in California.<sup>3</sup> If all of these FFVs routinely utilized E85, California’s petroleum demand would be reduced by almost one billion gallons per year, and California’s GHG emissions in the transportation sector would be reduced by approximately 1.2 MMT.<sup>4</sup> Thus FFVs utilizing E85 offer a useful means to

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<sup>1</sup> California Air Resources Board, “Notice of Public Hearing To Consider Proposed Amendments to the Low-Emission Vehicle III Greenhouse Gas Emission Regulation,” at p. 1, <https://www.arb.ca.gov/regact/2018/leviii2018/leviiinotice.pdf> (viewed September 7, 2018).

<sup>2</sup> Letter of Alexander “Lex” Mitchell, Manager, Emerging Technologies Section, California Air Resources Board regarding E85 usage data, dated March 6, 2018, attached as Exhibit A.

<sup>3</sup> American Coalition for Ethanol, “E15 & Flex Fuel Retailer Roadmap, 2016-2017 edition,” at [http://flexfuelforward.com/roadmap/wpcontent/uploads/E15\\_Flex\\_Fuel\\_Retailer\\_Roadmap.pdf](http://flexfuelforward.com/roadmap/wpcontent/uploads/E15_Flex_Fuel_Retailer_Roadmap.pdf) (last viewed September 7, 2018), at p. 17-18.

<sup>4</sup> See California Air Resources Board, “Climate Change Investments Quantification,” at <https://ww2.arb.ca.gov/resources/documents/cci-quantification-benefits-and-reporting->

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reduce GHG emissions in the light-duty internal combustion fleet as part of a comprehensive strategy to achieve California's GHG reduction requirements.

The Initial Statement of Reasons states:

*“CARB has been, and remains, willing to consider well-founded and necessary changes to the program, including flexibilities that reduce compliance costs, so long as they continue to provide the necessary greenhouse gas emission reductions.”*<sup>5</sup>

In order to effectively obtain substantive input from key stakeholders on compliance flexibilities, it is necessary and appropriate for the agency to supplement CARB Release Number 18-42 (August 7, 2018), the Notice of Public Hearing, and the Initial Statement of Reasons with language that explicitly solicits input on specific flexibilities that reduce compliance costs and that provide the necessary greenhouse gas emission reductions. For instance, CARB should supplement the following quoted sentence from page 2 of the ISOR with the additional language indicated in italics:

*“CARB has been, and remains, willing to consider well-founded and necessary changes to the program, including flexibilities that reduce compliance costs, so long as they continue to provide the necessary greenhouse gas emission reductions.” Specifically, CARB requests comment regarding the integration of the following compliance flexibilities into LEV III either directly or through California's continued participation in a revised unified national program:*

- *Harmonizing the crediting of flex fuel vehicles (FFV) under the LEV III, CAFE, and GHG programs;*
- *Applying a petroleum-equivalency factor to a midlevel ethanol blend (MLEB) or E85 ethanol certification fuel, based on the gasoline portion of the fuel (e.g., 0.75 for E25; 0.15 for E85);*
- *Allowing dual-certified vehicles to weigh the E85 certification fuel and gasoline fuel results proportionally based on the ethanol usage rate (F-factor) when calculating fuel economy;*

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[materials?corr](#) and related links (last viewed September 7, 2018), “Threshold Guidance for the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions,”

<https://www.arb.ca.gov/cc/reporting/ghg-rep/guidance/fuel-threshold.pdf> (last viewed September 7, 2018, and “California Greenhouse Gas Emissions for 2000 to 2016,” (last viewed September 7, 2018) for emission factors and other factors underlying calculation.

<sup>5</sup> California Air Resources Board, PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO THE LOW-EMISSION VEHICLE III GREENHOUSE GAS EMISSION REGULATION STAFF REPORT: INITIAL STATEMENT OF REASONS, at

<https://www.arb.ca.gov/regact/2018/leviii2018/leviiiisor.pdf> at page 4 (last viewed September 7, 2018).

- *Calculating an F-factor for FFV crediting purposes for MY 2019 and subsequent years that is based on CARB data for E85 use in California;*
- *Revising the carbon-related exhaust emissions formulas to reflect that the ethanol portion of the MLEB or E85 fuel generates no net carbon emissions, consistent with 17 CCR §95852.2(a)(6);*
- *Providing incentive multipliers to encourage the sales of next-generation vehicles including high octane fueled vehicles (HOFVs) that utilize MLEBs, and allowing HOFVs to weigh the midlevel ethanol certification fuel results equally with the gasoline fuel results when calculating fuel economy; and,*
- *Considering the effect of octane on fuel efficiency performance.*

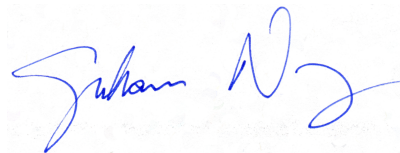
The LEV III proceedings are occurring in parallel with federal rulemaking procedures undertaken by the Environmental Protection Agency (“EPA”) and the National Highway Transportation Safety Administration (“NHTSA”) regarding the EPA’s Greenhouse Gas Emission Standards program and NHTSA’s Corporate Average Fuel Economy Standards. There is considerable uncertainty regarding the ultimate outcome of the federal proceedings and related litigation. This uncertainty is likely to retard investments in new vehicles and vehicle technologies that are necessary to achieve GHG and criteria pollutant emission reductions.

Under these circumstances, it is in CARB’s interest to delve into the value and merits of specific compliance flexibilities in the LEV III proceeding to the greatest extent possible. Such an approach will increase and improve the level of stakeholder engagement and input to the proceeding and better inform the agency regarding the cost benefit and GHG reduction value of the various compliance flexibilities.

#### Conclusion

Thank you for your consideration of our input. Please contact us if any further input would be helpful. We look forward to continuing to provide input to this proceeding.

Sincerely,



Graham Noyes

EXHIBIT A



Mary D. Nichols, Chair  
Matthew Rodriguez, CalEPA Secretary  
Edmund G. Brown Jr., Governor

March 6, 2018

Graham Noyes  
Noyes Law Corporation  
401 Spring Street, Suite 205  
Nevada City, California 95959

Dear Mr. Noyes:

Thank you for your inquiry regarding the amount of E85 sold in California for transportation fuel purposes. As you are aware, the California Air Resources Board (CARB) tracks E85 fuel sales as part of implementation of our E85 fuel specification regulation, found at title 13, California Code of Regulations §2292.4. Fuel suppliers are required to report to CARB all E85 blending that occurs in California. CARB receives reports of E85 sales for use in flex fuel vehicles that represent virtually all the E85 sold in the State.

During the last six years, the total amount of E85 sold in California is as follows:

<u>Year</u>	<u>Gallons</u>
2012	6,482,868
2013	8,799,981
2014	11,066,428
2015	14,773,124
2016	18,679,904
2017	23,854,146

I understand that you plan to submit this information to the National Highway and Transportation Safety Administration and the Environmental Protection Agency. My staff has reviewed these numbers and they are accurate to the best of our knowledge.

Mr. Graham Noyes  
March 6, 2018  
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If you have questions regarding this letter, contact Aubrey Gonzalez,  
Air Resources Engineer, Industrial Strategies Division, at (916) 324-3334 or email at  
[Aubrey.Gonzalez@arb.ca.gov](mailto:Aubrey.Gonzalez@arb.ca.gov).

Sincerely,



Alexander "Lex" Mitchell, Manager  
Emerging Technology Section  
Industrial Strategies Division  
California Air Resources Board