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September 30, 2024

VIA ONLINE PORTAL

Chair Liane M. Randolph
Members of the California Air Resources Board
c/o Clerk of the Board
1001 I Street
Sacramento, California 95814

RE: Recirculated Draft EIA for Low Carbon Fuel Standard (State Clearinghouse No. 2023020330)

Honorable Board Members:

The Western Independent Refiners Association (“WIRA”) appreciates the opportunity to comment on the California Air Resources Board’s (“Board”) Recirculated Draft Environmental Impact Analysis for the Proposed Low Carbon Fuel Standard Regulation (“Recirculated Draft EIA”) released August 16, 2024.

WIRA previously provided the Board its comments on the Proposed 15-Day Changes to the Proposed Amendments to the Low Carbon Fuel Standard (“LCFS”) Regulations (the “Proposed Amendments”). WIRA’s August 27, 2024, comment letter, attached hereto and incorporated herein, outlined our concerns with the operational and economic impacts the Proposed Amendments will have on regulated entities, including, specifically, the proposal to limit LCFS credits for biofuels generated from soybean oil and canola oil. WIRA now takes the opportunity to respectfully provide its feedback concerning the accuracy and completeness of the environmental review.

Our concerns with the Recirculated Draft EIA’s adequacy under the California Environmental Quality Act (Pub. Resources Code, § 21000 *et seq.*) (“CEQA”) can be summarized as follows. First, the revised emissions analysis and modeling presented in the Recirculated Draft EIA significantly overestimate the greenhouse gas emissions reductions that will take place if the proposed soybean and canola oil cap is implemented. Second, we do not believe that the very limited scope of the Recirculated Draft EIA is appropriate, given the very significant modifications to the LCFS proposed after the original release of the Draft EIA. The post-circulation changes require that CARB revise and recirculate several portions of the EIA—not just its emissions modeling. Third, the Recirculated Draft EIA does not present the meaningful alternatives analysis that is required for consideration of potential impacts from the soybean and canola oil cap and other Proposed Amendments.

1. The Recirculated Draft EIA overestimates emissions reductions and does not support its conclusions with substantial evidence.

The Proposed Amendments would immediately cap the generation of LCFS credits from soybean and canola oil feedstock. As detailed in numerous comment letters previously submitted to CARB, clean fuels derived from these feedstocks have made, and continue to make, positive contributions to California's greenhouse gas emission reduction goals, and are primed to continue to support cost effective emissions reductions in the future. Stifling these feedstocks through imposition of a cap *will stifle clean fuel investments*, increase reliance on diesel fossil fuels, and not only slow reductions in criteria air pollutants and greenhouse gas emissions, but potentially increase these emissions. The Recirculated Draft EIA does not adequately reflect these reasonably foreseeable effects.

The Recirculated Draft EIA purports to have "reassessed and expanded" the EIA's air quality and greenhouse gas evaluations "with modeling outputs that reflected the Proposed Scenario in the 15-day Notice package." However, in the list of "reasonably foreseeable compliance responses" the Recirculated Draft EIA does not in any way acknowledge that *placing a cap on LCFS credit generation from soybean and canola feedstocks will reasonably lead to actions that increase criteria pollutant and greenhouse gas emissions*. If soybean and canola feedstocks are capped, this slice of the feedstock pie necessarily must be replaced, potentially with increased foreign import of waste feedstocks. The transport of feedstocks from across the globe generates significant emissions, none of which are captured in the Recirculated Draft EIA.

Similarly, it is a reasonably foreseeable consequence that the cap will force many biodiesel processors out of business, and as a result, the biofuel market will shrink. Again, the market will be forced to replace this fuel with something else, and it is reasonably foreseeable that petroleum diesel utilization will necessarily increase. There is no accounting for increased emissions from *increased reliance on petroleum diesel* in the Recirculated Draft EIA. Instead, the EIA acknowledges the cap, but then goes on to conclude that "[b]iomass-based diesel fuel attributed to the LCFS as part of the Proposed Amendments could result in an overall potential decrease in long-term operational NOx and PM emissions relative to use of conventional diesel." But, there is no explanation of how capping biomass-based fuel supports this conclusion.

The Recirculated Draft EIA ultimately determines that the Proposed Amendments will achieve reductions of approximately 30 MMT CO₂e of greenhouse gas emissions (p. 60), 9,232 tons of PM_{2.5}, and 35,161 tons of NOx in aggregate through 2046 (p. 46). But, for all the reasons outlined above, these estimates are unsupported by substantial evidence. In fact, the substantial evidence in the record, including, specifically, CARB's own staff analysis as presented at the April 10, 2024, public workshop, shows that a cap on soybean and canola oil feedstocks will increase dependence on dirtier fuels, *will increase greenhouse gas and criteria pollutant emissions*, and will result in related health impacts. The Recirculated Draft EIA's emissions impact analysis is therefore inadequate. (See *Laurel Heights Improvement Association v. Regents of University of Cal.* (1988) 47 Cal.3d 376, 404 [a bare conclusion without explanation of its factual and analytical basis is not a sufficient analysis].)

2. The limited scope of the Recirculated Draft EIA does not analyze and disclose non-emissions related impacts caused by the Proposed Amendments.

The Recirculated Draft EIA revises the Project Description to reflect the Proposed Amendments, but then updates and recirculates only the EIA's air quality and greenhouse gas emissions analyses. Yet, the Proposed Amendments, and the soybean and canola oil credit cap in particular, will result in impacts beyond air quality and greenhouse gas emissions. These impacts are not analyzed or disclosed in any manner in the Recirculated Draft EIA.¹ Thus, CARB is required to prepare this analysis now, and recirculate a Draft EIA with a more expansive scope for public review and comment. (See *Sierra Watch v. County of Placer* (2021) 69 Cal.App.5th 86, 103.)

As detailed in various comments previously submitted to CARB by stakeholders, the soybean and canola oil cap will put biofuel producers out of business. This is not just a social or economic impact, but one that will result in clearly foreseeable and concrete physical changes to the environment.² Any aesthetics, agricultural, soils, or biological impacts analysis completed prior to the Proposed Amendments is not capable of filling this gap, given that previously there was no proposed cap on credit production from soybean and canola feedstocks, and therefore no consideration of the same in the originally circulated Draft EIA.

3. The Recirculated Draft EIA, together with the Draft EIA, fail to provide CARB with a meaningful alternatives analysis.

CARB is required to present the public with a reasonable range of alternatives, and disclose to the public an accurate and complete comparison of the impacts that result from each alternative. (Cal. Code Regs., tit. 14, § 15126.6(a).) Because the Recirculated Draft EIA overestimates air emissions reductions and does not acknowledge myriad non-emissions impacts associated with the Proposed Amendments, any comparison of alternatives would be inherently flawed. There can be no fair comparison of the Proposed Amendments against any iteration of the LCFS without those changes, given that, for the reasons addressed above, the Recirculated Draft EIA presents unsupportable estimates of emissions reductions, and ignores potential non-emissions impacts.

¹ While typically only those portions of a draft environmental review document that have been revised to disclose a new or more severe significant impact are recirculated, here, CARB has not explained how it knows that the Proposed Amendments will not result in new or more severe impacts than those previously disclosed in the Draft EIA. (See *Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 97 [comments on an EIR disputing the impacts analysis or conclusions do not trigger recirculation *only* where the EIR already contains a discussion and evaluation of the relevant issue].)

² See, generally, the August 27, 2024, comment letter submitted to CARB by the U.S. Canola Association on the Proposed Amendments.

WIRA continues to respectfully encourage the Board to reconsider the proposed soybean and canola cap. Yet, if CARB moves forward with the cap, CEQA requires that CARB prepare and provide a fair and accurate reporting of the potential impacts resulting from the cap. Only then can CARB's decisionmakers, and the public, fully understand the impacts of the Proposed Amendments. Thank you for your thoughtful consideration of this letter. If you have any questions, please do not hesitate to contact me at (310) 312-4353 or by email at cmoyer@manatt.com.

Respectfully submitted,

Western Independent Refiners Association

/s/ Craig A. Moyer

Craig A. Moyer
Executive Director and General Counsel

Enclosure



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August 27, 2024

VIA CARB ONLINE PORTAL

Clerks' Office
California Air Resources Board
1001 I Street
Sacramento, California 95814

RE: Comments on the 15-Day Proposed Modifications to Amendments to LCFS Regulations

Honorable Board Members:

The Western Independent Refiners Association ("WIRA") appreciates the opportunity to comment on the California Air Resources Board's ("Board") Proposed Amendments for the Low Carbon Fuel Standard released on August 12, 2024 ("Proposed Amendments"). WIRA is a long-standing trade association comprised of small and independent refiners on the West Coast of the United States, including various regions of California. WIRA has been an active participant in local, state, and federal rulemakings for many years, with its members serving a vital role as pro-competitive forces in the market for refined transportation fuel.

The Proposed Amendments, although couched as minor regulatory revisions, will have significant and meaningful impacts on the LCFS program and its regulated parties—including WIRA members. Consequently, a 15-day comment period during which to study and remark on these substantial changes is simply insufficient given the importance of this matter.

For example, the Board's publicly-noticed materials contain no discussion or consideration of the operational and economic impacts the Proposed Amendments will have on regulated entities. This dearth of analysis evidences a need to take a harder, closer look at these issues. On the contrary, the 15-day public notice for the Proposed Amendments seems to downplay their impacts, stating that "the modifications consist of provision clarifications, minor revisions removing certain proposals, such as removing jet fuel as a required fuel, and updated modeling, which does not alter the compliance responses such that the significance determinations change." But this is not the case—the Proposed Amendments as drafted will have significant impacts.

While environmental analysis is a separate issue, the Proposed Amendments will result in extensive market and cost impacts to businesses that will be required to comply with the Proposed

Amendments. The Board must consider the regulatory impacts these Proposed Amendments will have, including resulting economic harms to LCFS-regulated parties.

WIRA would appreciate insight into the Board's position with respect to the Proposed Amendments' economic impacts on California businesses, individuals, and the LCFS market in general (among other issues). For example, the proposal to limit LCFS credits for biofuels generated from soybean oil and canola oil would seem to potentially justify its own Standardized Regulatory Impact Assessment to avoid an arbitrary and capricious action given the potential economic impacts from that lone amendment. Simply stated, the Board must have a full understanding of the facts and impacts these Proposed Amendments will have prior to considering them for approval.

In conclusion, WIRA respectfully encourages the Board to identify additional opportunities to engage with the regulated community to better appreciate the Proposed Amendments and to explore potential reasonable alternatives. Thank you for your thoughtful consideration of this letter. If you have any questions, please do not hesitate to contact me at (310) 312-4353 or by email at cmoyer@manatt.com.

Respectfully submitted,

Western Independent Refiners Association

/s/ Craig A. Moyer

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