

January 21, 2020

Mr. Gavin Hoch
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Subject: An Updated Environmental Analysis (EA) is Required

Dear Gavin:

CARB's second 15-day notice states that "the current amendments to the ADF reg – the 'project' for CEQA purposes—do not require revisions to the 2018 EA because they do not involve new significant effects or a substantial increase in the severity of significant effects previously identified in the 2018 EA." That assertion is simply false, CARB knows it, and is attempting to justify its position on the claim that "[t]he proposed modifications are procedural, in nature, and do not alter the compliance responses as identified in the 2018 EA." Additionally, CARB's statement that "there is no new information of substantial importance related to this modification that shows new significant effects or previously identified significant effects that would be more severe" is once again demonstrably false.

In the 2018 EA CARB stated, "the public would be deprived "of a meaningful opportunity to comment upon a substantial adverse environment effect or a feasible way to mitigate or avoid such an effect" (CEQA Guidelines Section 15088.5[a]). As stated in CEQA Guidelines Section 15088.5(a), "significant new information" requiring recirculation includes: [a] new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented."¹ CARB brought the requirement to update the EA on themselves when, after conducting a rigged NOx Mitigant study, publicly stated that "[s]tatistical analysis of the NOx results demonstrated that all additive blends tested failed the certification test criteria for NOx because the additive blends did not reduce NOx emissions to a level equivalent to the reference fuel." Furthermore, CARB issued Cal Fueling a letter stating the goal of the NOx Mitigant program "was to confirm, consistent with the emissions mitigation requirements of CARB's Regulation on the Commercialization of Alternate Diesel Fuels (ADF regulation), that additives certified pursuant to that regulation are effective at mitigating biodiesel NOx emissions to equivalence with CARB diesel", and that our products purportedly "failed to effectively mitigate to the regulatory standard."

We vigorously dispute CARB's contentions, and after we highlighted just a few of the litany of problems with its testing program, CARB attempted to walk back their NOx Mitigant non-performance statements in various forms. It nonetheless is bound by its own public statements challenging the general efficacy of all currently certified NOx mitigants. Most recently, CARB, in connection with its failed Motion to Dismiss filed in *Best Energy Solutions & Technology Corp vs*

¹Appendix D, Final Environmental Analysis, Amendments to the LCFS and ADF Regulation, September 17, 2018, page 1.

California Air Resources Board, Case No. BCV-20-102198, filed a declaration from its employee, Alexander “Lex” Mitchell, putting forward yet another viewpoint stating that, in regards to the CE-CERT test program, “CARB’s primary programmatic concern supporting the testing was not whether Best’s additive could be effective just once in one specific test scenario in order to support a certification, but whether the certified additive was effective in general.” Setting aside our and Best’s rejection of its findings, CARB has asserted that no currently certified NOx mitigant is “effective in general”, which is the drive for the proposed ADF changes, it is axiomatic that CARB must update the 2018 EA based on CEQA requirements. Conversely, CARB can set the record straight by publicly indicating that VESTA® was “effective in general” and allow its Executive Orders to stand.

In July 2017, the Attorney General of California wrote the Supreme Court of California regarding the POET case. On page 5, the document states “CEQA requires than an agency ‘use its best efforts to find out and disclose all that it reasonably can about the potential significant impacts of a project (Cal Code Regs., tit. 14, Section 15144).” CARB has stopped short of disclosing, as required by CEQA, the NOx Mitigant evaluation significant adverse impacts which they’ve publicly promoted. While CARB’s unsubstantiated statements against VESTA® are not true, as evidenced by an overwhelming body of evidence to the contrary, it has stood by its views and must now quantify its NOx Mitigant findings environmentally via an updated EA. Alternatively, if it is prepared to recant its prior position regarding the efficacy of previously approved NOx mitigants, then the stated need for the onerous recertification process it has designed falls apart. CARB cannot have it both ways.

Questions:

1. If CARB is not confident that the previously approved NOx mitigants are “effective in general”, how can it claim that the originally approved ADF regulation was adequate and the proposed changes are “procedural”?
2. Has CARB conducted an analysis of the impact on the environment if, in fact, the previously approved NOx mitigants, or any of them, are not “effective in general”?
3. If so, what does CARB see as the impact of the potential loss of over 60 million gallons of biodiesel (biodiesel used in blends above the seasonal allowances) on the environment, which would seem to fly in the face of CARB’s 2017 Standardized Regulatory Impact Assessment (SRIA) to the Department of Finance.
4. What consideration has been given to the SRIA economic impacts of the proposed ADF?

Following is our assessment of the proposed ADF’s impact on CARB’s SRIA analysis. The heading used are taken directly from CARB’s previous report.

- The creation or elimination of jobs within the state.

- a. Based on EIA's report², California produces approximately 80 million gallons per year of biodiesel. CARB has previously indicated that 25-30% of biodiesel consumed in California goes into biodiesel blends above the seasonal allowances. CARB's most recent quarterly summary³ indicates that over the last four (4) quarters, approximately 230 million gallons of biodiesel was consumed which equates to approximately 63 million gallons of biodiesel in blends above the seasonal allowances. Removing this volume requirement from the market will devastate California biodiesel producers, which in return will result in countless numbers of jobs lost.
- The elimination of existing businesses within the state.
 - a. NOx Mitigant companies, such as California Fueling (a family-owned business formed as a result of the ADF), will go out of business.
 - b. Removing some 60 million gallons of biodiesel from the California marketplace will likely drive some California biodiesel manufacturers into bankruptcy which may lead to eventual closure.
- The competitive disadvantages for business currently doing business within the state.

CARB will likely attempt to counter the concerns associated with biodiesel and the elimination of volume by indicating they are approving blends of renewable diesel and biodiesel (which we will address in a separate public comment) thus offering an alternative. While the opportunity to blend biodiesel with RD may be the case for some, it's not for others and CARB need only review prior public comments documenting this concern. Biodiesel manufacturers, in order to enable an ADF Formulation, will be required to purchase and blend renewable diesel with their biodiesel. While RD volume has grown considerably, it has its own challenges. Some RD manufacturers have chosen to use distributors, some on an exclusive basis. Other RD manufacturers also manufacture biodiesel. CARB has not recognized the disadvantages that their proposed ADF will place on in-state biodiesel producers. Assets and capital will be required to do so, and CARB has expressed no interest in understanding this dilemma. Most California biodiesel producers don't manufacture RD putting them in a vulnerable position to offer RD and biodiesel blends (R75 B20 and/or R55, B20). Based on these ratios, if biodiesel manufacturers were to consider making such

²<https://www.eia.gov/biofuels/biodiesel/production/table4.pdf>

³ <https://ww3.arb.ca.gov/fuels/lcfs/lrtqsummaries.htm>

blends available, they have to install tanks which are 3-4 times the size of their current biodiesel tanks. Permitting would have to be secured, environmental studies would have to be conducted and all of this must occur in a compressed timeline given the proposed ADF August 1, 2021 deadline. California biodiesel manufacturers will clearly be put at a disadvantage if the proposed ADF is implemented.

- The increase or decrease of investment in the state.
 - a. CARB will attempt to downplay this impact by pointing to the wealth of RD projects announced. While that may be true and good for California, it does not address disincentivizing capital flowing to existing biodiesel manufacturing facilities. CARB's proposed ADF changes are a nail in the coffin of in-state biodiesel producers and CARB has failed to recognize this. The fact that CARB would on the one hand want to help an industry build and on the other cut them to the ditch is inexcusable and will undoubtedly lead to decreased investment in the state.
- The incentives for innovation in products, materials, or processes.
 - a. The flow of R&D monies into the California biodiesel business will stop as a results of CARB's ADF proposed changes. Private equity or other monies will not flow into a declining business nor one that has been handicapped by state regulations like the proposed ADF.

In closing for the reasons noted herein, CARB's claim that the proposed ADF changes are procedural in nature, which in turn doesn't require an updated EA, is not factually correct. CARB are seeking to avoid drafting a new EA because it will reflect negatively on their past actions and delay their effort to implement the proposed ADF. CARB cannot place its own best interest above that of the public, must update the EA based on its findings and finally consider the additional ramifications of the proposed ADF on not only the 2018 EA but also the 2017 SRIA which must also be updated. If CARB chooses not to do so they will be in clear violation of CEQA requirements.

Respectfully,

Patrick J McDuff

Patrick J. McDuff
CEO
California Fueling, LLC