Alternative Fuels & Chemicals Coalition

Advocating for Public Policies to Promote the Development & Production of Alternative Fuels, Renewable Chemicals, Biobased Products, and Sustainable Aviation Fuels

August 27, 2024

VIA ELECTRONIC FILING

California Air Resources Board
Rajinder Sahota
Deputy Executive Officer
Climate Change and Research, CA Air
1001 1 St #2828
Sacramento, CA, 95814

Re: Comments to the 15-Day Information for LCA Standard Amendments

Dear Rajinder Sahota:

AFCC and its member companies are providing comments to the 15-day Information for the Proposed Low Carbon Fuel Standard Amendments.

AFCC is a collaborative government affairs effort organized by the Kilpatrick Townsend & Stockton law firm and American Diversified Energy. AFCC was created to address policy and advocacy gaps at the federal and state levels with respect to renewable chemicals, bioplastics/biomaterials, cell-cultured food ingredients, alternative proteins, single cell protein for food and feed, enzymes, alternative fuels, biobased products and sustainable aviation fuels sectors. AFCC member companies work on food and fiber supply chain security and sustainability, renewable chemicals, industrial biotechnology, bioplastics and biomaterials, and biofuels.

Executive Summary

AFCC and its member companies object to language in the 15-Day amendments that specifically states that the biomass must come from "non-industrial forestland." Therefore this prohibits the use of biomass from "industrial forestland" which would include plantation forest, which is the primary source of feedstock for AFCC producers and/or developer's projects.

The recommendation from AFCC and its member companies is to exclude the new language biomass must come from "non-industrial forestland" rfrom the LCFS rulemaking package and that a separate focused rulemaking that involves producers/developers, foresters, and other stakeholders in California are included.

Definition of Forest Biomass & Reduction of Biomass Availability

An objectionable issue would be the proposed definition of Forest Biomass Waste in 95488.8(g)(1)(A)3. While regions, and practices within those regions, differ across the US, excluding Industrial Forestland in California (or if produced outside

California and delivered into the State) would significantly reduce the amount of biomass available. In addition, Industrial Forestland owners have the capacity financially to offer long term contracts that enable funding by meeting requirements of the investors funding the biorefinery. And with the proposed phased approach for certification requirements, Industrial Landowners are more likely to have the necessary documentation in the early stages while small/private landowners work towards that requirement. With a primary goal of reducing forest fire risk, excluding Industrial Forestland and the harvesting of their waste exposes a significant amount of acreage to this risk.

The definition in that section is also too restrictive or at least not inclusive enough to be consistent with the RFS. There needs to be alignment with existing federal law, and CARB should not create new provisions which impede the growth of the emerging industry, and it serves to cause market confusion and derails the growth of our sector. The definition should include if the biomass is cut for "forest stand improvement" and compliant with all laws. In working with some other committees and getting their feedback, language similar to this for the definition would be preferred for the referenced section: "Forest biomass waste from forestlands removed for the purpose of wildfire fuel reduction or forest stand improvement, to reduce the risk to public safety or infrastructure, to create defensible space, or for forest restoration; and was performed in compliance with all local, State, and federal rules and permits."

Remove Restrictive Language: Impedes Development and Production of Sustainable Aviation Fuels(SAF)

One of the biggest challenges SAF produces are facing today is the cost of production compared to incumbent technologies. Restricting the use of forest residuals would simply be left to rot in the field if not used for feedstock in the production of SAF. The CO2 and methane that such rotting contributes to the atmosphere will continue unabated. The jets flying overhead will have less access to sustainable aviation fuel and will have to continue to rely heavily upon fossil fuel sources. The exclusion of feedstocks from industrial forestlands will thus have severe negative social and economic consequences for all producers of SAF, advanced biofuels, cellulosic biofuels and impoverished people of the rural communities where impede our efforts to reduce the levels of CO2 and methane in the atmosphere.

Importance of the RFS and Forest Residuals: LCFS Compliance

It is significant that the CARB should not create barriers to investments made and should be aligned with federal policies and not be restrictive and impeding innovation in the United States by restricting sourcing of feedstocks, especially since these are waste or in areas setup for hazardous fuels. We urge CARB to not cause confusion in the market and encourage the growth of the nascent biofuels sector.

AFCC and its member companies propose that the Renewable Fuel Standard (40 CFR §80.2) already places significant constraints on which materials from industrial forestlands can be utilized for qualified credits and represent an excellent model for adoption by California. The RFS restrictions ensure that the materials utilized are from managed, sustainable forestlands and that there is a traceable chain of custody that ensures compliance. The acceptable materials are pre-commercial thinnings and slash. Under the RFS Slash is defined as the residue, including treetops, branches, and bark, left on the ground after logging or accumulating as a result of a storm, fire, delimbing, or other similar disturbance. Pre-commercial thinnings are defined as trees, including unhealthy or diseased trees, removed to reduce stocking to concentrate growth on more desirable, healthy trees, or other vegetative material that is removed to promote tree growth.

Under the RFS industrial forestlands, or tree plantations, that the pre-commercial thinnings are allowed to originate from are further defined as a stand of no less than 1 acre composed primarily of trees established by hand- or machine-planting of a seed or sapling, or by coppice growth from the stump or root of a tree that was hand- or machine-planted. Tree plantations must have been cleared prior to December 19, 2007 and must have been actively managed on December 19, 2007, as evidenced by records which must be traceable to the land in question, which must include one of the following:

1. Sales records for planted trees or tree residue together with other written documentation connecting the land in question to these purchases;
2. Purchasing records for seeds, seedlings, or other nursery stock together with other written documentation connecting the land in question to these purchases;
3. A written management plan for silvicultural purposes;
4. Documentation of participation in a silvicultural program sponsored by a Federal, state or local government agency;
5. Documentation of land management in accordance with an agricultural or silvicultural product certification program;
6. An agreement for land management consultation with a professional forester that identifies the land in question; or
7. Evidence of the existence and ongoing maintenance of a road system or other physical infrastructure designed and maintained for logging use, together with one of the above-mentioned documents (SAF).

Production of Renewable Fuel from Municipal Solid Waste (MSW)

California Air Resource Body (CARB) to refer following precedence available under Renewable Fuel Standard Program (RFS) to produce renewable fuel from Separated MSW. As per US-EPA's decision on petition filed by Fiberight Blairstown Operating, LLC , MSW that has undergone separation and recycling of "recyclable paper, cardboard, plastics, rubber, textiles, metals, and glass ....to the extent reasonably practicable, and according to a plan submitted to and approved by U.S. EPA under the registration procedures specified in § 80.1450(b)(1)(viii)" is categorized as Separated MSW and has been approved as feedstock for production of renewable fuel under RFS program.

Thus, we urge CARB to approve feedstock ' Separated MSW' which has been derived from MSW and processed with the most advanced technology available for separation of recyclables and to the extent reasonably practicable, as per the procedures approved by EPA in § 80.1450(b)(1)(viii) to produce renewable fuels under LCFS.

Sustainability Requirements

Feedstock is not a "specified source" and must meet a set of sustainability standards defined in section 95488.9(g), that those standards are not well defined. As it stands, section 95488.9(g) appears to have
been written with crop-based fuels in mind, and applying it to forest biomass waste and agricultural waste is inappropriate. Neither processors of agricultural waste nor forest management operators can be asked to be held to the same standards as purpose-grown crops without severely restricting the amount of agricultural and forest biomass waste that can be utilized in the LCFS program.

Hydrogen Production

The ruling on H2 produced from fossil resources even with CCS could be an issue, this applies to hydrogen used for transportation. Thus, H2 used in chemical process that comes from non-biomass energy sources is still allowed as the H2 itself is not a fuel but a chemical component of a process. This distinction is important for those fuel producers that hydroprocess feedstocks into biomass fuels and don't have access to biomass derived H2.

Limitation to Use of Virgin Seed Oils

The limitation to the use of virgin seed oils to 20% is a hindrance to the RD/HEFA/BD producers but is not impactful to products using non-food-based feedstocks.

Modifications to Maintaining Fuel Pathways

For the Modifications to Section 95488.10—Maintaining Fuel Pathways, clarification on how great of a CI difference is considered critical to trigger this issue. If 1 or less, it means that the verified CI must be higher than any variability in process operations that impact CI.

Conclusion

We believe that the goals of ensuring that industrial forestlands are sustainable can be achieved by instituting guidelines that largely align with those in the Federal Renewable Fuel Standard. We urge CARB to allow qualified biomass from industrial forestlands.

In the near term we request that the new language regarding biomass be deleted from the LCFS rulemaking package and that a separate focused rulemaking that involves stakeholders and California agencies with forestry expertise in the process be initiated.

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Alternative Fuels & Chemicals Coalition