



August 27, 2024

Governor Gavin Newsom  
California State Capitol  
Sacramento, CA 95814

Liane Randolph, Chair  
Members of the Board  
Dr. Steven Cliff, Executive Officer  
California Air Resources Board  
1001 "I" Street  
Sacramento, CA 95814

*Submitted electronically via*

[https://www.arb.ca.gov/lispub/comm/iframe\\_bcsbform.php?listname=lcfs2024&comm\\_period=1](https://www.arb.ca.gov/lispub/comm/iframe_bcsbform.php?listname=lcfs2024&comm_period=1)

**Re: Notice of Public Availability of Modified Text and Availability of Additional Documents and/or Information for the Proposed Low Carbon Fuel Standard Amendments (lcfs2024)**

To Esteemed Responsible Officials:

Our organization Biofuelwatch appreciates the opportunity to submit this brief letter to the California Air Resources Board (CARB) as comment on the **Notice of Public Availability of Modified Text and Availability of Additional Documents and/or Information for the Proposed Low Carbon Fuel Standard Amendments (lcfs2024)**<sup>1</sup>. Our organization has previously commented on the LCFS amendment package<sup>2</sup>. We reference those comments for consideration alongside this new letter.

Biofuelwatch<sup>3</sup> is an international organization that works to increase public understanding and civic engagement on the land-use implications of climate policy. We have a particular focus on the environmental harms and social inequities of large-scale industrial bioenergy projects, and we work extensively on addressing the negative ecological and social outcomes of policy and actions that are justified as being beneficial to the global climate, yet carry with them risks and threats to public health and safety, economic stability and natural resources. Due to circumstance, more than due to an innate desire, we have developed extensive experience with

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<sup>1</sup> <https://ww2.arb.ca.gov/rulemaking/2024/lcfs2024>

<sup>2</sup> <https://www.arb.ca.gov/lists/com-attach/7028-lcfs2024-B2VdMIA+AjcFdIA1.pdf>

<sup>3</sup> <http://www.biofuelwatch.org.uk/>

the negative real-world outcomes associated with the Low Carbon Fuel Standard (LCFS). In particular, over the last nearly four years our organization has been deeply engaged in tracking and documenting the irregular governance of the conversion of two refineries in the San Francisco Bay Area to manufacturing liquid biofuels, the Phillips 66 Rodeo Renewed Project (Phillips 66 Project)<sup>4</sup> being one of those controversial refinery conversion projects and the Marathon-Neste biofuel refinery joint venture in Martinez (Marathon-Neste Project)<sup>5</sup> being the other.

In the context of the environmental review of the refinery conversion projects, the proposed changes to the LCFS are particularly important, as there is a clear admittance that climate and biodiversity impacts from deforestation and land use change, direct and indirect, for the provision of feedstocks for liquid biofuels like 'renewable diesel' (RD), are of serious concern. This contrasts dramatically with previous public positions communicated by CARB leadership. It is worth reminding members of the Board that, during the California Environmental Quality Act (CEQA) review by Contra Costa County of both the Phillips 66 Project and the Marathon-Neste Project, CARB executive staff came to county proceedings to make broad statements that deforestation was not a concern, and that the LCFS guards stringently against such negative environmental and climate impacts.

How remarkable it is that CARB now, in both this current version and in the initial set of amendments for the LCFS, has been so explicit as to recognize the globally understood threat to natural ecosystems that is embodied in an increase in demand for high deforestation risk commodities like soy for making energy products. When these concerns arose during the irregular and controversial environmental review process of the refinery conversions CARB staff minimized them and dismissed relevant evidence as being insignificant. The truth is that CARB executive staff were involved to an unprecedented degree in county level processes to push the refinery conversion environmental review process to the finish line, acting as aggressive proponents of transnational energy sector company proposals and playing a key role in the irregular governance of the refinery conversions, not only as a regulator but as a political player. Though it is gratifying to see CARB now admit to the real environmental threats that leadership of the agency had publicly denied, it is also horrifying to watch how a regulatory agency fails to act in the public interest and instead rallies to the cause of protecting the economic agenda of polluting industry. Note that the legal challenge to the Contra Costa County certification of the Final Environmental Impact Report for the Marathon-Neste Project will be heard in State Appeals Court later in September. The legacy of CARB executive leadership having taking such a prominent role in the permitting of the conversion of SF Bay Area refineries to manufacturing high emissions high deforestation risk liquid biofuels is still being defined. Unfortunately, the arbitrary behaviors of the agency do not bode well for the communities living under the increasingly flaring cloud of these refineries, nor for the communities bearing the brunt of the environmentally damaging and socially conflictive agroindustrial model that produces the feedstock commodities upon which these fuels are based.

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<sup>4</sup> <https://www.contracosta.ca.gov/RodeoRenewed>

<sup>5</sup> <https://www.marathonmartinezrenewables.com/>

### ***Sustainability Certification Safeguards Remain Inadequate and Reek of Greenwashing***

Staff at our organization collectively have decades of experience working with certification processes and schemes. We have direct experience in the development of guidelines and protocols while participating in technical committees for standard development at the International Organization for Standardization<sup>6</sup>, and staff from our organization have worked from both the industry side and civil society side of stakeholder processes with certification schemes as diverse as the Forest Stewardship Council (FSC), the Sustainable Biomass Program (SBM), the Roundtable on Sustainable Palm Oil (RSPO), the Round Table on Responsible Soy (RTRS), the International Sustainability and Carbon Certification (ISCC), and others. We have just in the last 3 years worked in more than a dozen different countries on matters that directly included certification schemes, in one form or another. Suffice it to say that our experience is immense, from design, to implementation, to accountability, to research on the outcomes. After all these years it is truly apparent to our organization that certification schemes may serve as a tool for a company to pursue due diligence, but that such schemes are totally inadequate to meet goals to mitigate environmental and social harms as described by CARB in both the original and the current set of amendments.

It is essential for members of the Board to understand that certification schemes are proven ineffective for removing deforestation from commodity supply chains. The amendments are suggesting that certification of feedstock commodities will mitigate or address the harms that arise from increased demand for these products – yet the evidence shows otherwise: certification is an ineffective tool for assuring sustainability in supply chains<sup>7</sup>.

Considering the known shortcomings of certification schemes it is troubling that CARB is doubling down on such an approach to mitigate harms from feedstock production for liquid biofuels like ‘renewable diesel.’ Fundamentally, as stated above, certification is not designed to prevent deforestation and other environmental harms. There are a number of reasons why. In many instances certification does not identify or prevent harms because audit and certification teams do not have the time, or even the expertise, to address complex social and human rights issues. Evidence shows that certification does not assure the legality of the product. Certification will repeatedly fail to provide transparency or essential information on geographical origin of the commodity. Certification has also been proven time and time again to provide opportunities for greenwashing, and to increase corporate power over natural resources. These are just a few of the problems with certification schemes that numerous studies have quantified and identified.

Also problematic is the role of the third-party certifying entities, which the CARB proposal relies on heavily. One proven problematic dynamic is that certifying bodies are not liable for the harm

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<sup>6</sup> <https://www.iso.org/home.html>

<sup>7</sup> There are numerous examples of robust studies exploring the inadequacies of certification schemes. For examples see <https://www.earth-sight.org.uk/news/green-labels-EUDR>; <https://www.sciencedirect.com/science/article/abs/pii/S1389934124000893?via%3Dihub>; <https://news.mongabay.com/2021/11/relying-on-green-labels-to-address-our-thirst-for-the-products-of-deforestation-would-be-a-disaster-commentary/>; [https://www.greenpeace.org/static/planet4-international-stateless/2021/04/b1e486be-greenpeace-international-report-destruction-certified\\_finaloptimised.pdf](https://www.greenpeace.org/static/planet4-international-stateless/2021/04/b1e486be-greenpeace-international-report-destruction-certified_finaloptimised.pdf).

they cause. The outsourcing of control of compliance to third-parties in an unregulated market has repeatedly created accountability problems, where failures to comply with the certification standards are unaddressed. Ultimately, the certification bodies are not independent of the companies that they are working for, resulting in conflicts of interest and increased violations. CARB makes gestures to addressing conflict of interest, but such proposed measures are far short of providing the oversight that is desperately needed of the totally and shamefully unregulated audit and certification body sector.

The reason why certification schemes cannot achieve the outcomes listed by CARB in the amendments packages is because that is not what they are designed to do. The lack of accountability and the repeated instances of violations going unaddressed, even when stakeholders are able to present substantive evidence during engagement processes, is fundamental to how certification schemes prioritize keeping participants within the program. Certification schemes are recognized to increase demand for the high deforestation risk commodity in question, perversely driving the very motor of destruction that the certification scheme was intended to curb. Market forces remain paramount. Because of economic considerations, the agenda of the interests utilizing the certification scheme takes precedence over the protection of the environment or respect for the rights of local and indigenous communities, and even over the reliability or brand reputation of the certification scheme itself. There is a lot of study that members of the Board must do before they can sign off on the reliance on certification schemes in the LCFS that staff are proposing.

CARB staff have taken steps now that require members of the Board to become expert in certification schemes; to advance the amendments and to approve in concept the proposal by CARB staff to rely on certification schemes to address the environmental harms associated with the production of feedstocks like soy requires doing serious due diligence. This decision cannot be taken lightly, we are putting the evidence in front of the board that certification schemes are not up to the task. We encourage members of the Board to be cognizant of the significance of this decision. As the legacy of the conversion of SF Bay Area refineries to making high emissions high deforestation risk liquid biofuels is still being defined, it would certainly behoove members of the Board to consider what they would like that legacy to be, how they will contribute to that legacy, and what their responsibility will be in shaping that legacy.

### ***Faux Company Level Cap Is Overly Complicated and Reveals CARB Desperation***

There is not much to be said about the proposal to only offer LCFS credits for 20% of a company's renewable diesel production, other than that it is a useless gesture<sup>8</sup>. CARB is trying to throw a bone to the environmental stakeholders demanding a cap in the production of crop-based liquid biofuels like renewable diesel, yet the CARB amendments proposal has loopholes in it big enough to fit the Phillips 66 Rodeo refinery. This gesture is clearly as desperate as it seems. And it does nothing to assure that California does not become addicted to high emissions high deforestation risk liquid biofuels like soy-based renewable diesel. We don't need to say anything more about

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<sup>8</sup> See p. 37 of Proposed Changes Attachment A-1:

[https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2024/lcfs2024/15day\\_atta-1.pdf](https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2024/lcfs2024/15day_atta-1.pdf)

this proposed measure, other than how ironic it is for the refineries to discover that after CARB went to bat for them to push the permitting of the refinery conversions through to the finish line, that CARB is now desperately casting around for a way to put the high deforestation risk liquid biofuels Pandora back in their box. This ploy with a faux cap should make members of the Board extremely leery of what CARB staff are proposing with these new amendments. Some serious Board scrutiny and questioning of the context and the content of these proposed amendments would serve the public well. This is no time for members of the Board to rely on their rubber stamp as they have on previous occasions. Rubber stamping bad policy and bad projects is what got us into this problem, it most certainly is not going to get us out of the problem.

### ***Deforestation From Livestock and Fraud in Used Cooking Oil Supply Chains Remains Ignored***

A great deal of emphasis is made in the proposed amendments to addressing the clear deforestation risks arising from making fuels from virgin soy and canola oil. We have already addressed the inadequacies of the plan for mitigating those harms. What has not been mentioned, either in this letter or in the amendments, are the environmental harms associated with the reliance on animal tallow from the global livestock industry as a feedstock for making liquid biofuels. It is well known that the links between the livestock industry and the soy agroindustrial model are very strong, especially in vulnerable landscapes in regions like South America. The amendments do nothing to recognize or mitigate the harms from what we are calling the ‘great California fats grab’ – the way that the LCFS is incentivizing fuel producers to secure access to as many animal fats and related feedstocks from around the world to make fuels to sell in California. These dynamics bring up another crucial issue that the amendments fail to address, that of Indirect Land Use Change (ILUC). Market elasticity and existing uses for the commodities that are coveted now for making fuels like renewable diesel result in increased demand for fats products that must be then be replaced and substituted for their existing uses. The amendments do nothing to address these concerns. The other matter that is not addressed is the risk of palm oil being laundered as Used Cooking Oil, a real and present problem in global markets that CARB has not wanted to recognize. The recent publication by the European organization Transport and Environment titled “*UCO: Unknown Cooking Oil*”<sup>9</sup> explores the realities and evidence of virgin vegetable oils being trafficked as UCO; again, CARB has refused to address this problem in a substantive manner.

### ***Conclusion: Halt Deforestation-Driving Soy Biofuels Before It Is Too Late***

Considering the urgency of the situation, another item that would serve members of the Board to take into consideration is the December 2023 report from the same organization Transport and Environment titled “*Halt Deforestation-Driving Soy Biofuels Before it is Too Late*.”<sup>10</sup>

In this report clear arguments are made that soy must be considered a high-ILUC risk feedstock (something that the current LCFS Rulemaking fails to do) and that **in order to protect global**

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<sup>9</sup> <https://www.transportenvironment.org/articles/uco-unknown-cooking-oil-high-hopes-on-limited-and-suspicious-materials>

<sup>10</sup> <https://www.transportenvironment.org/wp-content/uploads/2023/12/Halt-deforestation-driving-soy-biofuels-before-it-is-too-late.pdf>

**forests an aggressive phase out of palm and soy-based biofuels is needed immediately.** There are many lessons to be learned from the European experience on these matters of global deforestation and biofuels, and CARB staff and leadership need to take measures to update their approach to assessing the climate impacts from high deforestation risk feedstocks like soy.

Much more research and analysis need to be done about the viability and environmental repercussions of granting a special climate value to making liquid biofuels from soy. The available evidence shows that this is not a climate solution. By rushing forward with these amendments to reinforce existing credit pathways for making liquid biofuels from commodities like soy CARB is exacerbating the existing risk of elevating California climate policy to become a driver of global deforestation.

It is certainly noteworthy that in 2024 CARB staff and leadership have admitted to what they so vigorously denied for so long: that deforestation is a real problem associated with making liquid biofuels from soy and other vegetable oils. Now we need the agency to take action in a responsible manner, and not just put a sheen of certification window dressing on the problem to distract the public with known tools of greenwashing. As it stands, the current package of amendments to the LCFS fails to meet those responsibilities. We beseech the members of the Board to demand a course correction, and to anticipate now what it will take to reject the current amendments and remove high emissions high deforestation risk biofuels from the portfolio of climate solutions being promoted by state authorities. There is no time left for inaction.

Sincerely,

A handwritten signature in black ink, reading "Gary Graham Hughes". The signature is fluid and cursive, with the first name "Gary" being the most prominent.

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