MONTANA RENEWABLES™

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Via electronic submission to: https://ww2.arb.ca.gov/lispub/comm/bclist.php

Dr. Steven Cliff
California Air Resources Board
1001 I Street
Sacramento, CA 95814

RE: Comments of Montana Renewables, LLC on Proposed Modifications (15-Day Changes) to Proposed Low Carbon Fuel Standard Amendments

Dear Dr. Cliff,

Montana Renewables, LLC ("MRL" or "the Company") hereby provides comments on proposed modifications (15-day changes) to the California Low Carbon Fuel Standard amendments (hereafter referred to as the "15-Day Changes").[1] As a leading producer of sustainable aviation fuel ("SAF"), renewable diesel and renewable naphtha, we are encouraged by the California Air Resources Board's CARB's proposal to set ambitious carbon intensity ("CI") targets through 2030, especially the 9% "step-down" in carbon intensity standards set to become effective in 2025. However, we have serious concerns regarding CARB's newly proposed 20% cap on the eligibility of biomass-based diesel from soy and canola. We are also disappointed that CARB has not followed through on previously proposed obligations for fossil jet fuel that would have supported SAF use in California, and suggest certain alternative measures that CARB can and should consider as additional modifications to the proposed amendments. These and other matters introduced, modified or supplemented by the 15-Day Changes are detailed further below.

<u>The 20% Cap on Credit-Eligible Soy and Canola is Unnecessary, Arbitrary and Capricious</u>

CARB'S proposal to redefine eligibility for biomass-based diesel derived from soy or canola[2] is an 11th hour change of direction that will have monumental impacts on feedstock markets and fuel producers.

Most alarming to us is that these caps were neither included in the December 2023 proposed amendments (which received a more fulsome 45-day comment period) nor presented by staff during CARB's April 2024 public workshop on the amendments. Stakeholders cannot possibly have sufficient time for public discourse and input on this issue during the mere 15-day comment period offered for the 15-Day Changes, especially with the Board hearing on this rulemaking already scheduled for early November. Finalizing the proposed caps would be arbitrary and capricious, in contravention of the requirements of the California Administrative Procedures Act. On procedural grounds alone, CARB must remove the proposed caps and more thoughtfully consider the potential risks and benefits as part of a future LCFS rulemaking.

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[1] MRL previously provided comments on the proposed Low Carbon Fuel Standard ("LCFS") amendments by letter dated February 20, 2024 (https://www.arb.ca.gov/lists/com-attach/6934-lcfs2024-WjcHbgBvV3ADZFI8.pdf), and on the California Air Resources Board's ("CARB") related public workshop letter dated May 10, 2024 (see https://ww2.arb.ca.gov/form/public-comments/submissions/11501)

[2] *See* proposed amendments to Section 95482(i) of the LCFS regulation.

Beyond the clear and inarguable procedural defects with this proposal, CARB should recognize that capping credit generation simply is not good policy. CARB's 15-day notice offers two rationales for the imposition of the 20% cap:

1. "[T]he State must ensure that other regions are able to also access increasing volumes of low-carbon alternative fuels"; and,
2. "The proposed addition … avoids sending a long-term signal for virgin soy or canola oil to serve California demand".

Respectfully, the first rationale is not compelling enough to override the primary objective of the LCFS program, which is to reduce the carbon intensity of the California transportation fuel pool. Furthermore, programs in such other regions generally trail California in CI benchmark stringency or otherwise provide more favorable treatment for soy and/or canola, meaning that the structural signals within the control of such programs already offer greater incentivize for soy- and canola-based biomass-based diesel than California does.

With respect to the second rationale, both existing and new measures introduced in the amendments render the proposed caps unnecessary. First and foremost, the very design of the LCFS program, with its declining annual CI standards, sends a very clear message that soy and canola are not able to participate in the long term. The proposed revised standards will result in the majority of soy and canola biomass-based diesel pathways becoming minimal credit generators (if not in fact deficit generators) within a five-to-six year timeframe. Meanwhile, soy and canola remain saddled with indirect land use change ("ILUC") factors that are amongst the highest compared to other similar low carbon fuel incentive programs. CARB has refused calls to reevaluate these now nearly 10 year old factors, despite ample scientific evidence supporting significantly lowering them. CARB's soy and canola ILUC factors can reasonably be characterized as punitive, disadvantaging them relative to other feedstocks without technical support and, again, signaling that these feedstocks are unwelcome in the state.

The only predictable outcome that the 20% cap will produce is a wealth transfer to waste feedstocks, for which CARB should view some sources skeptically. U.S. and Canadian feedstocks participate in sophisticated commodity markets. Even with the LCFS program's existing and new signals discouraging their use, canola and especially soy provide important price discovery and market making functions against which other, more attractive (from a CI standpoint), feedstocks are pegged. The natural reaction to an arbitrary limit on eligibility under the LCFS will be the disruption of soy and canola's price-setting function and a rise in the commodity price of "uncapped" feedstocks like animal fats and used cooking oil ("UCO"). Basic economics assumes that rising prices should encourage greater supply; however, the fundamental flaw in this assumption in this context is that U.S. and Canadian animal fat and UCO collection programs are already mature. The price signal cannot "create" more legitimate wastes for collection, since their availability is driven by the supply-demand requirements of their primary products (beef, pork and cooked foods). Thus, the price for waste feedstocks will rise and remain high, thereby raising the cost of producing low CI fuels. Higher price signals may in turn provide motive for fraudulent suppliers on the margins, particularly from foreign markets. As CARB is aware, the EU and the EPA are investigating UCO imported from Asia, given potential concerns as to veracity.

Pushing stakeholders into alternatives to soy and canola at an accelerated pace in response to eligibility caps presents a high threat of unintended consequences that should be fully vetted through a stakeholder process. The LCFS program generally does not work when it arbitrarily picks winners and losers. Current, up-to-date emissions modeling and science should dictate the direction for future feedstocks and products serving the California market. CARB should allow the proposed CI standards to work as intended to incentivize legitimate, best-performing feedstocks.

For all of these reasons, we urge CARB to withdraw the proposed caps on soy- and canola-based biomass-based diesel eligibility. However, if CARB proceeds with these arbitrary caps, the agency should at a minimum extend the proposed grace period for existing biomass-based diesel pathways from three years to five years in the final rule, and allow for consideration of longer grace periods as part of a future rulemaking that is vetted in a public process. CARB has rationalized the three-year grace period as sufficient to "provide time to adjust feedstock supply contracts as needed"; however, the record supporting this position is inconclusive at best. We would contend that a three year deferral substantially underestimates the role of feedstock flexibility in fuel producers' long-term investments and commercial and operational planning. A minimum five year deferral (through 2030) would mitigate some of the risk of disrupting the market and supply-demand balances.[3]

<u>CARB Should be Sending Stronger, Not Weaker, Signals in Support of SAF</u>

MRL was among many commenters who supported the elimination of the LCFS exemption for fossil jet used in intrastate flights, as proposed by CARB in December 2023. While we had our concerns that such proposal only indirectly incentivized SAF, it was at least a step towards concrete obligations to support this emerging fuel sector. We are thus disappointed that CARB has walked back even this modest commitment in the 15-Day Changes and offered only an unspecified commitment "to finding effective ways to reduce emissions from the aviation sector through the production and use of cleaner aviation fuels and other low-carbon alternatives".[4] We believe that CARB can still enact meaningful measures in the present rulemaking to support SAF deployment in California.

One small step that CARB could take now would be to remove the applicability of the Auto Acceleration Mechanism (AAM)[5] to the table of annual jet fuel CI benchmarks.[6] When applied to the gasoline and diesel benchmarks[7], the AAM functions as a control on the size of the LCFS credit bank by <u>both</u> reducing credit generation for alternative fuels and increasing the deficits for fossil fuels. When applied to the jet fuel benchmark – which now lacks a corresponding deficit obligation for fossil jet fuel – the AAM would only

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[3] CARB has also proposed to condition eligibility for the grace period on a producer's use of soy or canola to produce at least 20% of biodiesel or renewable diesel, as reported in 2023. While MRL believes it would qualify under this proposal, the prerequisite LCFS report is unspecified and qualifying year (2023) seems random – hallmarks of a hastily prepared addition that, again, has failed to be sufficiently vetted in a public process.

[4] We do appreciate that CARB's proposal at least continues the harmonization of the annual diesel and jet fuel benchmarks first established in CARB's 2018 LCFS rulemaking. As noted in our comment letter submitted May 10, 2024, some of the supporting materials in the current rulemaking docket appeared to suggest that CARB intended to apply the annual percentage reductions against a conventional jet fuel CI of 89.31 gCO2e/MJ in the revised jet CI benchmarks, which would have led to severe discrepancies in credit generation opportunities between renewable diesel and SAF from HEFA processes since each product is generally assigned the same CI score.

[5] *See* proposed amendments to Section 95484(b) of the LCFS regulation.

[6] *See* Table 3, Section 95484 of the LCFS regulation.

[7] *See* Tables 1 and 2, Section 95484 of the LCFS regulation.

serve to reduce credit generation opportunities for SAF. This, in turn, exacerbates the economic gap that favors renewable diesel production over SAF. Given that SAF will contribute only a very small portion of the total LCFS credit pool for the foreseeable future, reducing its credit opportunities via the AAM would serve only to undercut support for it without creating any corresponding demand.

CARB could send an even stronger signal in support of SAF by restoring the jet fuel CI benchmarks to their pre-amendment levels (i.e., a 20% CI reduction by 2030). With intrastate jet fuel obligations seemingly off the board, the jet fuel benchmarks serve only to establish the size of the credit generation opportunity for SAF. With SAF projected to comprise only a very small portion of the California fuel market through 2030, its contributions to the burgeoning LCFS credit bank – the primary motivator for the current rulemaking– do not necessitate subjecting SAF to the same revised benchmarks (i.e., 30% by 2030) as other more prevalent fuels that have benefited from years of higher standards and credit generation opportunities since the inception of the LCFS program. Setting a 20% emission reduction target in 2030 for jet fuel would give the SAF sector a leg up at a critical moment in its development, while still ensuring progress in reducing emissions over time. Notably, British Columbia has adopted a similar approach under their recent LCFS amendments, providing both a higher benchmark and a less aggressive compliance curve for aviation fuels. We respectfully ask CARB to consider taking these steps in this rulemaking or in future near-term engagement with stakeholders to ensure that California remains a policy leader and attractive destination for SAF.

Credit True Up Opportunities Should Be Implemented Immediately

MRL strongly supports the 15-Day Changes' expansion of the proposed credit true up opportunity in Section 95488.10(b) of the LCFS regulations to include temporary pathways. We believe this justifiably rewards producers whose validated/verified CI scores outperform their previously registered CI scores, including temporary pathway CIs, with credits corresponding with actual emission reductions for fuels delivered to California.

We understand that part of the rationale for authorizing credit true-ups is that fuel producers are also now subject to a punitive four times (4x) credit retirement obligation in the event that their verified operational CIs are greater than the previously registered CIs. This signals that producers should conservatively set margins of safety in their registered fuel pathways to avoid over-generation; the credit true-up opportunity, therefore, avoids penalizing producers for acting conservatively.

Based on our reading of the proposal, the 4x credit retirement obligation would become effective the same year as the proposed amendments – if correct, it would mean such obligation would be applicable to producers' 2024 Annual Fuel Pathway Reports (covering 2023 and 2024 operational data) verified in August 2025. In contrast, the credit true-up opportunity described in proposed Section 95488.10(b) would not occur until the 2025 Annual Fuel Pathway Report (covering 2024 and 2025 operational data) is verified in August 2026. We see no reason for producers to be immediately at risk of penalty but to have to continue to wait another year for the return of credits reflecting actual emission reductions. Put simply, California should not get another year of "free" emission reduction; we urge CARB to align the penalty and true-up provisions by making the true up opportunity effective immediately and assessed following pathway validations or verifications completed in calendar 2025.

CARB Should Provide More Time and Clarity for Feedstock Supply Chains to Implement Sustainability

In the 15-Day Changes, CARB has expanded upon the general framework of new biomass feedstock sustainability certifications first outlined in the December 2023 proposed amendments. As an ISCC-certified producer of SAF, MRL remains generally supportive of CARB's inclusion of sustainability requirements in the LCFS program. We wish to stress, however, that the agricultural supply chain certification requirements articulated in the 15-Day Changes will necessitate a massive engagement with farmers, grain and seed collectors, and distributors. Alternative fuel producers typically are not in direct contractual privity with these parties, which will complicate and prolong the negotiation of new commitments. To this end, MRL urges CARB to proceed at a reasonable pace and extend by at least one (1) year the proposed phase in periods applicable to existing certified biomass pathways (including soy and canola);meaning:

- The requirements related to biomass attestations and farm spatial data in proposed Section 95488.9.(g)(1) and (g)(2)(A) should take effect in the 2027 data year rather than 2026;
- The requirements related to third party certification described in proposed Section 95488.9(g)(3)(A) should take effect in the 2029 data year rather than 2028; and,
- The requirements related to best environmental practices described in proposed Section 95488.9(g)(1)(B) and (g)(4)(A) should take effect in the 2032 data year rather than 2031.

This extension would provide critical time for communication, outreach and engagement with stakeholders and other representatives of complex feedstock supply chains. It will also offer CARB additional time to review feedback and clarify ambiguous requirements. For example, the proposed "best environmental management practices" requirements of Section 95488.9(g)(1)(B) are at this time only generic obligations that lack both specificity and applicability to different agronomic circumstances; their implementation will depend greatly on further direction from CARB, which should be informed and vetted in a public process with stakeholder input.

CARB Should Clarify/Streamline the Proposed Cut-Off for New Biomass-Based Diesel Pathways

The 15-Day Changes authorize the Executive Officer to "choose not to accept new fuel pathway applications for biomass-based diesel" beginning January 1, 2031, if certain thresholds for Class 3-8 ZEVs reported or registered in California have been met. We share the same concerns with this provision as we do with the 20% caps on soy and canola use – i.e., that sufficient stakeholder engagement must be conducted prior to adoption or implementation, and that CARB should avoid picking winners and losers arbitrarily.

Furthermore, we believe that clarification is urgently needed to confirm that the proposed cut-off (1) does not apply to SAF, even if produced by a biomass-based diesel producer; and (2) does not prevent routine modifications of existing biomass-based diesel pathways (including but not limited to new inputs; CI scoring changes following an operational CI verification; or changes resulting from the adoption of a new version of the CA-GREET or alternative emissions model).

CARB Should Withdraw and Revise Proposed Changes to LCFS Credit Generation for Hydrogen

The 15-Day Changes include new amendments to Section 95482, adding section (h) which renders "hydrogen produced using fossil gas as feedstock [as] ineligible for LCFS credit generation unless biomethane attributes are matched to the hydrogen production". This addition, as with several others previously noted above, has not undergone sufficient vetting in a public process with stakeholder input. As drafted, the provision raises questions regarding its impact on hydrogen produced in steam methane reformers (SMR) at HEFA facilities. MRL, for example, produces hydrogen in onsite SMRs from renewable offgases (LPGs) that are byproducts of the HEFA process. While the amount of renewable offgas produced and captured internally is sufficient to meet hydrogen demand, system balancing requirements with our co-located refinery may necessitate periodically making hydrogen from natural gas. We believe the proposed language should apply only to the portion of hydrogen produced using fossil gas, and further should not apply to hydrogen produced in systems where renewable LPGs are directly delivered to an onsite SMR in monthly or quarterly quantities sufficient to meet demand. These clarifications and other finer points would undoubtedly benefit from further stakeholder input on this provision; as such, we respectfully request that CARB withdraw this proposed change and take it up again in a future rulemaking.

CARB Should Expand the Geographic ILUC Region for Soy

CARB has proposed changes to Table 6 – Land Use Change Values for Use in CI Determination, to clarify the applicability of existing ILUC scores to the feedstock growing region(s) that they cover and provide a process for assigning or developing ILUC scores for other regions. While MRL generally is satisfied with these clarifications, we believe it would be appropriate for CARB to recognize the growing region covered by the ILUC for soy as "North America" rather than the "United States". This modest change is both conservatively representative and may help avoid potential supply disruptions in soy feedstock markets.

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Thank you for considering these comments. We look forward to engaging further with CARB staff on this rulemaking and in the future. Please do not hesitate to contact us with any questions.

Regards,

Greg Staiti
Compliance Director, MRL