October 16, 2024

Members of Board
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Via Electronic Submittal

RE: Earthjustice, Communities for a Better Environment, Asian Pacific Environmental Network, and Center for Biological Diversity Comments on the Low Carbon Fuel Standard Second 15-Day Changes.

Chair Randolph and Members of the California Air Resources Board**:**

The LCFS Proposal headed to the Board in November presents a set of changes more aligned with prolonging harmful industry practices than with the urgent needs of environmental justice, climate action, and California's air quality and carbon neutrality goals. We respectfully request that the Board reject these revisions and adopt a program aligned with climate and air quality needs. It is unfortunate that some of the most critical feedback from frontline communities, environmental groups, and climate advocates is absent from the LCFS Proposal. In fact, the revisions double down on policies that entrench polluting practices and delay critical reforms.

Because the LCFS Proposal largely ignores the hundreds of pages of comments provided and rejects suggestions for necessary program improvements, we fail to see the value in providing detailed responses to the numerous flaws in CARB's second 15-day changes to the Proposed Amendments. Thus, this comment letter focuses on several of the most alarming aspects of the proposed changes, including their continued reliance on problematic biofuels and biomethane, the bias toward dirty hydrogen at the expense of clean, the weakening of equity provisions that support a just transition off of climate-harming combustion fuels, and its inconsistency with air quality standards.

I. The LCFS Proposal Doubles Down on Harmful Biofuel Feedstocks.

Rather than taking the necessary steps to implement an effective and science-based approach to limiting virgin oil feedstocks, CARB's latest changes to the Proposed Amendments entrench their use. The Proposal lacks meaningful long-term deterrents to runaway virgin oils used as a biofuel feedstock. Specifically, it fails to assign the fossil diesel carbon intensity score to fuels above the 20% crop-feedstock restriction, provides an even more generous grandfathering provision that delays implementation of the restriction until 2028, and fails to cover Sustainable

Aviation Fuel. While CARB's addition of sunflower oil to the 20% limit further acknowledges the issues posed by virgin oils, it fails to address the broader concern of interchangeability among these oils, particularly the absence of restrictions on other high-impact feedstocks like corn oil. This omission highlights a critical gap in policy, as virgin oils can be easily substituted, undermining the intended environmental protections. Taken together, Proposal's biofuels provisions reward environmentally damaging agricultural practices, drive up food prices, and create a perverse incentive to expand forest clearing.

The LCFS should not be designed to effectively pave the way for more deforestation, global hunger, and indeed higher greenhouse gas emissions.

II. The LCFS Proposal Expands Lavish and Unjustified Incentives for Biomethane at the Expense of Environmental Justice.

Despite longstanding calls to regulate emissions from industrial dairy and swine operations, and the plain text of Senate Bill 1383 which requires CARB to do so, CARB has continued to expand lavish incentives for these projects. By offering up to three 10-year crediting periods, CARB is locking California into decades of reliance on harmful methane production practices. Worse still, the LCFS proposes to allow projects to continue to receive new avoided methane crediting periods <u>even if methane capture and reduction requirements are implemented</u> under SB 1383, turning what was a stop-gap solution to the dairy methane problem into an ongoing windfall from the LCFS. CARB further proposes greenwashing the electricity used for electric vehicle charging by allowing book-and-claimed biomethane attributes for this purpose.

CARB is operating under the assumption that methane emitters require LCFS subsidies in the form of avoided methane credits to build and operate dairy digesters. CARB provides no analysis to support this assumption, and a recent independent analysis shows it is wrong. According to a UC Berkeley review of industry digester cost data and existing subsidies, **"[a]fter the first 10 years [of avoided methane crediting], once capital costs have been paid, there is little economic justification for digesters to receive prevented methane LCFS credits**."[1] This is because the federal Renewable Fuels Program "is providing enough to keep these digesters running." As a result, "**California drivers are effectively donating additional dollars"** to digester companies, and sending most of those dollars out of state, as roughly two-thirds of LCFS dairy biomethane is from outside of California.[2] Why is CARB ignoring this evidence and guaranteeing decades of windfall profits to methane emitters at the expense of Californians?

With each turn on this issue, the Proposal has ignored calls from not only affected community members and advocates but also its own Board Members to actuate effective policies that do not incentivize further consolidation and gift polluters with extravagant incentives rather than treating the emissions on par with other methane-emitting sources. CARB should shift the LCFS from a program predicated on factory farms being paid for their pollution to a program requiring

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[1] Smith, Aaron. How Much Should Dairy Farms Get Paid for Trapping Methane? (Oct. 14, 2024), https://energyathaas.wordpress.com/2024/10/14/how-much-should-dairy-farms-get-paid-for-trapping-methane/ (emphasis added).
[2] *Id*. (emphasis added).

that they clean up their own mess—the same approach that is taken for wastewater, landfills, and even oil and gas operations.

Further, CARB doubles down on treating out-of-state dairy emissions favorably by not immediately requiring the gas to be delivered to California, unlike all other fuels in LCFS. As explained above, this means that the LCFS is sending a large portion of its revenues out of state, thereby undermining California's ability meet its short-lived climate pollutant reduction goals and other climate goals. Under the Proposal's weak deliverability provision, CARB does not require deliverability to California until 2041 for compressed natural gas ("CNG") and until 2046 for methane used to make hydrogen. CARB only moves up this requirement to 2038 if an arbitrary heavy-duty truck threshold is met. Worse, this 2038 provision only applies to dairy methane used as a final fuel (i.e., CNG)—which is already being phased out of California's transportation systems—and not for hydrogen. Why is the agency delaying for close to two decades requirements that are necessary now? As we face climate disaster after climate disaster, we do not have the luxury to wait two decades for this commonsense provision.

III. The LCFS Proposal Supports Dirty, Greenwashed Hydrogen Over Green Hydrogen.

For numerous reasons, the Proposal's treatment of hydrogen is thwarting a just transition off fossil fuels. First, the definition of "renewable hydrogen" in the Proposal and the accompanying notice of availability are misleading because CARB does not explain that the definition of "<u>renewable hydrogen</u>" includes hydrogen derived from reformation of <u>fossil methane</u> paired with book-and-claim biomethane credits. CARB allows this dirty hydrogen to be called "renewable" even though its production emits harmful pollutants and has dubious climate benefits.

Second, CARB's allowance of book-and-claim accounting for fossil gas-derived hydrogen will lock in dirty hydrogen production for decades to come and kneecap growth of truly green hydrogen in California. With biomethane receiving the excessively lavish subsidies described above, its unbundled environmental attributes will be readily available to greenwash dirty hydrogen under the Proposed Amendments. Supercharging more dirty hydrogen production in California means more pollution in already overburdened communities.

Third, because deliverability of biomethane paired with hydrogen is not required until 2046 (explained above), dirty hydrogen producers in California will paper over their polluting fuel with out-of-state credits for at least the next 22 years.

Fourth, CARB is now allowing the fossil fuel-derived hydrogen that is not paired with biomethane credits to remain in the program until 2035, undermining both the State's carbon neutrality goals and its commitments to clean air. By delaying the phase out of fossil gas-derived hydrogen, CARB is kicking the can down the road on one of the most critical energy issues of our time and handing industry yet another undeserved gift at the expense of our climate and communities.

Fifth, the provision allowing three-quarter book-and-claim crediting of low-carbon intensity electricity for electrolytic hydrogen and direct air capture projects—which will likely result in increased greenhouse gas emissions—has been further weakened. CARB has walked back the limitation to electrolytic hydrogen and is now proposing to allow book-and-claim provisions for all types of hydrogen, including hydrogen that uses fossil methane as a feedstock.

In sum, the Proposal is ensuring the proliferation of stranded fossil fuel assets in California instead of driving a transition to genuinely clean hydrogen sources, and it is misleading the public by allowing hydrogen derived from fossil fuels to be called "renewable." This lack of support for green hydrogen undermines environmental justice and raises questions about California's climate leadership and its commitment to becoming a clean hydrogen hub.

IV. Base Credit and Equity Provisions: Watered Down Commitments

Several organizations have consistently asked CARB to ensure that the LCFS prioritizes funding for the communities most harmed by fossil fuel pollution. Unfortunately, rather than strengthening these commitments, the LCFS Proposal weakens them. The revisions allow less equity spending for most utility funds and keeps the first 15-day Proposal provisions crediting Original Equipment Manufacturers rather than funding additional medium- and heavy-duty zero-emission vehicles ("ZEVs"). These funds are California's best and most reliable funding source to support a just transition, yet CARB seems to favor funding multi-billion-dollar companies that are already required to transition to ZEVs rather than helping those most in need.

V. The LCFS Will Continue to Be Dominated by Combustible Fuels, Which Will Impede Attainment of Air Quality Standards.

An additional frustration is that the LCFS Proposal is untethered from air quality planning. The program will continue to be dominated by combustible fuels despite air plans saying we must shift to zero-emissions everywhere feasible by this year for the 1997 8-hour ozone standard, 2031 for the 2008 8-hour ozone standard, and 2037 for the 2015 8-hour ozone standard. In fact, CARB's action to withdraw the South Coast's Section 185 Contingency Measure Plan for the 1997 8-hour ozone standard—which included a commitment to actually achieve additional Nitrogen Oxide (NOx) reductions <u>from the LCFS</u>—signals the complete separation of its climate efforts from air quality planning. By abandoning shifts to make the LCFS program consistent with air quality needs to get to zero-emissions, CARB continues its legacy of not doing what is necessary to actually attain air quality standards.

Conclusion

The LCFS Proposal prioritizes industry rapacious appetite for billions of dollars of lavish incentives over science, environmental justice, and the health of California's residents. We urge the Board to reject these deeply flawed provisions and take meaningful steps to realign the LCFS with the State's climate, air quality, and equity goals. We understand this will require additional work by staff to fix this deeply broken program, and we do not take this suggestion lightly. But, the current proposal locks in decades of harms that will be hard to unwind without Board leadership to stop it now.

Sincerely,

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