



900 7th St. NW, Suite 820
Washington, D.C. 20001
Ph: (605) 965-2200
poet.com

April 21, 2025

Clerk of the Board
California Air Resources Board
P.O. Box 2815
Sacramento, CA 95812

Submitted electronically via: <https://ww2.arb.ca.gov/applications/public-comments>

RE: POET COMMENTS ON APRIL 4, 2025 REVISIONS TO PROPOSED LOW CARBON FUEL STANDARD AMENDMENTS

Dear CARB Members:

POET appreciates the opportunity to provide comments on the California Air Resources Board's ("CARB") April 4, 2025 Revisions to its Proposed Low Carbon Fuel Standard ("LCFS") Amendments ("Third Revised Proposed Amendments"). POET has participated actively in CARB's ongoing rulemaking and submitted detailed [comments](#) on its own behalf and as part of a [coalition](#) on February 20, 2024, regarding the Amendments initially proposed in December 2023 ("Original Proposed Amendments"). POET also attended the LCFS rulemaking workshop held on April 10, 2024, and submitted written [comments](#) regarding the matters discussed and presented during the workshop. POET also offered [comments](#) in response to CARB's August 12, 2024 Revised Proposed Amendments and [commented](#) on CARB's October 1, 2024 Second Revised Proposed Amendments.

POET remains opposed to CARB's biofuel-related amendments, which abandon technology-neutrality in the LCFS program, cut off practical pathways to decarbonization, impose needless and costly burdens on biofuel production, and undermine the primary objectives of both the LCFS and California's Global Warming Solutions Act ("AB 32").¹

Although we continue to hold and assert the views expressed in our prior comments, we write separately here to address specific legal and administrative problems presented by the breadth and ambiguity of CARB's "sustainability" related amendments, which suffer from the same defects identified by the State of California's Office of Administrative Law ("OAL") in its Decision of Disapproval of Regulatory Action dated February 25, 2025 ("Disapproval Decision").² In its

¹ California Global Warming Solutions Act, Cal. Health & Safety Code § 38500-38599.

² OAL Decision of Disapproval of Regulatory Action, OAL Matter No. 2025-0103-01S at 2, https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2024/lcfs2024/disapproval_decision.pdf

Disapproval Decision, OAL determined that CARB had violated the California Administrative Procedure Act's clarity standard in several respects. OAL explained that "the meaning of regulations [must] be easily understood by those persons directly affected by them,"³ and directed CARB to correct twenty-six instances in which the Proposed Amendments failed to meet this requirement.

Although CARB has now acted to address the specific issues named in the Disapproval Decision, the agency has left in place fundamentally ambiguous language at the heart of its proposed "Sustainability Requirements," creating costly risks and uncertainties for "directly affected" stakeholders like POET. Compounding matters, CARB's lengthy rulemaking process, which remains incomplete, has compressed the time period for compliance with the Proposed Amendments, which still feature implementation deadlines starting in January 2026. This leaves biofuel producers facing new and uncertain feedstock certification requirements applicable within mere months of the effective date of the regulations, should OAL now approve them.

POET again urges CARB to refrain from adopting its proposed sustainability requirements and to instead address the issue of feedstock sustainability in a future rulemaking. In the alternative, POET urges CARB to clarify the standards it intends to impose and to postpone the proposed implementation dates for feedstock sustainability requirements.

1. CARB Should Eliminate the Impermissibly Vague Requirement That "Biomass Must Be Cultivated and Harvested in Accordance with All Local, State, and Federal Rules and Permits."

Beginning in 2026, CARB's Sustainability Requirements for biomass-based fuel pathways require an attestation from biofuel producers guaranteeing that the feedstocks used to produce their fuel were "cultivated and harvested in accordance with all local, State, and federal rules and permits."⁴ On its face, the scope of this attestation is incredibly broad and could be construed to mean that biofuel producers must guarantee to CARB that the farmers who grow their feedstocks have not deviated from *any law in any way*. A requirement of that breadth and reach is not rationally related to CARB's intended goal of ensuring that biofuel feedstocks are grown sustainably. Furthermore, it is impossible to know what type of due diligence activities CARB expects biofuel producers to engage in to determine whether the farmers from whom they source their feedstocks have followed "all local, State, and federal rules and permits" that may apply to the seeds, fertilizers, labor, equipment, fuel, and other supplies and activities required to cultivate and harvest their crops. Without knowing what specific legal requirements CARB has in mind, and without knowing whether and to what extent CARB intends to require on-farm compliance

³ *Id.* at 3.

⁴ §95488.9(g)(5)(C).

audits, the meaning of CARB’s regulatory language is not “easily understood” and therefore fails to comply with the California APA’s clarity standard.

2. CARB Should Clarify or Eliminate the Impermissibly Vague Requirement that Biomass-Based Feedstocks Be Produced Under the “Best Environmental Management Practices”

Beginning in 2028, biofuel producers are required to source feedstocks “produced according to best environmental management practices that reduce GHG emissions or increase GHG sequestration.”⁵ But CARB does not clearly define this requirement. Despite feedback from various stakeholders across multiple rounds of comments that the term “best environmental management practices” is too vague and does not allow biofuel producers to understand and plan for compliance, the Third Revised Proposed Amendments continue to offer only *examples* of such practices, and not a clear set of rules. And those examples, which “include *but are not limited to*” “[m]aintain[ing] or enhance[ing] biodiversity habitat on agricultural or forested lands,” “[e]nhanc[ing] soil fertility and avoid[ing] erosion or compaction,” “[a]pply[ing] fertilizers in a manner that minimizes runoff, and soil and water contamination,” and [r]educ[ing] unsustainable water use, and minimize[ing] diffuse and localized pollution from chemical residues, fertilizers, soil erosion, or other sources of ground and surface water contamination,”⁶ are themselves too vague to offer clear guidance regarding how those “directly affected” by the regulation are obliged to follow it. This language too, therefore, fails the California APA’s clarity standard.

3. CARB Should Postpone the Implementation Dates for Feedstock Sustainability Requirements

Given the protracted length of this rulemaking, which began with proposed new regulatory language in December 2023, and the delays occasioned by OAL’s February 18, 2025 rejection of CARB’s Proposed Amendments, CARB should postpone the implementation dates for feedstock sustainability requirements which are currently slated to begin in 2026, leaving stakeholders mere months to prepare for compliance with new and ambiguously defined rules that represent a complex and onerous paradigm shift in California’s LCFS program.

⁵ §95488.9(g)(3).

⁶ *Id.* (emphasis added).

* * *

POET appreciates the opportunity to comment and looks forward to working with CARB to make the LCFS a continued success for California. If you have any questions, please contact me at Josh.Wilson@POET.com or (202) 756-5612.

Sincerely,

A handwritten signature in black ink, appearing to read 'JWP', with a stylized flourish at the end.

Joshua P. Wilson
Senior Regulatory Counsel