

THE LAW OFFICES OF  
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A PROFESSIONAL CORPORATION

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Clerk of the Board  
California Air Resources Board  
1001 I Street  
Sacramento, CA 95812

Re: Comments to Proposed Amendments to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions; Comments to Proposed Regulatory Order to Amend California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms

Ladies and Gentlemen:

This will follow up on very helpful conversations that I and others had on November 17<sup>th</sup> and 18<sup>th</sup> with California Air Resources Board (the "Board") staff members Manpreet Mattu and Greg Mayer, by, in accordance with staff request, documenting the comments provided.

1. Comments on Proposed Regulations on Cap on Greenhouse Gas Emissions.

These comments relate to the use of biomethane as a fuel source of emissions without a compliance obligation as provided in Section 95852.2. We understand that there was a typographical error in the regulations as published, and that "(b) Biodiesel," "(c) Fuel ethanol," "(d) Municipal Solid Waste" and "(e) Biomethane" were intended as further subcategories of 95852.2(a), "Combustion from biomass-derived fuels", and respectively "(a)(5) Biodiesel," "(a)(6) Fuel ethanol", "(a)(7) Municipal Solid Waste" and "(a)(8) Biomethane".

The apparent intended use of the word "biomass-derived fuel" in the proposed regulations to mean anything that was ever living that is not now fossilized is confusing, since "biomass" has a pre-existing, and different, meaning in the energy industry, as generally referring to the items listed in 95852.2(a)(1), (2), (3) and (4). Biomethane from digesters is generally not considered biomass in the energy industry. See, e.g., California Energy Commission Renewable Energy Facilities Eligibility Guidebook 3<sup>rd</sup> ed., p. 3 ("biomass or biogas"), page 10 ("biogas" and "biomass" are two separate items on the table), pp. 11 and 20, discussing biomass and biogas as completely separate resource categories, and Form CEC-RPS-1A/B (listing biomass and biogas as completely separate resource categories).

Since most people in the energy industry distinguish "biomass" from the other items in the broad list of fuel sources listed in 95852.2(a) as renumbered as indicated above, in order to avoid confusion, it may be useful for the proposed regulations to use the word "organic" or

“organically derived” rather than “biomass-derived” for the broad, all-inclusive concept for which “biomass-derived” is now used, and redefine and limit the defined term “biomass” to fuels in the nature of 95852.2(a)(1), (2), (3) and (4), to keep “biomass” as used in the regulations within the confines of traditional meaning of the word “biomass” in the energy industry.

I also understand that the phrase “(except biogas from digesters)” in the first line of 95852.2(a) is meant to exclude offset credits, and not biogas or biomethane in general. It would be very helpful that this change keeps clear that it is not meant to exclude biomethane as provided in 95852.2(e)/(a)(8).

I understand that staff also plans to add a defined term “biomethane” as “pipeline-quality biomass-derived fuel.” If staff does adopt use of “organic” or “organically derived” in place of the current use of “biomass” to mean anything once living that is not now a fossil, the current use of “biomass” in the proposed regulations that is something very much broader than the meaning of the word “biomass” this definition would instead read something akin to “pipeline-quality organically derived fuel.”

## 2. Comments on Proposed Amendments to Regulation for Mandatory Reporting.

I understand that staff seeks generally to streamline 95131(i), Verifying Biomass-Derived Fuels. I also understand that staff intends that 95131(i) not disqualify biomethane. Current language in 95131(i) could disqualify biomethane because strictly read, it implies requirements to color code gas molecules, which is impossible, as well as a potential variance from the Federal Energy Regulatory Commission’s bedrock interstate gas transportation pipeline “shipper must have title” legal principle requiring that the owner of the gas be the transporter of that gas on the interstate pipeline. Additionally, language in proposed 95131(i)(B) would seem to disqualify from verification any biomass-derived fuel that passed through the hands of any person that received credit for any other biomass-derived fuel of any kind in any venue, whether or not such credit bore any connection to the specific biomass-derived fuel under verification.

Accordingly, here are proposed changes to selected subsections of 95131(i)(2):

(B) The verification team shall determine that no entity in the chain of custody has applied for or received credit for the use of **the biomass-derived** *[“biomass derived” would be changed to “organically derived” if the proposal above to use “organic” for the broad purpose to which “biomass” has now been put is adopted]* fuel in offset credits or any other credit for greenhouse gas reductions in another voluntary or regulatory **program project**.

(D) The verification team shall determine that **the biomass purchasing or producing an** entity’s total volume of biomass-derived *[“biomass derived” would be changed to “organically derived” if the proposal above to use “organic” for the broad purpose to which “biomass” has now been put is adopted]* fuel transferred to all customers in a calendar year does not exceed the entity’s purchases and production of biomass-derived *[“biomass derived” would be changed to “organically derived” if the proposal above to use “organic” for the broad purpose to which “biomass” has now been put is adopted]* fuels during that year.

(E) The verification team must be able to track the exact amount of fuel identified in contracts or invoices from the producer to the reporting entity, and

have reasonable assurance that the reporting entity is ~~the only customer~~ receiving that **fuel quantity**.

(F) The verification team shall review and evaluate all fuel analytical devices and data management systems used by biomass-derived fuel **selling** entities to quantify, track, and report fuel amounts. The verification team must evaluate the uncertainty and effectiveness of these systems using the requirements in section 95131(b)(8).

Thank you very much for the opportunity to comment on the above proposed regulations.

Yours truly,



Jeremy D. Weinstein

cc: Ms. Manpreet Mattu  
Mr. Greg Mayeur