



Danielle Fugere
09-4-4

April 22, 2009

Mary Nichols, Chair
California Air Resources Board
1001 I Street
Sacramento, CA 95812

Re: Proposed Regulation to Implement the Low Carbon Fuel Standard

Dear Chair Nichols and Members of the Board:

Thank you for the opportunity to comment on the California Air Resources Board's (CARB) Proposed Regulation to Implement the Low Carbon Fuel Standard. We support the Low Carbon Fuel Standard as an important first step in achieving significant reductions in the carbon intensity of California's fuels. Every day brings new information confirming that global warming is not only underway, but moving much more rapidly than predicted; transformative change in the near term is therefore absolutely crucial to avoiding disruptions to our climate.

We appreciate that CARB has demonstrated early and innovative leadership on global warming policies, including the development of the world's first LCFS. We also commend CARB staff for their commitment to measuring the full lifecycle impacts of fuels, including indirect land use, even when doing so has required the development of new analytical tools and has raised controversy. Accounting for the full lifecycle impacts of fuels is the bedrock of an effective LCFS.

We also support CARB in ensuring that high carbon fuels, including those derived from Canadian and U.S. tar sands, oil shale, and liquid coal, are addressed in pathways that distinguish them from lower carbon petroleum fuels, thus protecting against the use of carbon intensive fuels while incentivizing cleaner fuels.

While supporting the proposed regulation, we also have provided suggestions for strengthening it in four ways as set forth in the April 15, 2009 comment letter submitted on behalf of over thirty other groups. One such important area is adopting safeguards to ensure that the pursuit of alternative fuels does not create unintended negative consequences or environmental harm.

Sustainability

As CARB promotes the development of alternative fuels under the LCFS, it is critical that the environmental harms associated with reliance on fossil fuels not be traded for equally harmful impacts from expanded alternative fuel use. We therefore request that CARB put into place

measures to minimize or avoid negative environmental impacts from the sourcing, production, and use of low-carbon fuels, including impacts to air quality, species, biodiversity, wildlife habitat, soil health, water quality, water quantity, and food security. We request that CARB staff develop and present to the Board in the December 2009 amendments to the regulation, a plan for developing sustainability metrics to be included in the LCFS regulation, with the goal of incentivizing the development of broadly sustainable alternative fuels and avoiding fuels with negative impacts on natural resources. In addition, we request that CARB assess the environmental impact of the LCFS in its periodic reviews and undertake adjustments as necessary to mitigate or avoid any identified negative impacts.

Land Safeguards

Biofuels will play a significant role in reducing the carbon intensity of California fuel, at least in the early years. It is therefore critical for CARB to put minimum land safeguards in place to protect habitat, retain ecosystems intact, and avoid the conversion of new lands to biofuels plantations. One of the most straightforward ways to accomplish this goal is for CARB to adopt the land safeguards put in place by Congress and signed into law by the Bush Administration when the Renewable Fuel Standard of 2007 (RFS) was enacted at the national level. The RFS biomass sourcing protections were carefully crafted through a broad stakeholder process to provide a minimum level of protection for wildlife habitat, natural forests, native grasslands, and important public lands, while allowing biofuels production to move forward. Minimum land safeguards do not prevent activities from occurring on these lands; rather they signal to investors that fuels grown on ecologically important lands will not receive credit under the regulation.

We ask that CARB either adopt the RFS minimum land safeguards or undertake, for inclusion in December 2009 amendments, the development of safeguards that offer equivalent protections.

Transparency of Credit and Compliance Information

We appreciate the proposed rule's provision in Section 95486(f)(2)(B) providing that, if a 2A or 2B application is approved by the Executive Officer, the carbon intensity values, associated parameters, and other fuel pathway-related information obtained or derived from the application will be incorporated into the Method 1 Lookup Table without restriction. This not only makes it possible for others to use the customized inputs or pathway, but allows the public to understand the basis for the new carbon intensity values.

The proposed rule is not clear, however, on whether compliance reporting and credit status is equally available to public review. This is important because, as we saw in last year's Zero Emission Vehicle proceeding, regulated parties may claim that compliance reporting, banking information, and credit status are trade secret information barred from public review. CARB resolved this issue with regard to ZEV at that January 24, 2008 hearing by requiring that, moving forward, all reported compliance information, including credit status and banking information, is a public document.

We request that CARB clarify in the LCFS regulation that all reported compliance information, including credit status and credit banking, is a public document and will not be considered trade secret.

Nature of Credits: In Section 95485(d), the proposed regulation states that "LCFS credits shall not constitute instruments, securities, or any other form of property." We request that the regulation be modified to add the following statement: "Further, LCFS credits are a record of compliance and will not be considered to be a trade secret of a regulated entity."

Carbon Intensity Values

We appreciate that CARB has included indirect land use in measuring the lifecycle carbon intensity of biofuels. We join with other groups, however, in calling for a time-based accounting of emissions rather than the proposed method of discounting emissions over an arbitrary and fixed number of years. A time-based method better accounts for the fact that carbon released into the atmosphere today will have a greater relative global warming impact than the same amount of carbon emitted at a fixed rate over time. This real-world impact matters greatly and should be accounted for in the regulation.

Thank you for your consideration of these comments.

Sincerely,

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

Danielle R. Fugere
Regional