



VIA: ELECTRONIC MAIL ONLY

February 5, 2024

Chair Liane Randolph and
Members of the Board
California Air Resources Board
1001 I Street
Sacramento, CA 95814
cotb@arb.ca.gov

Re: Low Carbon Fuel Standard – Suggested Process for Rule Adoption

Dear Chair Randolph and Members of the Board:

Earthjustice respectfully requests that the California Air Resources Board (CARB) hold the March 21, 2024 meeting on the Low Carbon Fuel Standard (LCFS) as a non-voting item and bring back a final proposal for the Board to vote in July of this year. We do not make this request lightly. In rulemaking after rulemaking, we have opposed stakeholder efforts to delay life-saving regulations, particularly the landmark zero-emissions regulations like the Advanced Clean Fleets Rule and the Locomotive Rule. Here, however, the Board should measure twice and cut once, instead of barreling forward with a proposal that, as we explain below, lacks sufficient Board input. Importantly, this amendment process, which proposes targets through 2045, comes at an inflection point as California leaves polluting fuels behind and moves toward a zero-emission transportation system. CARB must get the policies right in this update to ensure that the LCFS both supports California's Zero Emission Vehicle (ZEV) goals through the tens of billions of investment dollars that flow through the program, and avoids exacerbating the State's environmental injustices. Below, we explain why holding a non-voting meeting in March and directing staff to come back in July with a revised proposal are necessary steps to achieving an LCFS that aligns with our zero-emission future.

I. The Board has not had a chance to weigh in on staff's proposal.

Most regulations heard by the Board include a non-voting Board meeting after the staff proposal is available. In September 2023, CARB staff held an informational meeting that provided a high-level summary of potential proposals. The proposed text was not released until December 2023, more than three months after the meeting. At the September meeting the Board provided initial reactions based on the limited information provided by staff at that time, and there are now additional issues where the Board should insist on providing feedback – especially since there is an actual proposal for review.

Earthjustice acknowledges that not all CARB regulations require two Board meetings. However, the norm for several years has been two meetings for major regulations. A one-meeting approach should not be tested on the LCFS, which is uniquely complex and wide-

ranging, and poses profound environmental justice implications. Accordingly, it should be given adequate time for the Board to consider.

II. We request a reasonable opportunity to allow important conversations and a public workshop by staff to discuss recent changes.

The request to defer the vote to July would allow Board members to direct staff on the current proposal at a non-voting March meeting and allow staff to hold a public workshop on the significant changes made since past workshops and in accordance with additional Board direction at the non-voting meeting. This public engagement is crucial given the major implications of this program.

III. Staff made significant changes to the proposal from what was presented at public workshops and at the Board meeting, and only one of those changes was at the direction of the Board.

Staff have been conducting workshops on potential LCFS change concepts for three years. Yet, the proposal issued in December 2023 has many elements that differ significantly from what had been discussed publicly over this time period. Some of the significant changes include:

1. Inclusion of (inadequate) safeguards in response to Board direction on crop-based feedstocks that have not been publicly explained or vetted;
2. Backsliding on avoided methane policy from what was presented at multiple workshops and which runs *counter* to the Board's expressed concerns in September of 2023;
3. Changes to the automatic acceleration mechanism from staff's initial proposal;
4. Easing of violation provisions not previously discussed publicly;
5. Allowing retroactive crediting for pathways that favors non-ZEV fuels not previously discussed publicly; and
6. Changes to the use of base credit funds not previously discussed publicly.

These are not minor matters related to the program design. Rather, they represent core issues that require more Board and public debate.

IV. Without a second Board meeting, Staff will need to make at least one 15-day change, which creates an extremely tight timeline for Board review.

The current proposal will necessarily need some changes because some issues are not fully clarified. Clarifications and other changes will require staff to issue a 15-day change. If CARB staff are requesting Board approval on March 22, 2024, Earthjustice estimates the timeline as follows:

- **February 20:** Public comment period closes.
- **March 5:** Last business day for staff to post a 15-day change, assuming these materials do not need additional changes before a Board vote.
- **March 19:** Public comment period on changes closes.

- **March 21:** Board hearing and public comments. Staff must respond to any new environmental issues raised in oral or written comments before the Board vote. Staff would not be required to respond to non-environmental assessment comments prior to the Board vote.
- **March 22:** Board vote.

Under this rubric, there would not be adequate time between the March 19 close of comment on the 15-day changes and the March 22 vote for staff or the Board to review public comments or for the Board to provide direction to Staff.

Thus, the Board would be asked to vote on text released less than three months prior that differs from what was discussed publicly for many years and will guide investment decisions and climate and air quality results for decades. The Board must be given more time to consider such a consequential set of changes to this important program.

V. Providing 3-4 months of additional time for debate and input will not impede the rulemaking process.

The Office of Administrative Law (OAL) published the Notice of Proposed Action in the California Regulatory Notice Register on January 5, 2024. Per OAL, a “state agency must complete its rulemaking and submit the rulemaking file to OAL within one year of the date of publication of a Notice of Proposed Action (“Notice”) in the Notice Register.” A delay of 3-4 months should not affect staff’s ability to complete the rulemaking, while giving time to the public and the Board to carefully consider the proposed changes.

VI. An additional 3-4 months will keep CARB on track for a 2025 implementation date, consistent with the current proposal for updating the carbon intensity benchmarks.

The current proposal includes an update to the carbon intensity benchmarks starting in 2025. The request to delay a vote by 3-4 months would **not affect this timeline**. Earthjustice approximates a revised timeline as:

- **March 21:** Board direction to staff on critical issues.
- **May:** Staff hold a public workshop to discuss proposed changes.
- **June:** Staff issue a 15-day change.
- **July:** Board vote.

VII. More time is needed to address EJAC recommendations and concerns.

In 2022, Chair Randolph committed to establish a permanent Environmental Justice Advisory Committee (EJAC). CARB subsequently established a permanent EJAC in March 2023, with a mission of “advis[ing] the Board on environmental justice considerations,

prioritizing racial equity, related to implementation of AB 32, via input to CARB on the Scoping Plan Updates and any other pertinent matter related to the implementation of AB 32.”¹

Since then, the EJAC has convened for numerous meetings, with many of these meetings including LCFS as an agenda item, indicating high interest in the regulation.² In August 2023, the EJAC presented a draft resolution to CARB, which recommended eight changes to the LCFS. Only one of these eight recommendations is partially included in the staff’s proposal. The perceived lack of acknowledgment or consideration of their resolution could cast doubt on the sincerity of establishing the permanent EJAC. By providing more time for Board action, staff would have additional time to interact with the EJAC and consider their proposed changes.

VIII. The LCFS is complex, and most of the Board members are new and may benefit from more time to understand and weigh in on staff’s proposals.

The LCFS is one of the most complex climate regulations, if not the most complex regulation, that the State implements. The regulation spans multiple sectors and has gotten more complicated with time. Other states look to the California LCFS as the gold standard and generally align with its policies, so the impact of policy decisions is far-reaching.³ Since 2018, the last major update of the regulation, a majority of the Board is new.⁴ Specifically, the following Board Members did not participate in the last LCFS amendment process:

- Board Member Cliff Rechtschaffen (appointed September 2023);
- Board Member Susan Shaheen, Ph.D. (appointed January 2023);
- Supervisor V. Manuel Perez (appointed January 2023);
- Senator Henry Stern (appointed January 2023);⁵
- Supervisor Eric Guerra (appointed January 2023);
- Supervisor Nora Vargas (appointed February 2022);
- Board Chair Liane Randolph (appointed December 2020);
- Council Member Davina Hunt (appointed December 2020);
- Tania Pacheco-Werner, Ph.D. (appointed December 2020); and
- Board Member Gideon Kracov (appointed December 2020).

Given that this will be the first time that 10 of 16 Board members hear a major update to the LCFS, there is benefit from more time to understand the program and the menu of policy options available to them.

¹ AB 32 Environmental Justice Advisory Committee Charter as taken from CARB’s website: <https://ww2.arb.ca.gov/sites/default/files/barcu/board/books/2023/032323/23-3-4ejaccharter.pdf> on February 1, 2024.

² <https://ww2.arb.ca.gov/environmental-justice-advisory-committee-meetings-and-events>.

³ Oregon and Washington have LCFS programs and many other states are considering programs.

⁴ As taken from CARB’s website: <https://ww2.arb.ca.gov/about/leadership>, accessed February 1, 2024.

⁵ Ex-Officio member.

Earthjustice reiterates its request to include the LCFS at the March Board meeting as a non-voting item, allowing Board members to hear from both stakeholders and Staff in a common forum before providing policy direction. Earthjustice further requests that staff conduct a public workshop on proposed changes. Moreover, a voting Board meeting necessarily needs more time to allow adequate public process. Implementing these requests would not affect the start date of staff's proposal to adjust the benchmarks beginning in 2025.

We appreciate your consideration of this request. Please do not hesitate to reach out if you would like to discuss the content of this letter.

Sincerely,

Adrian Martinez
Deputy Managing Attorney

CC: Governor Newsom
Yana Garcia, Secretary for Environmental Protection
Dr. Steve Cliff