



August 21<sup>st</sup>, 2023

Via the public meetings for CARB board website at [www.arb.ca.gov](http://www.arb.ca.gov)

The Honorable Liane M. Randolph,  
Chair, California Air Resources Board  
1001 I Street  
Sacramento, California 95814

Re: Comments on Second Notice of Public Availability of Modified Text and Availability of Additional Documents for the Advanced Clean Fleets Regulation

Dear Chair Randolph,

On behalf of Hexagon Agility Inc. and its subsidiaries (“Hexagon Agility”), I am writing in regard to the Second Notice of Availability of Modified and Availability of Additional Documents for the Advanced Clean Fleets Regulation (“Second Notice of Availability”). Specifically, Hexagon Agility is concerned with the provision on page 22 of the Second Notice PDF that states:

**CARB is now adding its response to comment 270-4, from the Response to Comments on the Draft EA, into the rulemaking record.** This comment broadly alleged that CARB misrepresented the emissions benefits of the ACF regulation because it did not “conduct a full life-cycle greenhouse gas emissions assessment ... to assess greenhouse gas emission impacts of their proposal and alternatives.”<sup>1</sup> CARB’s response to this comment included, in pertinent part, a quantitative assessment of the greenhouse gas emissions of the Proposed Project compared to the legal baseline. Please note that while CARB allows comment on the included document per APA requirements the inclusion of response to comment 270-4 into the rulemaking record does not mean that CARB is opening a new CEQA comment period for this rulemaking action. (emphasis added).

CARB’s Second Notice of Availability, and the language cited above in particular, is an improper attempt to impermissibly backfill CARB’s record of proceeding for the Advanced Clean Fleet Regulation (ACF). CARB may not rely on the material listed in the Second Notice of Availability because it is extra-record material and may not be considered in a proceeding brought pursuant to Code of Civil Procedure section 1085. (See *Western State Petroleum Ass’n v. Superior Court* (1995) 9 Cal.4th 559, 565.)

Pursuant to CARB’s CEQA-implementing regulations, project approval under CEQA occurred on the date CARB approved the ACF for adoption. (See Gov. Code, § 60004.2, subd. (c)(3).) As is reflected in

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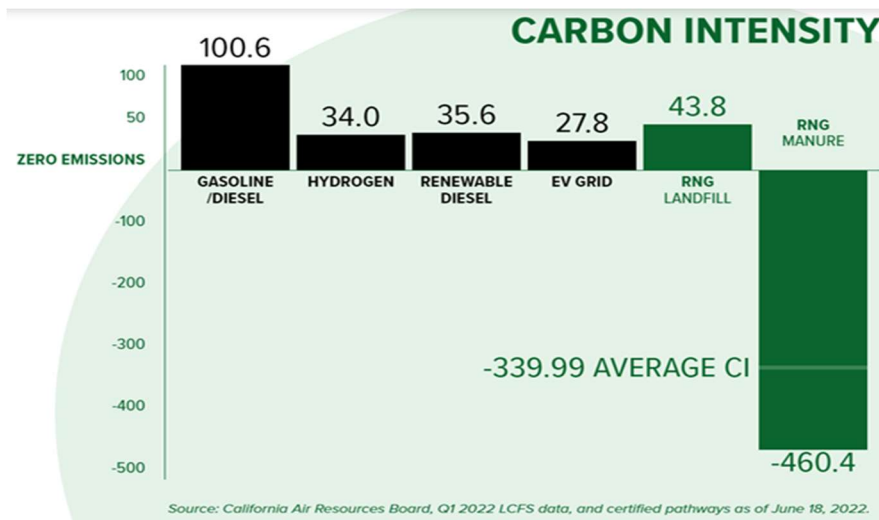
Clean air everywhere



Resolution 23-13,<sup>1</sup> CARB certified the Final Environmental Assessment (EA) and approved the ACF for adoption on April 28, 2023. The CEQA record of proceeding for the ACF closed more than three months ago. Technical reports cited in the Second Notice of Availability include web content accessed and prepared by CARB in June and August of 2023 and were clearly not relied on by CARB in responding to comments on the EA or in developing the ACF. (See, e.g., Second Notice of Availability, citing Canary Media (2023) and CARB’s Comments to the U.S. EPA dated June 16, 2023.)

CARB’s attempt to claim that it has “relied” on the materials (see Second Notice of Availability, citing Gov. Code, § 11347.1) is not credible at this late stage in the rulemaking proceeding and is a tacit acknowledgement that CARB itself believes that the ACF is arbitrary.

As such, we request that CARB remove these references from the Second Notice of Availability. We further request that CARB reconsider its conclusions relating to the emissions benefits of the ACF regulation. It is imperative that CARB revisit the life cycle (also known as well-to-wheel) approach to fairly and accurately assess the emission impacts of vehicles with internal combustion engines fueled with renewable natural gas (RNG) as compared to zero emission vehicles. It is well established that on a life cycle basis, RNG is the only carbon negative fuel and is the cleanest commercial fuel available today. Thus, it is incumbent on CARB to amend ACF to require the utilization of the next cleanest technology—vehicles running on RNG--in situations where zero emission vehicles are unavailable or unwarranted.



<sup>1</sup> Available at, <https://ww2.arb.ca.gov/sites/default/files/barcu/board/books/2023/042723/prores23-13.pdf>  
HEXAGON AGILITY INC



We thank you for your consideration of the foregoing comments. Hexagon Agility appreciates the time and energy CARB has spent developing and evaluating ACF and commends CARB's work towards achieving a goal that is central to Hexagon Agility's purpose: "clean air everywhere." Please feel free to contact me with any questions.

Thanks,

A handwritten signature in blue ink that reads "Ashley Remillard". The signature is written in a cursive, flowing style.

Ashley Remillard  
SVP Legal and Government Affairs

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