

**Supplemental Responses to  
Comments**

on the

**Draft Environmental Analysis**

for the

**Amendments to the  
Low Carbon Fuel Standard and  
Alternative Diesel Fuel  
Regulations**



to be considered at the  
**September 27, 2018 Board Hearing**

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## 1. INTRODUCTION

The California Air Resources Board (CARB or Board) prepared a Draft Environmental Analysis (Draft EA) for the Proposed Amendments to the Low Carbon Fuel Standard (LCFS) and Alternative Diesel Fuel (ADF) Regulations (Proposed Amendments). CARB included this Draft EA as Appendix D to the Initial Statement of Reasons (ISOR). Pursuant to court direction in the modified writ of mandate issued by the Fresno County Superior Court (Superior Court) in *POET, LLC v. California Air Resources Board* on October 18, 2017 related to CARB's prior CEQA analysis for the LCFS, CARB also prepared a Draft Supplemental Disclosure Discussion of Oxides of Nitrogen Potentially Caused by the Low Carbon Fuel Standard Regulation included as Appendix G to the ISOR. The ISOR and appendices (including Appendix D and Appendix G), were released for public review on March 9, 2018. The public comment period for all documents concluded on April 23, 2018.

CARB received additional comment letters during the Board Hearing for the Proposed Amendments. Pursuant to CARB's certified regulatory program, staff carefully reviewed all the comment letters received to determine which ones raised significant environmental issues related to the EA requiring a written response.

This document presents those comments and CARB staff's written responses for the Board to consider for approval prior to taking final action on the Proposed Amendments. Although this document includes written responses only to those comments related to the Draft EA and/or Appendix G, all of the public comments were considered by staff and provided to the Board members for their consideration. For reference purposes, this document includes a summary of each comment followed by the written response. Attachments and appendices to these comment letters can be found at the link provided above.

### A. Requirements for Responses to Comments

These written responses to public comments on the Draft EA are prepared in accordance with CARB's certified regulatory program to comply with the California Environmental Quality Act (CEQA). CARB's certified regulations states:

*California Code of Regulations, title 17 section 60007. Response to Environmental Assessment*

*(a) If comments are received during the evaluation process which raise significant environmental issues associated with the proposed action, the staff shall summarize and respond to the comments either orally or in a supplemental written report. Prior to taking final action on any proposal which significant environmental issues have been raised, the decision maker shall approve a written response to each such issue.*

Public Resources Code (PRC) Section 21091 also provides direction regarding the consideration and response to public comments under CEQA. While the provisions refer to environmental impact reports, proposed negative declarations, and mitigated negative declarations, rather than an EA, this section of CEQA contains useful guidance for preparation of a thorough and meaningful response to comments.

PRC Section 21091, subdivision (d) states:

*(1) The lead agency shall consider comments it receives ... if those comments are received within the public review period.*

*(2) (A) With respect to the consideration of comments received ..., the lead agency shall evaluate comments on environmental issues that are received from persons who have reviewed the draft and shall prepare a written response pursuant to subparagraph (B). The lead agency may also respond to comments that are received after the close of the public review period.*

*(B) The written response shall describe the disposition of each significant environmental issue that is raised by commenters. The responses shall be prepared consistent with section 15088 of Title 14 of the California Code of Regulations, as those regulations existed on June 1, 1993.*

California Code of Regulations, title 14, section 15088 (CEQA Guidelines) also include useful information and guidance for the preparation of a thorough and meaningful response to comments. It states, in relevant part, that specific comments and suggestions about the environmental analysis that are at variance from the lead agency's position must be addressed in detail with reasons why specific comments and suggestions were not accepted. Responses must reflect a good faith, reasoned analysis of the comments.

*California Code of Regulations, title 14, section 15088 (a – c) states:*

*(a) The lead agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response. The Lead Agency shall respond to comments received during the noticed comment period and any extensions and may respond to late comments.*

*(b) The lead agency shall provide a written proposed response to a public agency on comments made by that public agency at least 10 days prior to certifying an environmental impact report.*

*(c) The written response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular, the major environmental issues raised when the Lead Agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted. There*

*must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice.*

## **B. Comments Requiring Substantive Responses**

CARB is required to prepare substantive responses only to those comments that raise “significant environmental issues” associated with the proposed action as required by California Code of Regulations, title 17, section 60007(a). Staff determined that XX of the letters received at the Board Hearing mentioned or raised an issue related to the Draft EA or an environmental issue discussed in the Draft EA. Staff was conservatively inclusive in determining which letters warranted a written response, as many letters raised policy critiques that do not explicitly address the Draft EA. Thus, a response in this document does not concede that any particular comment is relevant to CEQA’s requirements, but is instead reflects CARB’s efforts to maximize transparency.

Comments on the Draft EA were considered by staff and provided to the Board members for their consideration.

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## 2. RESPONSES TO COMMENTS

The California Air Resources Board (CARB or Board) received two comment letters at the Board Hearing that relate to the Draft Environmental Analysis (Draft EA), the Draft Supplemental Disclosure Discussion of Oxides of Nitrogen Potentially Caused by the Low Carbon Fuel Standard Regulation (Appendix G of the Initial Statement of Reasons (ISOR)),<sup>1</sup> or an environmental issue, as listed in Table 2-1. Responses need only be provided to comments that raise significant environmental issues, as required by California Code of Regulations, title 17, Section 60007(a). That is, responses to comments that do not pertain to the content of the Draft EA are not provided in this document.

**Table 2-1  
 List of Commenters**

<b>Comment Number</b>	<b>Commenter</b>	<b>Affiliation</b>
SB1	John P. Kinsey, Wanger Jones Helsley PC	Growth Energy
SB2	Pat McDuff	California Fueling

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<sup>1</sup> Staff prepared Appendix G of the ISOR in response to writ of mandate (writ) issued by the Fresno County Superior Court on October 18, 2017. The writ requires CARB to evaluate whether the original and 2015 LCFS regulations are likely to have caused an increase in biodiesel-related NOx emissions in the past or is likely to cause an increase in the future.

## **Comment Letter SB1 Responses**

This comment letter was filed after the noticed comment period for this item.

The commenter attaches to their letter the administrative record for litigation related to the 2015 LCFS and ADF adoption, but does not raise any specific environmental issues related to that litigation record. Any environmental issues raised in those materials were responded to in the record of that prior adoption, and do not require any further response.

### **Comment SB1-1**

The commenter claims additional peer review should have been conducted due to departures from the historical framework and philosophy of the LCFS program.

#### **Response:**

This comment does not raise any significant environmental issues, and does not require a response under CEQA. Nonetheless, staff notes that the staff remark regarding certain modifications to the original amendments proposal quoted by the commenter has been taken out of context, and was not made in relation to the fundamental scientific bases of the Proposed Amendments. Response to comments FF56-23 and FF56-31, incorporated herein by reference, address the issues raised by this comment. No further response is required.

### **Comment SB1-2**

The commenter claims CARB “does not include evidence showing how the programs referenced would result in a ton-for-ton mitigation of past NOx emissions. Nor is there any evidence linking the amount of grant funds proposed with the amount of NOx emissions CARB intends to mitigate.”

#### **Response:**

This comment does not address the Proposed Amendments, but rather, relates to the voluntary remediation measure identified in the Supplemental Disclosure Discussion of Oxides of Nitrogen Potentially Caused by the Low Carbon Fuel Standard Regulation (Appendix G of the ISOR), and discussed in more detail in the Final NOx Disclosure Document. Responses to comments B4-2 and B4-3, incorporated herein by reference, clarify the status of that remediation measure. As noted in Appendix G and the Final NOx Disclosure Document, due to the short atmospheric lifetime of NOx emissions, it is not physically possible to mitigate any specific historical LCFS biomass-based diesel NOx emissions. Therefore, as noted in response to comment B4-2, the Voluntary NOx Remediation Measure (VNRM) is not identified as mitigation for the Proposed Amendments. Rather, the VNRM is an additional initiative designed to address potential LCFS-attributed biomass based diesel NOx emissions increases in a few

historical years. As such, CARB has committed to remediate all potential historic NOx emissions increases through future NOx reductions. (Final NOx Disclosure Document at G-11; Attachment A to Resolution 18-22.) See Comment B4-3 for an updated estimate of the historical NOx emissions attributable to LCFS, which was updated to reflect complete 2017 data on biodiesel and renewable diesel volumes.

### **Comment SB1-3**

The commenter states that “many of the responses to environmental comments are inconsistent with the requirements of CARB’s certified regulatory program and related caselaw under CEQA.”

#### **Response:**

CARB disagrees with this general comment. CARB responds generally that CARB staff has prepared 79 pages of substantive responses to comments received on the Proposed Amendments.<sup>2</sup> Commenter does not further identify any specific inconsistencies with CARB’s certified regulatory program or with “related caselaw” under CEQA, beyond the two comments summarized and addressed below. CARB’s certified regulatory program requires that, if comments are received during the evaluation process that raise significant environmental issues associated with the proposed action, CARB staff shall summarize and respond to the comments. (17 CCR § 1007(a).) CARB has done so here. CARB’s responses to comments are fully consistent with CARB’s certified regulatory program and applicable CEQA requirements and case law.

### **Comment SB1-4**

The commenter states that “the response to comment B4-69 states that CARB has declined to require more stringent mitigation requirements for NOx based on CARB’s ‘special expertise,’ as opposed to record evidence.”

#### **Response:**

This comment misrepresents CARB’s response to comment B4-69. As explained in that response (which concerned emissions estimates, not the stringency of mitigation requirements as claimed by commenter here), CARB determined its NOx and PM<sub>2.5</sub> emissions estimates are supported by ample evidence. That response only noted CARB’s “special expertise” in the context of projecting future emissions, not as a stand-alone reason for declining to require any NOx reductions as claimed by the commenter. Please see responses to comments B4-69, B4-70, and B4-73, which are incorporated herein by reference. Commenter provides no further evidence identifying any

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<sup>2</sup> See <https://www.arb.ca.gov/regact/2018/lcfs18/rtcea.pdf>.

deficiencies in CARB's NO<sub>x</sub> and PM<sub>2.5</sub> calculations, or in the measures proposed for reducing those emissions. No further response is required.

**Comment SB1-5**

The comment states that "CARB's responses to comments on the issuance of credits for infrastructure and capacity are not directly responsive to the commenters' concerns that the credits would be issued for activities that do not themselves reduce greenhouse gas emissions."

**Response:**

CARB disagrees with commenter's contention. CARB's response to comment FF9-1 explains that the capacity and infrastructure credit component of the Proposed Amendments is designed to further support ZEV permeation. In the Final EA, staff quantified the anticipated GHG reductions from the overall Proposed Amendments with addition of the capacity and infrastructure component. Even when conservatively ignoring ZEV permeation related benefits from the capacity and infrastructure credit component, the overall Proposed Regulation is projected to achieve an additional 63 million metric tons (MMT) of GHG reductions as compared to the business-as-usual scenario, and an additional 97 MMT emission reductions as compared to the 2016 existing conditions baseline. (Final EA at 105.) Therefore, the Proposed Amendments, even with the capacity and infrastructure component, would clearly continue to further reduce GHG emissions. The commenter provides no further evidence to the contrary. Please see Response to Comment FF9-1, which is hereby incorporated by reference.

**Comment Letter SB2 Responses**

This comment letter was filed after the noticed comment period for this item.

**Comment SB2-1**

The commenter reiterates and follows up on earlier comments suggesting that the proposed bifurcation of the ADF in-use NO<sub>x</sub> mitigation requirements will cause emissions increases.

**Response:**

CARB disagrees. Responses to Comment FF56-25, which is hereby incorporated by reference, addresses this comment.