

**BEFORE THE
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
AIR RESOURCES BOARD**

**DRAFT LCFS Sustainability Principles, Criteria, Indicators
Principles 4, 5, 6, 7**

**Comments of Biotechnology Industry Organization
August 5, 2011**

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**DRAFT LCFS Sustainability Principles, Criteria, Indicators
Principles 4, 5, 6, 7**

The Biotechnology Industry Organization (BIO) is pleased to comment on the DRAFT document by California Air Resources Board's (CARB) Low Carbon Fuel Standard (LCFS) Sustainability Working Group on LCFS Sustainability Principles, Criteria, Indicators for Principles 4, 5, 6, and 7 (Draft Sustainability Principles).¹ BIO is the world's largest biotechnology organization, with more than 1,100 member companies worldwide. BIO's Industrial and Environmental Section represents over 85 leading companies in the production of conventional and advanced biofuels and other sustainable solutions to energy and climate change. BIO also represents the leaders in developing new crop technologies for food, feed, fiber, and fuel.

As expressed in previous comments, BIO and its member companies commend the Board for its openness, inclusiveness and transparency throughout the LCFS rulemaking process. Further, BIO supports California's efforts to reduce the carbon intensity of transportation fuels and believes that biofuels can and must contribute significantly to this important objective.

CARB's approach to implementing the LCFS has important implications for the future of advanced biofuels, as well as all agricultural activity and climate change policy. As such, the

¹ http://www.arb.ca.gov/fuels/lcfs/workgroups/lcfssustain/07182011draft_principles.pdf

LCFS should be implemented in a manner that supports and encourages deployment of sustainable low carbon fuel alternatives, including advanced biofuels. BIO is concerned that, while well intentioned, the Draft Sustainability Principles would substantially hinder the goals of the LCFS. Further, as they are currently constructed, the obligations these provisions place upon feedstock and biofuels production would significantly suppress the development of innovative low carbon biofuels produced or sold in the State of California.

The Draft Sustainability Principles Appear to Go Beyond the Scope Of CARB Regulatory Authority and Unfairly Single Out Low Carbon Fuel Produced from Biomass

The requirements included under the Draft Sustainability Principles appear to go beyond the scope of CARB's authority under the LCFS. CARB and the LCFS seek to reduce and control harmful air emissions in the State of California. In the Draft Sustainability Principles, however, CARB would burden advanced and conventional biofuels and feedstock producers with requirements regulating not only sustainability of air quality, but also of conservation, biodiversity, water and soil quality. Moreover, these requirements are much more stringent than those under federal law. For instance, the requirements under the section on "Principle 5: Soil" would prohibit feedstock producers from utilizing otherwise legal pesticides and herbicides to enhance the yield and quality of crops to be used for biofuel production.

In addition, as indicated in past comments, BIO and its member companies urge CARB to use a technology-neutral approach as it implements the LCFS. The requirements in the Draft Sustainability Principles appear to be directed only to producers of one type of low carbon fuel and feedstocks used for that fuel. If sustainability requirements are applied to biofuel producers, and biofuel feedstock producers and processors, it follows that they should be applied to all regulated parties generating compliance credits under the LCFS program. And, such requirements should be made with equal rigor to measure and report supply chain sustainability

impacts of *all* forms of low carbon energy, including land, water and species impacts of all forms of electricity produced in California and imported from other states.

If imposing sustainability requirements is the direction CARB seeks to pursue, it needs to approach this radical shift in regulatory policy carefully, with proper authority, and with maximum flexibility in order to minimize economic harm and other unintended consequences. Otherwise, CARB risks arbitrarily picking winners and losers on the basis of potentially inconsistent environmental data as it implements the LCFS. Furthermore, it may be discouraging viable ways to achieve LCFS compliance and goals. To that end, the requirements would provide additional support to LCFS opponents trying to find reasons the law should be delayed or repealed.

The Draft Sustainability Principles Do Not Sufficiently Consider Economic Sustainability and Consequences

The Draft Sustainability Principles fail to consider or attempt to mitigate the economics and related consequences of placing the proposed environmental sustainability requirements on biofuel producers and biofuel feedstock producers and processors. As previously mentioned, BIO and its member companies want to help CARB and want the LCFS to succeed. However, the Draft Sustainability Principles contain reporting and recording-keeping requirements that go far beyond what is currently required in other states and under federal and international law. For instance, they would require environmental impact assessments that are costly both in terms of time and money. They would also mandate intense and specific environmental management plans requiring producers and processors to establish plans to conserve or enhance biological diversity; prevent or reverse soil degradation; minimize air pollution emissions; and, assess potential impacts on water quality and quantity only from biomass/biofuel operations, including

potential negative effects on the water supplies of “the local communities and ecosystems that rely on that water and [to] identify any mitigation measures.”

The costs of requiring these types of environmental management plans likely outweigh the benefits of producing or selling low carbon fuels in California. As the requirements are currently written, biofuel producers and biofuel feedstock producers and processors would be responsible to plan and mitigate certain potential environmental effects that may or may not happen, and which go well beyond current reporting requirements. For instance, under the section on “Principle 6: Water” biofuels producers and biofuel feedstock producers and processors must “provide evidence that the water plan identifies *any* negative impacts resulting from biomass/biofuel operations and that they are mitigated” (emphasis added). Among other things, the breadth of this requirement adds confusion and undue cost to obligated parties. For instance, how would “any” be defined? Where would the line be drawn on the types of potential negative effects that must be documented?

BIO member companies have significant concerns that, if the sustainability reporting requirements proposed here are implemented, it will not be economically feasible for them to continue to produce, buy or sell biomass in the State of California for biofuels production. They are also concerned that it will not be economically feasible to sell and import low carbon fuels into the State.

BIO Recommendations

For the reasons stated above, BIO recommends that CARB proceed with its sustainability work as follows:

1. CARB should direct its staff to continue soliciting input from all stakeholders on

appropriate ways to encourage environmental and economic sustainability, while also facilitating LCFS achievement by all obligated parties producing or processing LCFS compliant energy and energy components.

2. Sustainability gains beyond carbon reduction should be achieved through incentives or voluntary measures. CARB should make sustainability criteria and efforts that are not directly targeted at air emissions (i.e. ones applying to soil, conservation, biodiversity and water) eligible for extra credits under LCFS, thereby encouraging voluntary sustainability efforts by those entities that can afford them.

3. If CARB elects to make sustainability requirements mandatory, it should calculate compliance costs for low carbon alternative fuels producers and provide commensurate carbon intensity rewards or other mechanisms sufficiently high in value to cover the additional cost burden of complying with the new sustainability requirements. Furthermore, CARB should apply equally rigorous compliance requirements to all regulated parties producing alternative fuels under the LCFS program.

4. Also, if CARB intends to make sustainability requirements mandatory, it should provide broad guidance and requirements that may be met in various ways. Such flexibility would help mitigate the burden and expense of complying with highly detailed and specific requirements.

Conclusion

BIO and its member companies want the LCFS to succeed through the use of low carbon energy sources in California, including biofuels. For the reasons explained throughout these comments, the current Draft Sustainability Principles and the mandatory nature of its requirements risk substantially inhibiting the ability of biofuel producers and biofuel feedstock

producers and processors to conduct business in California. This unintended consequence will simultaneously inhibit the goals and compliance of the LCFS.

Thank you for considering these comments. BIO and its member companies look forward to working with CARB staff to find workable solution to the Board's sustainability goals under the LCFS.

Respectfully,

A handwritten signature in black ink, appearing to read "Brent Er.", with a stylized flourish extending to the right.

Brent Erickson

Executive Vice President, Industrial and Environmental Section
Biotechnology Industry Organization (BIO)