



**DRAFT DATA AND ASSUMPTIONS FOR  
NESCAUM LCFS ANALYSIS**

**COMMENTS OF THE  
CENTER FOR NORTH AMERICAN ENERGY SECURITY**

**August 27, 2010**

The Center for North American Energy Security (“the Center”) is an organization dedicated to environmentally sound development of oil sands, oil shale and similar so-called “non-conventional” resources in North America. The Center submits the following comments on the August 12, 2010 Draft Data and Assumptions for the NESCAUM low carbon fuel standard (LCFS).

1. Preemption of lifecycle fuel standards. A federal court has held that the CA LCFS is preempted by federal law, and does not fall within the federal waiver provision, because it is based on lifecycle carbon intensity analyses. In recently denying the state's motion to dismiss litigation challenging the LCFS, the court stated:

Plaintiffs have alleged that lifecycle analysis of the LCFS does not regulate a component of a fuel or a fuel additive. Rather, the LCFS regulates how fuels that have identical chemical compositions are made. Based on these allegations, this Court concludes Plaintiffs have successfully pled that California’s LCFS does not come within the Section 211(c)(4)(B) preemption exception . . .

Plaintiffs contend that the LCFS considers and regulates the direct and indirect effects of the process of making fuels, such as the land use, deforestation, conversion, and storage. Thus, Plaintiffs conclude the LCFS lifecycle approach that favors certain pathways that grow and process feedstocks with less energy use controls how a fuel is made was passed for the purpose of controlling emissions generally, not for the purpose of reducing emissions from a motor vehicle specifically. As in *Oxygenated Fuels*, this is a close call, but on a motion to dismiss under Rule 12(b)(6), this Court must find that the LCFS “does not come within the (c)(4)(B) exemption from preemption.”<sup>1</sup>

If the CA LCFS is preempted as a result of the lifecycle analysis, a similar NESCAUM standard would be preempted as well.

---

<sup>1</sup> *Rocky Mountain Farmers Union v. Goldstene*, E.D. Cal. No. CV-F-09-2234, Order on Defendant's Motion to Dismiss at 28 (June 16, 2010)(copy attached).

The Center recognizes that the CA decision is preliminary, but the court's legal conclusions with respect to preemption will carry great weight in the court's decision on the merits. The Center urges NESCAUM to suspend all work on lifecycle analyses associated with the LCFS until the CA federal court has issued a final decision.

2. Scope of analysis. As discussed in our prior comments, the NESCAUM analysis is devoted primarily to alternative or renewable fuel options. While NESCAUM apparently is preparing a base case for comparison with the LCFS alternatives, very little information is provided as to how the base case was developed and the assumptions that were used. There remains no indication of any effort to model the costs and benefits of a future market that relies on petroleum-based fuels with additional GHG controls, either with or without augmentation by other fuels, tailpipe controls, etc. Such an analysis is essential to understand how the costs and benefits of other options would compare to reliance on petroleum-based fuels.

Further, the Center suspects that Reference Case B of NESCAUM's analysis may not constitute a realistic future economic scenario. We recommend consideration of a 'Reference Case C' that consists of lower rate of economic growth, which may provide a more realistic basis for comparison with future LCFS Scenarios.

3. LCFS contributions to GHG emissions. The draft continues to assume that the NESCAUM region is "closed" and that the LCFS would reduce greenhouse gas (GHG) emissions through a "technology-forcing" role for renewable technologies. However, little evidence is offered to show that the LCFS is in fact likely to play a such a role. Further, even if regional emissions are reduced, crude oil or refined fuels displaced from the region by the LCFS will find markets in other regions. The LCFS will contribute to worldwide GHG emissions to the extent that they are transported to more distant markets. The analysis also still does not appear to consider that crude oil, unlike manufactured goods, cannot be branded or traced. If heavier hydrocarbons are diverted to other markets, which convert them to fuels and export them to the U.S., there is no way to identify the associated emissions.

### Conclusion

The Center continues to applaud the stated NESCAUM goal of "maximum clarity and transparency" in conducting this analysis. We also continue to believe that this goal has not yet been attained. We urge NESCAUM to continue to refine its analysis and to consider the comments we have provided above, as well as to halt all portions of the LCFS analysis based on lifecycle emissions estimates until the federal court considering the CA LCFS has issued its final decision.

Respectfully submitted,

Thomas J. Corcoran  
Executive Director

Kurt E. Blase  
General Counsel