



February 3, 2026

VIA ELECTRONIC FILING

California Air Resources Board (CARB)
Clerks' Office
1001 I Street
Sacramento, California 95814
Email: <https://ww2.arb.ca.gov/lispub/comm/belist.php>

Re: Public Comment on Proposed California Corporate Greenhouse Gas Reporting and Climate-Related Financial Risk Disclosure Initial Regulation

Dear Members of the California Air Resources Board:

Neste submits this comment letter regarding the above-referenced Proposed Regulation establishing fees and a first-year reporting deadline for Health and Safety Code section 38532, more commonly known as SB 253. Neste is the world's largest producer of renewable diesel and SAF. Our operations in the U.S. include feedstock development, sourcing, and trading as well as fuel production, imports, and sales. We are proud to produce renewable diesel in California via our Martinez Renewables Joint Venture (JV), however SB 253 reporting for the biorefinery is managed by our JV partner Marathon. Neste has consistently been a partner in supporting California's ambitious climate goals, and we look forward to working with CARB on this rulemaking.

I. INTRODUCTION

Neste supports California's leadership in addressing climate change and the transparency goals underlying SB 253. We are committed to meaningful climate disclosure and eager to comply with reasonable, clear reporting requirements. However, the Proposed California Corporate Greenhouse Gas Reporting and Climate-Related Financial Risk Disclosure Initial Regulation ("Proposed Regulation") and associated guidance documents establish compliance obligations that are fundamentally vague, contradictory, arbitrary, and unfair. These deficiencies will result in uneven treatment of similarly situated entities and undermine the very transparency goals the statute seeks to advance.

Specifically, the "good faith" compliance standard articulated in CARB's December 2024 Enforcement Notice ("Enforcement Notice") and the Proposed Regulation's Initial Statement of Reasons ("ISOR") creates a vague compliance framework. The Proposed Regulation compounds these problems by failing to clarify essential aspects of compliance, including fee obligations for non-reporting entities, the scope of "good faith" efforts, and corporate structure determinations.

Neste therefore urges CARB to consider pausing implementation of the first-year reporting deadline until comprehensive reporting guidance and regulations are developed or until ongoing litigation challenging the constitutionality of the statute is resolved, whichever is later. Such a pause would allow CARB to establish a fair, predictable, and legally sound compliance framework that achieves the statute's goals. Neste also encourages CARB to

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establish a workgroup composed of reporting entities to ensure a smooth implementation of SB 253 reporting.

II. THE "GOOD FAITH" COMPLIANCE STANDARD IS VAGUE AND FUNDAMENTALLY INADEQUATE

A. The "Good Faith" Standard Lacks Necessary Specificity and Will Result in Unequal Treatment

The Enforcement Notice states that "CARB will exercise enforcement discretion for the first report due in 2026, on the condition that entities demonstrate good faith efforts to comply with the requirements of the law." The ISOR similarly explains that "CARB has indicated that it will exercise enforcement discretion for the first report due in 2026, allowing reporting entities to submit Scope 1 and Scope 2 emissions for their prior fiscal year based on information they already have or were collecting when this Notice was issued. Entities that were not collecting data or were not planning to collect data, at the time the Enforcement Notice was issued, are not expected to submit Scope 1 and Scope 2 reporting data for this first reporting cycle."

This "good faith" standard is fundamentally inadequate as a compliance framework for several reasons:

First, "good faith" is inherently subjective and will mean different things to different entities. Some companies will interpret this standard to require comprehensive data collection efforts across all operations, incurring substantial costs for data systems, consultants, and internal resources. Other companies will take a minimalist approach, providing only readily available data with limited verification. Without clear metrics or benchmarks, similarly situated companies will make vastly different compliance investments, creating competitive disparities and undermining the goal of comparable disclosure.

Second, regulated entities have no assurance against arbitrary future enforcement. While CARB characterizes this as "enforcement discretion," entities face significant legal and financial risk if CARB later determines their good faith efforts were insufficient. The Enforcement Notice provides no criteria for evaluating good faith, no safe harbors, and no examples of what would constitute adequate compliance. Entities making good faith compliance decisions in 2026 could face penalties years later when CARB retroactively applies different standards. This uncertainty defeats the purpose of the enforcement discretion.

Third, and most critically, there is a direct contradiction between the Enforcement Notice and the ISOR regarding who must comply. The Enforcement Notice states that CARB "will exercise enforcement discretion for the first reporting cycle, on the condition that entities demonstrate good faith efforts to retain all data relevant to emissions reporting for the entity's prior fiscal year." This language suggests all reporting entities must make good faith efforts to collect and retain relevant data for their prior fiscal year—defined in Proposed Section 96076 as fiscal year 2024-25 or 2025-26 depending on when the fiscal year ends.

However, the ISOR introduces an entirely different standard, stating: "Entities that were not collecting data or were not planning to collect data, at the time the Enforcement Notice was issued, are not expected to submit Scope 1 and Scope 2 reporting data for this first reporting

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cycle." The ISOR repeats this formulation multiple times, making clear that entities not collecting data as of December 5, 2024—more than 20 months before the August 10, 2026 reporting deadline—have no compliance obligation whatsoever in the first reporting year, even though the Enforcement Notice had already put them on notice that they should begin undertaking good faith efforts at the time.

B. The Contradictory Guidance Creates an Arbitrary Tiered Compliance System

This guidance creates a three-tiered compliance system with fundamentally different obligations:

Tier 1: Entities that voluntarily collected Scope 1 and 2 data before December 5, 2024, must report that data by August 10, 2026.

Tier 2: Entities that had not been collecting data but had plans to collect data as of December 5, 2024, arguably must make "good faith efforts" to collect and report data, though the standard remains undefined. The ISOR lacks clarity in that it affirmatively states that it is allowing entities to report "based on information they already have or were collecting" when the Enforcement Notice was issued but then, in the next sentence, indicates that "planning to collect data" as of the Enforcement Notice date will result in a good faith compliance obligation. As a result of the inconsistency, some companies that were planning to collect data but had not yet collected data may reasonably sort themselves into Tier 2 or Tier 3.

Tier 3: Entities that were not collecting data and had no plans to collect data as of December 5, 2024, have no reporting obligation whatsoever in 2026.

This tiered system is arbitrary and directly penalizes entities that voluntarily undertook climate disclosure efforts prior to the statute's enactment. Companies that responsibly collected emissions data now face mandatory reporting obligations while less proactive competitors have no compliance obligations.

III. THE PROPOSED REGULATION FAILS TO ADDRESS FEE OBLIGATIONS FOR NON-REPORTING ENTITIES

The Proposed Regulation establishes a fee structure in Sections 96073 and 96074 that clearly applies to reporting entities—but it fails to clarify whether entities that do not report in the first year remain obligated to pay the implementation fee. This omission creates additional unfairness and inconsistency.

Section 96074(a) states that "Beginning in fiscal year 2026 and for each year thereafter, on or by September 10, the Executive Officer shall provide a written fee determination notice to each affected entity of the amount due." However, the regulation does not define "affected entity" in this context or specify whether entities exempt from first-year reporting under the good faith framework remain "affected entities" for fee purposes.

Basic principles of fairness dictate that **all entities meeting the statutory definition of "reporting entity" should pay the implementation fee regardless of whether they report in the first year.** As described in the ISOR, the fee is designed to recover CARB's costs for "implementing the programs established by sections 38532 or 38533 of the Health and Safety

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Code, including personnel salaries and benefits, legal defense costs, and contracting expenses." These costs do not diminish simply because some entities do not report.

If entities that voluntarily collected data before December 2024 must both report and pay fees, while entities that did not collect data escape both obligations, the unfairness described above would be dramatically exacerbated. Entities that took voluntary climate action would effectively subsidize program implementation for entities that avoided such efforts. This outcome would be unjust and contrary to the polluter-pays principle that underlies much of California's environmental law.

CARB should consider pausing implementation until it can establish a fair fee structure that does not penalize voluntary climate disclosure efforts. Alternatively, if CARB moves forward with reporting and fee collection, at a minimum CARB must clarify that all reporting entities as defined in Section 96072(a)(11) must pay the implementation fee, regardless of first-year reporting status.

IV. THE SCOPE OF "GOOD FAITH EFFORTS" BEYOND DATA COLLECTION REMAINS UNCLEAR

The Enforcement Notice and ISOR focus exclusively on "good faith efforts" related to data collection. However, the Proposed Regulation does not clarify whether the good faith framework extends to other critical compliance determinations, particularly the identification of proper reporting entities and organizational boundaries.

Despite additional definitional guidance in Proposed Section 96072 regarding "Parent," "Subsidiary," and "doing business in California," determining the appropriate reporting entity remains a highly complex exercise for many corporate structures. Section 96072(a)(16) defines "Subsidiary" using six different indices of control based on Title 17, California Code of Regulations, section 95833. Section 96072(a)(10) defines "Parent" by reference to the same framework. These definitions require detailed analysis of ownership structures, voting rights, and control relationships across potentially dozens of affiliated entities. It also requires a detailed analysis of the relationships between related US-based and non-US-based entities with interdependent supply chains.

For Neste and many similarly situated entities, determining which subsidiaries, affiliates, and controlled entities must be included in Scope 1 and 2 reporting requires substantial legal and accounting analysis. Different reasonable interpretations of the control definitions could yield significantly different reporting boundaries. If the good faith framework extends only to data collection and not to organizational boundary determinations, entities could face penalties for reasonable but incorrect boundary decisions—even if they collected complete data for their reasonably chosen boundaries.

If the Proposed Regulation goes forward, CARB must clarify that good faith enforcement discretion extends to all aspects of first-year reporting, including:

- Determinations of which entities meet the "reporting entity" definition;
- Analysis of parent-subsidiary relationships and organizational boundaries;

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- Interpretation of "doing business in California" requirements; and
- Decisions regarding inclusion or exclusion of specific operations or affiliates.

Without such clarity, the vague good faith standard creates liability exposure that will force entities to make overly conservative (and costly) boundary determinations or face potential enforcement risk for reasonable interpretations.

V. NESTE'S ANTICIPATED REPORTING APPROACH ILLUSTRATES THE NEED FOR ADDITIONAL GUIDANCE

Neste's corporate structure illustrates the practical challenges created by the Proposed Regulation's lack of clarity. **If the Proposed Regulation proceeds as currently drafted, Neste plans to report Scope 1 and 2 emissions data for its U.S.-based subsidiary only, even though the supply chain for that subsidiary is heavily intertwined with affiliated companies both within and outside the United States.**

Neste believes this approach represents a reasonable interpretation of its reporting obligations under the current regulatory framework. However, given the lack of detailed guidance, Neste cannot be certain this approach will satisfy CARB's eventual compliance expectations.

If Neste's intended approach is not appropriate, CARB should issue additional guidance well in advance of the August 10, 2026 deadline. Providing such guidance only months or weeks before the deadline, or after the deadline through post-hoc enforcement interpretations, would be fundamentally unfair and would undermine the transparency goals of the statute.

This example demonstrates why comprehensive reporting guidance must precede any enforceable compliance deadline. Without clear rules regarding organizational boundaries, transfer pricing, intercompany transactions, and allocation methodologies, entities cannot produce comparable, reliable disclosures regardless of their good faith efforts.

VI. THE APPROPRIATE PATH FORWARD:

Neste strongly supports climate disclosure and California's leadership in addressing climate change. We recognize the importance of transparent, reliable emissions reporting and are committed to meaningful compliance with reasonable regulatory requirements.

However, the problems identified above are not minor technical issues that can be resolved through clarifying FAQs or informal guidance. They represent fundamental deficiencies in the regulatory framework that make fair, consistent implementation impossible in 2026.

Neste therefore urges CARB to consider **pausing implementation of the first-year reporting deadline until:**

1. **Comprehensive reporting regulations are developed and adopted through a formal rulemaking process and with input from reporting entities,** including detailed specifications for:

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- Organizational boundary determinations and consolidation approaches;
 - Data collection, calculation, and estimation methodologies;
 - Reporting formats and assurance requirements;
 - Clear compliance examples and safe harbors;
 - Transparent enforcement criteria.
2. **Ongoing constitutional litigation challenging SB 253 is resolved**, providing regulatory certainty regarding the statute's enforceability.

Whichever of these occurs later should trigger implementation.

This pause would serve multiple important purposes:

First, it would allow CARB to develop the complete regulatory framework contemplated by Health and Safety Code section 38532(c). That provision requires CARB to "adopt regulations to implement this section" by July 1, 2025, and then allows regulated entities to begin compliance "starting in 2026." The Proposed Regulation represents only the beginning of this rulemaking process, establishing fees and a single deadline but leaving vast portions of the regulatory framework undefined. It would be unfair for CARB to have missed its own deadline of July 1, 2025 but then turn around and insist that the 2026 deadline for others is immovable. The clear statutory intent of the time between the July 1, 2025 deadline and the 2026 reporting deadline was to give regulated parties time to prepare based on known final regulations. Completing this rulemaking before requiring compliance would fulfill this statutory purpose and ensure entities can make informed, consistent compliance decisions.

Second, a pause would eliminate the arbitrary tiered compliance system described above. Rather than penalizing entities that voluntarily collected data while excusing entities that did not, CARB could establish uniform requirements that apply fairly to all reporting entities once clear rules exist. It would ensure that all entities report and pay fees simultaneously.

Third, delaying implementation pending litigation resolution would conserve both state and regulated entity resources. If courts ultimately determine that SB 253 is unconstitutional or must be significantly modified, compliance efforts made by some entities in 2026 may be wasted. Waiting for judicial clarity would ensure resources are invested in a legally sound program.

The ISOR acknowledges that "other program requirements, including, but not limited to, reporting and assurance requirements and enforcement provisions, will be developed and adopted through a subsequent rulemaking." If these fundamental requirements are not yet developed, it is premature to require compliance. CARB should complete its regulatory framework before establishing binding deadlines.

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Neste appreciates the opportunity to comment on the Proposed Regulation and would welcome the opportunity to discuss these concerns with CARB staff.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Oscar Garcia", with a stylized flourish at the end.

Oscar Garcia
Senior Regulatory Affairs Manager
Neste US, Inc.