

Final Determination California Air Resources Board Compliance Livestock Methane Reduction Offset Investigation

I. Introduction

The California Air Resources Board (CARB) has completed its investigation into whether the Central Sands Dairy Methane Reduction Project (CARB ID CALS5123-E; Project) in Nekoosa, Wisconsin was in compliance with the State of Wisconsin's Department of Natural Resources (WDNR) Pollutant Discharge Elimination System (WPDES) permit requirements when the Project conducted livestock methane destruction events for which CARB subsequently issued compliance offset credits. Under section 95985(c)(2) of the [Cap-and-Trade Regulation](#) (Regulation), CARB can investigate and invalidate issued compliance offset credits if the offset project activity and implementation of the offset project was not in accordance with all local, regional, state, or national environmental and health and safety regulations during the Reporting Period for which the compliance offset credits were issued.

Section 95985 of the Regulation establishes a process for CARB to investigate and invalidate issued compliance offset credits. Although CARB has concluded that all of the greenhouse gas (GHG) emission reductions represented by the offsets under investigation here are real, quantified, and verified reductions, CARB made an [initial determination](#) that these compliance offset credits may be subject to invalidation pursuant to section 95985.

In accordance with section 95985(f), on November 10, 2022, CARB notified all parties affected by this investigation, and all affected parties had 25 calendar days to provide additional information to CARB to aid in the review. Because all the offset credits subject to invalidation are in CARB's Issuance Account, CARB did not need to suspend or block affected credits from transfer pursuant to section 95985(d) of the Regulation. Since November 10, 2022, and pursuant to section 95985(f), CARB has conferred with WDNR, reviewed information submitted by notified stakeholders, and made staff available to stakeholders who wished to provide information or discuss the investigation. CARB received additional information from WDNR on February 2, 2023. After reviewing all information submitted, CARB has determined that there is sufficient information to make a final determination. The Regulation provides the Executive Officer 30 days from the date at which CARB has sufficient information to issue its final determination.

II. General Statement of Legal Principles and Statutory Framework

The California Regulatory Requirements for Compliance with Local, State, and National Regulatory Requirements

The regulatory requirements that govern the eligibility, implementation, and issuance of compliance offset credits for livestock methane destruction events are contained within the Regulation and the [Compliance Offset Protocol Livestock Projects](#) (adopted November 14, 2014; Protocol).

Section 95985(c)(2) of the Regulation states that CARB may determine that a compliance offset credit may be invalidated for several different reasons, including:

The offset project activity and implementation of the offset project was not in accordance with all local, regional, state, and national environmental and health and safety regulations that apply based on the offset project location and that directly apply to the offset project, including as specified in the applicable Compliance Offset Protocol, during the Reporting Period for which the ARB offset credit was issued.¹

Appendix E, paragraph (b) of the Regulation specifies the project activities considered for regulatory compliance of livestock projects:

All project activities associated with the installation and operation of the biogas control system that captures and destroys the methane must comply with all requirements that have a bearing on the integrity of the generated offsets. Project activities begin at waste collection and end at onsite biogas usage and the disposal of associated digester effluents.²

Subchapter 3.7 *Regulatory Compliance* of the Protocol states:

An offset project must meet the regulatory compliance requirements set forth in section 95973(b) of the Regulation.

In turn, Section 95973(b) of the Regulation states, in relevant part:

...an offset project must also fulfill all local, regional, state, and national environmental and health and safety laws and regulations that apply based on the offset project location and that directly apply to the offset project, including as specified in a Compliance Offset Protocol. The project is considered out of regulatory compliance if the project activities were subject to enforcement action by a regulatory oversight body during the Reporting Period, although whether such enforcement action has occurred is not the only consideration ARB may use in determining whether a project is out of regulatory compliance.

These provisions of the Regulation and Protocol require that both the project activities associated with the livestock methane destruction events as well as implementation of the project itself must be in “accordance with all local, regional, state, and national environmental and health and safety regulations.” These provisions require that the project comply with (1) all requirements that have a bearing on the integrity of the generated offsets, and (2) environmental and health and safety requirements

¹ Title 17, California Code of Regulations, section 95985(c)(2).

² Title 17, California Code of Regulations, Appendix E, paragraph (b).

associated with the collection, recovery, storage, transportation, and destruction of methane, including the disposal of the associated digester effluents.

III. Findings of Fact

- A. *A May 2019 Notice of Violation Was Reopened due to the issuance of a December 2021 Notice of Violation from the State of Wisconsin, Department of Natural Resources (WDNR) that alleges continued violations.*

On May 5, 2022, the Authorized Project Designee (APD) notified Cap-and-Trade Program staff that WDNR issued Central Sands Dairy (CSD) a Notice of Violation (NOV) and an Enforcement Conference letter, both of which were dated December 8, 2021. This 2021 NOV alleges violations of state water pollution control laws and conditions of the WPDES Permit #WI-0063533-03-1 (Permit). The 2021 NOV also reopens a previous NOV issued by WDNR to CSD on May 16, 2019, because a condition of the 2020 Closeout/No Further Action letter for the 2019 NOV that required repair of the on-site waste storage facility has not been corrected to date. The 2021 NOV states:

"The Department of Natural Resources (department) has reason to believe that Central Sands Dairy, LLC (CSD) is in violation of state water pollution control laws ch. 283, Wisconsin Statutes (Wis. Stats.), ch. NR 243, Wisconsin Administrative Code (Wis. Adm. Code), and conditions of Wisconsin Pollution Discharge Elimination System Permit #WI-0063533-03-1..."

"The department is also reopening the notice of violation issued to CSD on May 16, 2019 (the "2019 NOV"). In its Closeout/No Further Action letter for the 2019 NOV, the department identified that compliance with Section 3.9 of the Permit resolves the allegations in the 2019 NOV. As outlined in this Notice of Violation, the department alleges CSD is in violation of Section 3.9 of the Permit and, therefore, the condition for Closeout/No Further Action for the 2019 NOV has not been met."

In the 2021 NOV, WDNR alleged CSD to be in violation of the following state water pollution control laws and conditions of its Permit:

"Permit Section 3.9 Liquid Manure Storage Facility – Modification: Complete construction of the manure storage facility. The facility shall be functional and in operation by the specified Date Due (November 30, 2021). Post construction documentation shall be submitted within 60 days of completion of the project.

Permit Section - Production Area Discharge Limitations: The permittee shall comply with the livestock performance standards and prohibitions in ch. NR 151.

- All structures shall be designed and operated in accordance with ss. NR 243.15 and NR 243.17 to control manure and process wastewater for the

purpose of complying with the discharge limitations established above and groundwater standards.

- Production area discharges to waters of the state authorized under this permit shall comply with water quality standards, groundwater standards and may not impair wetland functional values.

Section NR 243.17(6), Wis. Adm. Code – Discharge Prevention: A permittee shall operate and maintain storage and containment facilities to prevent overflows and discharges to waters of the state.

Section NR 243.13(56), Wis. Adm. Code – All Large CAFOs: If a discharge of manure or process wastewater pollutants to waters of the state occurs, including a discharge allowed under subs. (2) to (4), the discharge shall comply with groundwater and surface water quality standards.

Permit Section – Nutrient Management: Except as provided for in s. NR 243.142(2), the permittee is responsible for ensuring that the manure and process wastewater generated by the operation is land applied or disposed of in a manner that complies with the terms of this permit, the approved nutrient management plan and s. NR 243.14.

The permittee shall land apply manure and process wastewater in compliance with the Department approved nutrient management plan, s. NR 243.14 and the terms and conditions of this permit. Land application practices shall not exceed crop nutrient budgets determined in accordance with NRCS Standard 590, this permit and s. NR 243.14 and shall be based on manure and process wastewater analyses, soil tests, as well as other nutrient sources applied to a field.”

Table 1 shows the reporting period subject to this investigation based on the period in which the alleged violations occurred. Table 1 also shows the dates when the reporting period started and ended, the number of ARB offset credits issued for the reporting period (Reporting Period E), the invalidation timeframe, and the start of the invalidation timeframe for Reporting Period E (which is the same date as the reporting period end date).³

³ The timeframe for invalidation refers to the period during which CARB may invalidate an offset credit. Pursuant to Section 95985 of the Regulation, the timeframe for invalidation is eight years from the end of a reporting period unless the project undergoes a second regulatory verification, in which case the timeframe for invalidation is shortened to three years.

Table 1. Offset Project Reporting Period Data

CARB Project ID # by Reporting Period	Reporting Period Start Date	Reporting Period End Date	ARB Credits Issued	Invalidation Timeframe	Start of Invalidation Timeframe
CALS5123-E	4/1/2020	3/31/2021	13,040	8 Years	3/31/2021

Based on the information provided by the APD and WDNR, CARB took action to prevent the transfer of all compliance offset credits issued under Reporting Period E. All offset credits subject to invalidation are in CARB’s Issuance Account, and CARB did not need to block these credits from transfer pursuant to section 95985 of the Cap-and-Trade Regulation.

B. Responses from WDNR and the APD, Camco Offsets I, LLC

CARB staff reached out to the APD and WDNR on December 30, 2022, to request (1) a copy of the current Permit, (2) confirmation of the period in which WDNR considers the dairy to be out of conformance, and (3) whether the CSD project was brought back into compliance. On December 30, 2022, the APD provided CARB with a copy of the current Permit. On January 10, 2023, WDNR submitted to CARB the following statements:

“The notices of violation issued to CSD on 5-16-2019 and 12-8-2021 alleged an ongoing, unlawful discharge of pollutants to groundwater. The allegations are supported in part by groundwater monitoring data from well CSD-5. From January 2018 to October 2022, monitoring well CSD-5 tested above the s. NR140 Groundwater Quality enforcement standard for ammonia during 75% of quarterly monitoring.”

“CSD has not taken actions that could resolve the allegations raised in the NOVs referred to above to the satisfaction of the department. As a result, Wisconsin DNR referred the case to the Department of Justice for potential civil prosecution June 15, 2022. The prosecution of that case remains in progress.”

IV. Final Determination

A. The Project did not meet the requirements of the Regulation and the Compliance Offset Protocol.

Under section 95985(c)(2) of the Regulation, CARB can investigate and invalidate issued compliance offset credits if the offset project activity and implementation of the offset project are not in accordance with all local, regional, state, and national environmental and health and safety regulations during the Reporting Period for which the compliance offset credit was issued.

Based on the information provided by the APD and WDNR, CSD failed to modify its waste storage facility by the Permit deadline of November 30, 2021. Further, groundwater samples taken from monitoring well CSD-5, during January 2018 through

October 2022 showed concentrations of ammonia that exceed WDNR’s enforcement standard. The date range when groundwater samples exceeded standards spans all of Reporting Period E, so the time period for invalidation corresponds to all of Reporting Period E.

B. Invalid Compliance Offset Credits

Based on the assessment documented in this report, as well as the reviewed offset issuance documents, the Executive Officer has made the final determination that:

- The Project was not operating “in accordance with all local, state or national environmental and health and safety regulations” during the time of methane destruction events relevant to this investigation during January 2018 through October 2022.
- Of the 13,040 compliance offset credits issued for Reporting Period E that were part of this investigation, 13,040 compliance offset credits correspond to methane destruction that occurred during the time in which the Central Sands Dairy was not in conformance with project requirements and with its WPDES permit.
- Upon issuance of this final determination, CARB will identify as invalidated the number of ARB offset credits associated with the project listed in Table 2 below on the relevant project issuance table.⁴ Per section 95985(h) of the Regulation, any entity that has retired these invalidated offset credits for compliance is required to replace the invalid compliance offset credits within 6 months of the CARB Executive Officer’s final determination to invalidate. In this case, none of the affected offset credits have been used to meet a compliance obligation, and there are no entities that need to be notified for holding invalidated offsets.

Table 2. Offset Credits to be Invalidated

CARB Project ID # by Reporting Period	ARB Offset Credits Issued	ARB Offset Credits to be Invalidated
CALS5123-E	13,040	13,040

- Based on this final determination, the Executive Officer considers this investigation to be complete and final.

⁴ See [ARB Offset Credit Issuance Table](#).