

Sent via email

January 26, 2022

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Re: Requests to Deny or Delay Consideration of Low Carbon Fuel Standard (LCFS)
Pathway Certifications

Dear Mr. Lobdell, Ms. Seaton, Mr. Frantz, Ms. Ball-Blakely, and Mr. Newell,

Thank you for the comment letters¹ you submitted in December 2021 and January 2022 requesting that the California Air Resources Board (CARB) deny certification of fuel pathway applications under the Low Carbon Fuel Standard (LCFS) regulation.²

Your comment letters reference and attach your “Petition for Rulemaking to Exclude All Fuels Derived from Biomethane from Dairy and Swine Manure from the Low Carbon Fuel Standard Program” (Petition), which you all first submitted to CARB on October 27, 2021. We appreciate that petitioners agreed to toll the deadline for CARB’s response to the

¹ Specifically, this letter is responsive to the similar comment letters petitioners submitted on LCFS Tier 2 pathway application numbers [B0220](#), [B0207](#), [B0218](#), and [B0280](#), as well as petitioners’ [January 7, 2022 LCFS workshop feedback letter](#). All LCFS Tier 2 pathway public postings, including pathway application information, public comments, and responses from LCFS pathway certification applicants are available [here](#).

² The Low Carbon Fuel Standard regulation appears at sections 95480 to 95503 of title 17, California Code of Regulations (CCR). For concision, most citations to sections of the LCFS regulation in this letter refer specifically to the section numbers within this range, omitting broader reference to title 17, CCR, where these sections are published.

Petition to January 28, 2022, while we took opportunities to discuss the petition with petitioners to better understand the concerns as well as the availability of supporting documentation. I write to respond briefly to petitioners' pathway comment letters with contextual clarification that I hope might be helpful. This response letter addresses only the petitioners' letters regarding CARB certification of LCFS Tier 2 pathways, and not petitioners' petition for rulemaking, which we have responded to according to the applicable process.

The Petition requests CARB begin a rulemaking process to amend the LCFS regulation. Consistent with the California Administrative Procedure Act, the Petition is not a proper legal mechanism to stop implementing the current version of the LCFS regulation. The current LCFS regulations were adopted through the robust public rulemaking process required by law, and the law requires a similar process for any amendments to ensure all members of the public have an opportunity to engage with CARB prior to any adoption. Accordingly, under current law,³ CARB must continue routine implementation of the aspects of the LCFS regulation that petitioners asked CARB to amend.

Nevertheless, following the initial October 2021 submission of the Petition, you have requested several times, both verbally in meetings with CARB staff and management and in writing in these public comments on fuel pathway certifications, that CARB agree to cease animal manure biomethane fuel pathway certifications until the Petition's requested amendments are finalized. These pathway certifications are routine implementation of aspects of the current LCFS regulation that the petitioners also request that CARB consider initiating a rulemaking process to amend. While we appreciate petitioners' engagement on both the Petition itself and on ongoing LCFS implementation, petitioners' supplemental request is essentially a request for CARB to grant their Petition in effect while it is still under consideration, which would bypass the legally required open public regulatory amendment process that the Petition requests be initiated.

Thank you again for your comments and ongoing interest in this aspect of the LCFS. We look forward to continuing to work with petitioners to improve the LCFS in the future.

Sincerely,



Gabriel Monroe, Senior Attorney
Legal Office, California Air Resources Board

cc: (via email only)

³ [Government Code § 11340.5\(a\)](#) outlines this elemental principal of administrative law: "No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter."

Mr. Lobdell, Ms. Seaton, Mr. Frantz, Ms. Ball-Blakely, and Mr. Newell
January 26, 2022
Page 3

Liane M. Randolph, CARB Chair
Richard W. Corey, CARB Executive Officer
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