

June 24, 2025

Submitted via ca.gov

Liane M. Randolph, Chair
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Tier 2 Pathway Application No. B0752 (California Bioenergy LLC; ABEC Bidart-Stockdale LLC)

Dear Chair Randolph,

Leadership Counsel for Justice & Accountability, Central Valley Defenders of Clean Water & Air, Animal Legal Defense Fund, and Food & Water Watch (collectively, “Commenters”) write in opposition to California Bioenergy LLC’s Tier 2 pathway application. As Commenters have explained through numerous comments, the Petition for Rulemaking to Exclude All Fuels Derived from Biomethane from Dairy and Swine Manure from the Low Carbon Fuel Standard Program (included and incorporated here as Exhibit A), and the Petition for Reconsideration (included and incorporated here as Exhibit B), the California Air Resources Board’s (“CARB”) treatment of factory farm gas under the Low Carbon Fuel Standard (“LCFS”) is flawed, and staff’s assessment of this application is no different. CARB cannot certify this application—especially now that it has directed the Executive Officer in Resolution 24-14 to “prepare a plan for initiating, developing, proposing, and implementing a livestock methane regulation[.]”¹

Commenters oppose this application for several reasons. First, the application incorporates an unlawfully truncated system boundary that ignores feedstock production at the ABEC Bidart-Stockdale Dairy and other emissions such as those from storage and disposal of digestate, resulting in artificially low Carbon Intensity (CI) values and inflated credit generation. A fuel pathway life cycle analysis must take into account “feedstock production” and “waste generation, treatment and disposal.”² In addition to the evidence provided in Exhibits A and B, more recent research indicates that emissions from factory farm gas production are significantly higher than currently appreciated, with especially high emissions from digestate storage.³ This recent study did not consider additional emissions from digestate handling and application, which is another potentially large source of emissions resulting from factory farm gas production that must be included in the pathway life cycle analysis.⁴ Yet, CARB and the pathway applicants ignore these and other

¹ CARB, PUBLIC HEARING TO CONSIDER PROPOSED LOW CARBON FUEL STANDARD AMENDMENTS, RESOLUTION 24-14 at 7 (Nov. 8, 2024), <https://perma.cc/V4UV-YFW6>.

² Cal. Code Regs. Tit. 17 §§ 95481(a)(66), 95488.7(a)(2)(B).

³ Semra Bakkaloglu et al., *Methane Emissions Along Biomethane and Biogas Supply Chains Are Underestimated*, 5 ONE EARTH 724–736 (June 17, 2022), <https://www.sciencedirect.com/science/article/pii/S2590332222002676>.

⁴ *Id.* at 728; Michael A. Holly et al., *Greenhouse Gas and Ammonia Emissions from Digested and Separated Dairy Manure During Storage and After Land Application*, 239 AGRIC. ECOSYSTEMS & ENV’T 410, 418 (Feb. 15, 2017), <https://doi.org/10.1016/j.agee.2017.02.007>; Roger Nkoa, *Agricultural benefits and environmental risks of soil fertilization with anaerobic digestates: a review*, 34 AGRONOMY FOR SUST. DEV. 473 (2014), <https://link.springer.com/article/10.1007/s13593-013-0196-z>; F. Montes et al., *SPECIAL TOPICS — Mitigation of methane and nitrous oxide emissions from animal operations: II. A review of manure management mitigation options*,

emissions. In other words, this application dramatically undercounts the greenhouse gas emissions associated with this fuel by failing to apply the required “well-to-wheel” analysis.

Concurrently, this application overcounts environmental benefits by ignoring that this is, in one factory farm owner’s words, “*lucrative*” feedstock production.⁵ Liquified manure rotting anaerobically in massive waste “lagoons” is not an unavoidable and natural consequence of animal agriculture operations. This system and the methane emissions that it causes are the result of the factory farms’ intentional management decisions designed to maximize profits and externalize pollution costs. CARB cannot ignore that the emissions the pathway applicants claim as captured from these factory farms’ lagoons are intentionally created in the first place. The manure handling practices at these facilities are integrated parts of generating and using factory farm gas. Thus, the gas generated at these facilities is an intentionally produced product and cannot now be claimed as “captured” to secure a lucrative negative CI value.

Second, CARB has failed to ensure that the additionality requirements of Health and Safety Code section 38562 are met.⁶ If CARB had done so, it would have concluded that the methane capture at issue is patently not additional. The digester has been operational since 2011 and currently sells electricity generated by the digester through a purchase power agreement.⁷ These purported methane emission reductions would have occurred without the LCFS and are not additional. Certification of these pathways with this proposed CI value would openly violate § 38562 by crediting nonadditional reductions.

Third, this application is a good example of how CARB’s flawed approach is rewarding the biggest factory farm polluters and incentivizing further expansion and herd consolidation, which does more climate harm than good.

Fourth, CARB has failed to consider the significant air quality impacts that the combustion of gas for electricity will create on an ongoing basis. As CARB is fully aware yet opts to fully ignore, combusting biogas in internal combustion engines emits NO_x and other air contaminants in an amount that makes the electricity far more polluting than electricity from a modern combined cycle gas-fired power plant.⁸ Granting this pathway certification further shows the inadequacy of CARB’s CEQA review of the 2024 LCFS amendments, when CARB claimed that all LCFS pathways would use fuel cells rather than internal combustion engines and that the LCFS would have a near zero NO_x impact.⁹ Kern County specifically and the San Joaquin Valley generally face extreme air pollution, including among the highest levels of both particulate matter and ozone in

91 J. OF ANIMAL SCI. 5070 (2013), <https://academic.oup.com/jas/article/91/11/5070/4731316>; Kurt Möller & Walter Stinner, *Effects of different manuring systems with and without biogas digestion on soil mineral nitrogen content and on gaseous nitrogen losses (ammonia, nitrous oxides)*, EUROPEAN J. OF AGRONOMY (2009), <https://www.sciencedirect.com/science/article/abs/pii/S1161030108000695?via%3Dihub>.

⁵ Stacey Smart, *Deer Run Dairy wins national sustainability award*, DAIRY STAR (June 27, 2022), <https://dairystar.com/Content/Home/Home/Article/Deer-Run-Dairy-wins-national-sustainability-award/80/254/18626> (emphasis added) (“Installed in 2011, the digester supplied power to nearly 600 homes. In 2020, the farm converted over to renewable natural gas that is injected into the pipeline, which Duane said is a more lucrative option.”).

⁶ See Ex. A, Petition for Rulemaking, section III.A.2; Ex. B, Petition for Reconsideration, section III.A.3.

⁷ Staff summary, Application No. B0752, pp 1-2

⁸ See Ex. A, Petition for Rulemaking at 30; Ex. B, Petition for Reconsideration at 29.

⁹ Draft EIA, at 27; SRIA, Appendix C-1 at B-3.

the nation,¹⁰ that this gas-to-electricity project will continue to exacerbate. Finally, Commenters have been unable to locate any Authority to Construct permitting documents on the Air District website for the internal combustion engine. We therefore request that CARB ensures that this project has all required air district permits, not just the Permit to Operate.

Fifth, this application is so opaque that it is impossible for Commenters or other stakeholders to meaningfully evaluate it.¹¹ The lifecycle analysis redacts information critical to understanding the CI calculation.

Sixth, the inflated CI values CARB proposes here work an additional environmental injustice on California citizens who will be exposed to higher levels of pollution from fossil transportation fuel and dirty vehicles made possible by excessive credit generation at factory farms. CARB has acknowledged that pollution from transportation fuels inflicts a racially disparate impact, so this continued certification of fuel pathways with extreme negative CI values to allow more pollution from deficit holders contributes to this injustice.¹²

Finally, the certification of these pathways would result in a discriminatory impact, in conflict with CARB's obligations under California Government Code 11135 and Title VI of the Civil Rights Act, which impose an affirmative duty on CARB to ensure that its policies and practices do not have a discriminatory impact on the basis of race. ABEC Bidart-Stockdale is in Kern County, which has a significantly higher Latino/a/e/ population than California (approximately 57% compared to approximately 40%) according to US Census Data.¹³ Additionally, Kern County has a higher poverty rate than California as a whole, and a lower median household income compared to the state median household income.¹⁴

The community that these facilities occupy already faces substantial and disproportionate pollution burden, including extreme and disproportionate impacts from ozone, PM 2.5, and drinking water contamination,¹⁵ all of which are caused and exacerbated by dairy operations. Additionally, the communities near these factory farms also suffer from critical groundwater overdraft¹⁶

¹⁰ 2025 State of the Air <https://www.lung.org/getmedia/5d8035e5-4e86-4205-b408-865550860783/State-of-the-Air-2025.pdf>

¹¹ Publicly posted application materials “must provide sufficient information to allow for meaningful stakeholder review.” CAL. AIR RES. BD., LOW CARBON FUEL STANDARD (LCFS) GUIDANCE 20-051 (Apr. 2020), <https://perma.cc/856Y-CVVZ>.

¹² See 2020 Mobile Source Strategy at 26–27, <https://perma.cc/4P3H-HG3Z>.

¹³ *QuickFacts California; Kern County, California*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/kerncountycalifornia,CA/PST045224> (last visited June 22, 2025).

¹⁴ *Id.*

¹⁵ *CalEnviroScreen 4.0*, OEHHHA, <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40> (last visited June 22, 2025) (For example, the census tract where the facility is located and the adjacent census tract are in the 80th percentile or higher for drinking water contamination, ozone, and particulate matter).

¹⁶ CAL. DEP'T OF WATER RES., *Critically Overdrafted Basins*, <https://water.ca.gov/programs/groundwater-management/bulletin-118/critically-overdrafted-basins> (June 13, 2025) (listing the Delta-Mendota Subbasin as critically overdrafted).

By granting the application, CARB would further incentivize expansion and herd consolidation—as well as the production of cow manure—in an area that cannot support continued unreasonable groundwater use and abuse by the dairy industry.¹⁷ As explained in the Petition for Reconsideration, wells are already going dry and other adverse effects of overdraft, including further impaired water quality, are already affecting residents and communities in this region.¹⁸ This is on top of the dairy industry’s dangerous nitrate loading and other water pollution, which have greatly harmed community health.¹⁹ Granting this application would undermine SGMA and encourage the dairy industry to continue its unreasonable use of water.

The certification of this pathway would do nothing to address this disproportionate impact. Rather, it would incentivize the most polluting herd and manure management practices and incentivize the expansion of herd populations. Further, it would violate section 38562 by failing to ensure that such certification would not disproportionately impact low-income communities (§ 38562(b)(2)) and by failing to ensure that it would not interfere with efforts to achieve and maintain federal and state ambient air quality standards (§ 38562(b)(4)).

As this application highlights, CARB’s unlawful and unjust administration of the LCFS program is causing environmental and public health harms in California by incentivizing and rewarding some of the worst factory farm practices by making them more “*lucrative*.” If California is serious about being a climate leader, this is not the example to set.

Commenters request that CARB deny the application. To do otherwise will violate California law, further destroy the integrity of the LCFS market, undermine the state’s climate change mitigation efforts, and harm California communities.

Respectfully,

Phoebe Seaton
Co-Executive Director and Attorney
Leadership Counsel for Justice and Accountability

¹⁷ CAL. CONST., art. X, § 2; *see* Cal. Water Code § 100.

¹⁸ Ex. B, Petition for Reconsideration, section III.A.4.a–b.

¹⁹ *Id.*