

# 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-D; 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, 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 at issue 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(d), on June 5, 2020, CARB blocked transfers of the potentially invalid compliance offset credits until its investigation could be completed and a final determination on whether to invalidate any of the compliance offset credits is made by CARB's Executive Officer.

In addition to blocking the transfer of compliance offset credits under investigation, CARB also notified all parties identified as holders of potentially invalid compliance offset credits, and all affected parties had 25 calendar days to provide additional information to CARB to aid in the review.

Since June 5, 2020, and pursuant to section 95985(d), CARB has conferred with WDNR, reviewed information submitted by notified stakeholders, and made staff available to stakeholders and their counsel who wished to provide information or discuss the investigation. CARB received additional information from WDNR on August 3, 2020. 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.<sup>1</sup>

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.<sup>2</sup>

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

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<sup>1</sup> Title 17, California Code of Regulations section 95985(c)(2).

<sup>2</sup> Title 17, California Code of Regulations Appendix E, paragraph (b).

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

### **III. Findings of Fact**

#### *A. Notice of Violation Issued by the State of Wisconsin, Department of Natural Resources (WDNR)*

On February 7, 2020, CARB staff became aware of a Notice of Violation (NOV) and Enforcement Conference letter dated May 16, 2019, that was issued by WDNR to the Central Sands Dairy. The NOV alleged violations of state groundwater standards based on groundwater monitoring data provided to WDNR by Central Sands Dairy. Four samples from monitoring well CSD-5 were collected, beginning on January 18, 2018, and then roughly quarterly throughout 2018, and analyzed for parameters that included ammonia nitrogen. The ammonia nitrogen levels exceeded the enforcement standard in each of the four 2018 samples. The NOV further alleged that upon review of the dairy’s March 8, 2019 Ground Water Monitoring Report:

“The report shows concentrations of ammonia in groundwater downgradient of the waste storage pond and beyond the production site property boundary exceeding the enforcement standard (ES) and preventive action limit (PAL). Additionally, concentrations have recently increased significantly in monitoring well CSD-5. The Ch. NR 140, Wis. Adm. Code ES for Ammonia is 9.7 mg/L and the PAL is 0.97 mg/L. Throughout 2018, ammonia concentrations in ground water collected from CSD-5 have exceeded the ES and the most recent sampling event shows ammonia concentrations from CSD-5 at 56.4 mg/L.”

Based on this information, WDNR alleged Central Sands Dairy to be in violation of the following conditions of its WPDES permit# WI-0063533-02-1:

#### *Permit Section 1.1 Production Area Discharge Limitations:*

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 discharge limitations established above and groundwater standards.

*Permit Section 1.3.1 Proper Operation and Maintenance:*

The permittee shall at all times properly operate and maintain all manure and process wastewater facilities and systems in compliance with the conditions of this permit. The permittee shall comply with the permit and s. NR 243.17.

Table 1 shows the reporting period subject to this investigation, based on the period in which the non-compliant groundwater samples were taken. The table also shows the dates upon which the reporting period started and ended, the number of ARB offset credits issued for the Reporting Period (Reporting Period D), the date ARB offset credits were issued, the invalidation timeframe, and the start of the invalidation timeframe for the Reporting Period (which is the same date as the reporting period end date).<sup>3</sup>

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-D	4/1/2017	3/31/2018	15,002	8 Years	3/31/2018

Based on the information provided by WDNR, CARB took action to block the transfer of all compliance offset credits issued under Reporting Period D. Some of the affected credits issued under this reporting period were previously retired.

*B. Responses from WDNR, the Authorized Project Designee, Camco Offsets I, LLC, and CARB*

On June 30, 2020, the Authorized Project Designee (APD), Camco Offsets I, LLC, submitted a written response to CARB on behalf of the Project, disputing allegations made by WDNR. The APD states that based on WDNR’s own requirements, in order for WDNR to confirm the alleged violations, one of the following circumstances would need to occur:

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<sup>3</sup> The timeframe for invalidation refers to the time 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.

“1) A court holds that the department finding of noncompliance is proven by a preponderance of the evidence; (2) the department and the dairy enter into a consent order which specifically includes stipulated admissions of noncompliance by the dairy; or (3) the dairy voluntarily admits to violations.”

The APD contended that since none of the three circumstances occurred, Central Sands Dairy was never not in conformance or not in compliance with its permit requirements.

In support of its claim, the APD submitted to CARB a “Closeout/No Further Action” letter dated July 1, 2020, in which WDNR states that on June 27, 2019 an enforcement conference was held to discuss a resolution to the allegations, and the following actions occurred resolving the NOV:

- On June 1, 2020, the department reissued WPDES Permit # WI-0063533-02-1. Provision 3.9 of the Permit requires that by October 31, 2020, Central Sands Dairy submit plans and specifications to address the adverse manure storage conditions of waste storage facility 001.
- Compliance with the terms of Section 3.9 of the Permit and groundwater monitoring required under Section 2 of the Permit resolves the allegations in the NOV.
- The department reserves the right to reconsider this decision if additional future violations are discovered.

CARB staff reached out to WDNR on July 30, 2020, to request a copy of the reissued permit, and to confirm whether the Central Sands Dairy project was brought back into compliance. CARB staff also confirmed that on June 27, 2019, an enforcement conference was held to discuss a resolution to the allegations. On August 3, 2020, WDNR submitted to CARB a copy of the reissued permit along with the following statement:

“...these allegations have not been confirmed by judicial review or by an admission by the regulated entity and, therefore, remain allegations. The July 1, 2020 closeout letter reads, ‘Compliance with the terms of Section 3.9 of the Permit and groundwater monitoring required under Section 2 of the Permit resolves the allegations in the NOV.’ WDNR closed the NOV because the permit has become the vehicle for resolving the allegations of noncompliance to the satisfaction of the department. This is consistent with our stepped enforcement policy which seeks to resolve disputes over allegations of noncompliance at the lowest level.”

While the documentation provided to CARB by both the APD and WDNR show that the NOV has been closed and resolved to the satisfaction of WDNR, it does not support the APD's claim that the project was in conformance during the period that violations were alleged. As provided in section 95973(b) of the Regulation, a "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." A NOV is part of the enforcement process. Furthermore, as noted in the provision cited above, enforcement action is not the only consideration CARB may use in determining a project's regulatory compliance status. Here, the evidence shows that the state regulator found documented concentration exceedances. Not all enforcement cases are proven in court or involve specific admissions of violations. To reflect this, and to ensure the protectiveness of CARB's offsets program, CARB's Regulation allows CARB to determine regulatory noncompliance has taken place based upon other considerations as well. Based on its review of the documentation and evidence during this invalidation investigation, CARB concludes that the dairy was out of regulatory compliance in 2018, based upon the four groundwater samples from monitoring wells CSD-5 where the ammonia levels were found to have exceeded the enforcement standards (as documented in the NOV).

#### **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 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 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 date when the first groundwater sample was taken, the time period for invalidation corresponds to only a portion of Reporting Period D. Groundwater samples taken from monitoring well CSD-5, beginning on January 18, 2018 and throughout 2018, showed concentrations of ammonia that exceed WDNR's enforcement standard. As explained above, WDNR confirmed for CARB that the WPDES permit was reissued to Central Sands Dairy in June 2020 because the compliance terms outlined in Section 3.9 of the Permit have been met, and therefore the permit resolves the allegations in the NOV to the satisfaction of the state department. While the reissuance of the permit seems to confirm that the noncompliance was ultimately resolved at a later date, none of the information provided by WDNR indicates that the dairy was in regulatory compliance during the last few months of the project's reporting period at issue here (specifically January to March 2018). The available evidence shows that the dairy was

not in compliance with its permit requirements due to groundwater samples exceeding the State of Wisconsin's enforcement standards.

*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 from January 18, 2018 to March 31, 2018.
- Of the 15,002 compliance offset credits for Reporting Period D that were part of this investigation, 4,896 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 below on the relevant project issuance table.<sup>4</sup> CARB will notify all holders of the invalidated offsets. 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.

**Table 2. Offset Credits to be Invalidated**

<b>Project ID # By Reporting Period</b>	<b>ARB Offset Credits Issued</b>	<b>ARB Offset Credits to be Invalidated</b>
CALS5123-D	15,002	4,896

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

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<sup>4</sup> See [ARB Offset Credit Issuance Table](#).