

**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 Dairyland Farm LLC Methane Reduction Project (CARB ID CALS5021-F; Project) in New Franken, 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 April 1, 2021, 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 April 1, 2021, and pursuant to section 95985(f), CARB has reviewed information submitted by notified stakeholders, and made staff available to stakeholders and their counsel who wished to provide information or discuss the investigation. 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.

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.

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 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 9, 2021, CARB market monitoring staff began review of a Notice of Violation (NOV) and Enforcement Conference letter dated December 16, 2019, that was issued by WDNR to Dairyland Farm LLC (Project). The NOV alleges violations of the Wisconsin Pollutant Discharge Elimination System (WPDES) permit that limits discharge of manure and wastewater pollutants from the production area to navigable waters.

According to the NOV, on October 22, 2018, WDNR was notified that a manure discharge had occurred on October 21, 2018, and upon further observation, WDNR confirmed they believe Dairyland Farm LLC discharged manure pollutants to navigable waters from the production area:

...the department was notified via the DNR Spills Hotline that a manure discharge occurred from the Main Dairy. Department staff conducted an inspection at the Main Dairy that same day and observed a manure discharge to a navigable waterway due to a manure transfer equipment malfunction. Water samples collected during that inspection supported the observations that manure had been discharged to a navigable waterway. Based on observations the department believes Dairyland discharged manure pollutants to navigable waters from the production area.

Based on this information, WDNR alleged Dairyland Farm LLC to be in violation of the following conditions of its WPDES permit# WI-0059552-04-0:

#### *Permit Section 1.1, Production Area Discharge Limitations;*

The permittee shall comply with the livestock performance standards and prohibitions in ch. NR 151. In accordance with s. NR 243.13, the permittee may not discharge manure or process wastewater pollutants to navigable waters from the production area, unless all of the following apply (exemptions do not apply).

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.

The permittee may not discharge pollutants to navigable waters under any circumstance or storm event from areas of the production area.

Table 1 shows the reporting period for the Project, the dates upon which the reporting period started and ended, the number of ARB offset credits issued for the Reporting Period (Reporting Period F), 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>1</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
CALS5021-F	4/1/2018	3/31/2019	30,811	8 Years	3/31/2019

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

**B. Response from the Owner/Operator, Energy Systems Group (ESG)**

CARB received a written response on behalf of the Project from the owner/operator, ESG, dated April 12, 2021, confirming their position that the Project was possibly out of compliance from October 21, 2018 to October 26, 2018 and requested that CARB only consider this timeframe for invalidation:

ESG's position is that Dairyland was potentially out of WDNR compliance from the date of the spill October 21, 2018 through October 26, 2018. This is a total of six (6) days during the 4/1/2018 through 3/31/2019 reporting period. As such, only these six (6) days should be considered for invalidation. The remaining days during the reporting period were in compliance.

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<sup>1</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.

In support of ESG's claim regarding the timeframe for invalidation, ESG submitted to CARB a copy of the NOV issued by WDNR, confirming that the noncompliance was reported to WDNR on October 22, 2018, but had taken place on October 21, 2018:

On October 22, 2018, at 8:08 a.m., Dairyland notified the department of a manure spill via the DNR Spills Hotline. On October 26, 2018, Dairyland submitted a written report of noncompliance to the department that stated that the manure spill was discovered by Dairyland on October 21, 2018, at 2:45 p.m.

On March 16, 2020, WDNR issued a "No Further Enforcement Action" letter to Dairyland Farm LLC confirming that WDNR will not take further enforcement action related to the December 16, 2019 NOV, and on January 20, 2021, WDNR issued a letter to ESG explaining the details of the NOV, confirming the dates that the violation took place, and when WDNR observed that the "unlawful" discharge had ceased:

After receiving notification of a manure spill on October 22, 2018, department staff conducted an inspection that same day. The department determined that the manure spill occurred on October 21, 2018. The department also identified in its site inspection October 26, 2018 that no unlawful discharge was occurring.

On January 25, 2021, WDNR also confirmed for CARB that WDNR observed Dairyland Farm LLC to be in compliance on October 26, 2018. While ESG has concluded a total of six (6) days of noncompliance, based on CARB's review of the documentation, communication with WDNR, and evidence during this invalidation investigation, CARB concludes that the Project returned to compliance status on October 26, 2018. As such, the project was out of regulatory compliance in 2018 for a total of five (5) days.

#### **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 date when the manure spill took place and when WDNR observed the Project to be in compliance, the time period for invalidation corresponds to only a portion of Reporting Period F.

### 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 October 21, 2018 to October 25, 2018. Communication with WDNR and the Project owner/operator confirms that the Project was considered to be in compliance on October 26, 2018.
- Of the 30,811 compliance offset credits for Reporting Period F that were part of this investigation, 466 correspond to methane destruction that occurred during the time in which the Project 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>2</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>
CALS5021-F	30,811	466

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

<sup>2</sup> See [ARB Offset Credit Issuance Table](#).