

Sent via email:

April 25, 2022

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Re: Petition for Reconsideration of the Denial of the Petition for Rulemaking to Exclude All Fuels Derived from Biomethane from Dairy and Swine Manure from the Low Carbon Fuel Standard Program

Dear Phoebe Seaton, Michael Claiborne, Jamie Katz, Brent Newell, Tom Frantz, Tarah Heinzen, Tyler Lobdell, Christina Stella, and Christine Ball-Blakely,

This is in response to your petition for reconsideration,¹ submitted by the Association of Irrigated Residents (AIR), Leadership Counsel for Justice & Accountability, Law Offices of Brent J. Newell, Food & Water Watch, and Animal Legal Defense Fund, on March 25, 2022, relating to petitioners' October 27, 2021 petition for rulemaking to the California Air Resources Board (CARB).² CARB initially acknowledged receipt of the petition for reconsideration on April 8, 2022.³

In your petition for rulemaking and your petition for reconsideration, you requested that CARB amend the Low Carbon Fuel Standard (LCFS) regulations found at title 17, California Code of Regulations (CCR), sections 95480 through 95503, which are authorized by the

¹ Submitted pursuant to Government Code, § 11340.6 and § 11340.7(c).

² The petition is available from CARB upon request.

³ See letter from Mr. Matthew Botill, Chief, Industrial Strategies Division, CARB, to petitioners, attached as Exhibit A.

Global Warming Solutions Act of 2006 (AB 32).⁴ Specifically, the petitions request that CARB exclude all fuels derived from biomethane from dairy and swine manure from the LCFS, or, in the alternative, to reform the LCFS treatment of those fuels to account for additional greenhouse gas (GHG) emissions. The sections of the regulation that the petitions request that CARB amend are title 17, CCR, sections 95488.3 and 95488.9(f).

CARB partially denied and partially granted the October 27, 2021 petition for rulemaking on January 26, 2022.⁵ CARB partially denied the petition by declining to amend the LCFS Regulation in the manners suggested but granted the petition in part by affirming CARB's commitment to continue to engage with petitioners on the programmatic, environmental justice, and environmental integrity concerns raised in the petition through ongoing public processes.

Since January, CARB has followed up on this element of the response to the petition by continuing the ongoing AB 32 Climate Change 2022 Scoping Plan update development process,⁶ and by hosting a comprehensive public workshop on "Methane, Dairies and Livestock, and Renewable Natural Gas in California" on March 29, 2022.⁷ Representatives of the petitioners participated in the full-day workshop panels along with academics; community representatives; dairy and livestock industry representatives; investors; State, regional, and local environmental regulators, and others. The workshop provided a public forum to seek comment on topics pertinent to the concerns raised by petitioners' petitions. Those topics included State mandates for reductions in methane emissions, trends in the dairy and livestock industry, State programs that reduce dairy methane, environmental regulations affecting dairy operations (including concerns raised about potential impacts associated with environmental policies and programs), and stakeholder perspectives on dairies. CARB also opened a public comment docket following the workshop to solicit additional input from the public on workshop topics.

⁴ See, e.g., Health & Saf. Code, §§ 38560 and 38560.5. Petitioners argue that the LCFS violates Health and Safety Code section 38562, but the LCFS was not developed based upon that section's authority, and is not bound by its requirements. No version of the LCFS regulations has ever referenced Health and Safety Code section 38562 as authorizing authority. Health and Safety Code section 38562 applies to the Cap-and-Trade regulations published at title 17, CCR, sections 95801 through 96022, but does not apply to the LCFS. See, e.g., CARB response to GROWTHENERGY1 comment B4-33 in the [Responses to Comments on the Draft EA for the 2018 LCFS amendments](#). In particular, the LCFS has never contained a general additionality requirement. The LCFS is designed to incentivize increased production of low carbon intensity fuels by rewarding the supply of volumes of such fuels.

⁵ CARB Response to Petition for Rulemaking to Exclude All Fuels Derived from Biomethane from Dairy and Swine Manure from the Low Carbon Fuel Standard Program (Jan. 26, 2022), [available here](#).

⁶ 2022 AB 32 Climate Change Scoping Plan update workshop materials [available here](#). As noted in CARB's January 26, 2022 response to the October 27, 2021 petition, AB 32 directs CARB to develop, and update at least once every five years, the overarching climate change strategy known by the statutory term as a "scoping plan." See Health & Saf. Code, § 38561.

⁷ March 29, 2022 Methane, Dairies and Livestock, and Renewable Natural Gas in California public workshop [agenda available here](#), and [presentations available here](#).

As the petition for reconsideration notes, this March 29, 2022, workshop followed from a suggestion from Board Chair, Liane Randolph, consistent with interests expressed by other Board members during the January 27, 2022, CARB Board hearing, that CARB staff convene public opportunities to explore and share findings and discussion on the issues raised in the petitioners' initial petition in the near term. Following that March 29, 2022, workshop, CARB staff are working to summarize and synthesize the discussion and outcomes for a report to the Board and the public.

In addition, CARB staff recently finalized an "*Analysis of Progress toward Achieving the 2030 Dairy and Livestock Sector Methane Emissions Target*" and overcoming technical and market barriers to methane emissions reductions projects,⁸ as required by SB 1383 (Lara, Stats. of 2016, ch. 395).⁹ Completion of this analysis is one of several elements required by SB 1383 as preconditions for the requirement that CARB adopt and implement regulations to reduce methane emissions from livestock manure management operations and dairy manure management operations to meet the 2030 methane reduction target after January 1, 2024.¹⁰ The analysis shows that, primarily as a result of the State's investment, as well as reductions in animal populations,¹¹ the dairy and livestock sector is expected to achieve 4.6 MMTCO₂e annual methane emissions reductions by 2030—or only about half of the emissions reductions needed to achieve the 2030 target. The analysis further shows that anaerobic digesters account for the primary share of statewide methane reductions achieved and expected from the dairy and livestock sector. Accordingly, without digesters, California would not be able to meet its 2030 dairy and livestock sector methane emissions reduction goal. The evidence suggests that the LCFS Regulation has been helpful in incentivizing the

⁸ CARB, Final Analysis of Progress toward Achieving the 2030 Dairy and Livestock Sector Methane Emissions Target (Mar. 2022) [available here](#) (Final Analysis).

⁹ Health & Saf. Code, § 39730.7(c) ("the state board, in consultation with the department, shall analyze the progress the dairy and livestock sector has made in achieving the goals identified in the strategy and specified in paragraph (1) of subdivision (b). The analysis shall determine if sufficient progress has been made to overcome technical and market barriers, as identified in the strategy."). The goals specified in Health and Safety Code, section 39730.7(b)(1) are to "reduce methane emissions from livestock manure management operations and dairy manure management operations [...] up to 40 percent below the dairy sector's and livestock sector's 2013 levels by 2030."

¹⁰ Health & Saf. Code, § 39730.7(b). Specifically, among other preconditions for adopting the methane emissions reduction regulations required, CARB must, in consultation with the California Department of Food and Agriculture, determine that the regulations are technologically and economically feasible, cost-effective, include provisions to minimize and mitigate potential leakage, and include an evaluation of the achievements made by incentive-based programs. Health & Saf. Code, § 39730.7(b)(4).

¹¹ As discussed on pages 10-11 in the CARB Final Analysis, *supra* note 7, CARB staff calculated an average annual decline of 0.5 percent in animal populations from the dairy and livestock sector in California between 2008 and 2017. Many market factors, including sustained low commodity prices, high production costs, reduced state, national, and international demand, and expansion of alternative product markets, suggest this trend in population decrease will continue. Many of these same trends, along with improved production efficiency from economies of scale, have also contributed to the ongoing consolidation trend throughout the dairy industry in California and the United States that has been occurring for decades. Petitioners have not demonstrated that the LCFS rather than industry trends or other factors are responsible for the harms petitioners highlight.

development of well-designed and operated digester projects in order to support achieving these emissions reductions.

CARB is currently developing the 2022 Scoping Plan update to identify a pathway to achieve carbon neutrality by no later than 2045, and as part of this work, identifying options for reducing California methane emissions in support of achieving carbon neutrality. The need for methane reduction approaches, like anaerobic digesters, and the utilization of dairy biomethane to better achieve various state policy goals is currently part of a public discussion and ongoing information gathering. As the March 2022 analysis describes, “[w]hile dairy biomethane is currently directed to the transportation fuel market through the LCFS Program, other market-based programs could play a role in directing the biomethane to alternative end uses, including towards industries that are difficult to electrify and otherwise decarbonize.”¹² This and other important policy questions relevant to the petition will be considered by CARB during the 2022 Scoping Plan update process. Because a broad statewide planning effort in this area is currently in progress in the context of the ongoing development of the 2022 Scoping Plan update, initiating amendments to the LCFS Regulation without first allowing the 2022 Scoping Plan update to proceed would be premature. As previously noted, we anticipate initiating a public process to discuss opportunities to amend the LCFS upon completion of the Scoping Plan update.

Moreover, for the reasons explained to petitioners in the January 26, 2022, CARB letter to petitioners,¹³ your renewed request that CARB stop implementing the elements of the LCFS that you propose that CARB amend is denied. The current LCFS Regulation was lawfully adopted through the required robust public rulemaking process, and it is functioning to bring the environmental and economic benefits to California that it was designed at adoption to incentivize. Petitioners’ request for “interim relief” is a request for CARB to effectively bypass the legally-required open public regulatory amendment process. Granting such a request would go against the basic principles of the Administrative Procedure Act and the underlying open public process policy interests.

Determination and Conclusion

California needs methane reductions from the dairy and livestock sector now, and the LCFS provisions that petitioners propose to amend support achievement of those reductions. Although the information contained in the petition for reconsideration underscores the need for continued action and coordination to address the complex issues associated with dairy and livestock operations in the Central Valley, petitioners have not presented information that changes the response as reflected in our January 26, 2022 letter to the petitioners and that would warrant shortcutting the public process for the Scoping Plan and any subsequent

¹² *Id.* at 41.

¹³ This CARB Letter to Petitioners Re: Requests to Deny or Delay Consideration of Low Carbon Fuel Standard (LCFS) Pathway Certifications (Jan. 26, 2022) was included as Attachment 5 to the petition for reconsideration, and is also [available here](#).

LCFS rulemaking. All of the reasons for the initial denial of the petition for rulemaking still apply.¹⁴

Therefore, after careful consideration of the petition for reconsideration, the relevant law, and the current context of ongoing development of the next 2022 Scoping Plan update and anticipated subsequent regulatory activity, the petitioners' petition for reconsideration, pursuant to Government Code section 11340.7¹⁵ is **denied**. The record upon which this decision is based includes the petition and its exhibits, this letter, and the materials referenced herein.

While CARB is denying the petition for reconsideration, CARB appreciates and welcome petitioners' continued engagement and information sharing within these ongoing public processes to improve our programs and the achievement of our shared important policy goals.

In accordance with Government Code section 11340.7(d), a copy of this letter is being transmitted to the Office of Administrative Law for publication in the California Regulatory Notice Register. The agency contact person in this matter is Gabriel Monroe, Senior Attorney, available at (916) 324-2132 or Gabriel.Monroe@arb.ca.gov. Interested parties may obtain a copy of the petition upon request to Chris Hopkins, available at (279) 208-7347 or Chris.Hopkins@arb.ca.gov. Upon request physical copies may be obtained from 1001 I Street, Sacramento, California, 95814.

Sincerely,



Richard W. Corey
Executive Officer
California Air Resources Board

cc: (via email only)

Liane M. Randolph, CARB Chair
Honorable Board Members
Rajinder Sahota, CARB Deputy Executive Officer
Chanell Fletcher, CARB Deputy Executive Officer
Ellen M. Peter, CARB Chief Counsel

¹⁴ Gov. Code § 11340.7 provides that an agency addressing a petition shall "identify the agency, the party submitting the petition, the provisions of the California Code of Regulations requested to be affected, reference to authority to take the action requested, the reasons supporting the agency determination, an agency contact person, and the right of interested persons to obtain a copy of the petition from the agency." This response fulfills those requirements.

¹⁵ The Board may delegate any duty it deems appropriate to its Executive Officer (Health & Saf. Code, § 39515(a)). The Board is conclusively presumed to have delegated any of its powers to the Executive Officer unless it has expressly reserved that power to itself (Health & Saf. Code, § 39516). The Board has not reserved the power to act on rulemaking petitions and it is, therefore, appropriate for me to act on this petition pursuant to my delegated authority.