

# FIRSTELEMENT FUEL

FirstElement Fuel Inc. | 5281 California Ave, Suite 260, Irvine, CA 92617 | 949-205-5553

December 21, 2022

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

Re: Responses to Comments on Tier 2 Pathway Application No. B0391

Dear Chair Randolph,

FirstElement Fuel (FEF) is pleased to provide the following responses to the Association of Irrigated Residents, Leadership Counsel for Justice & Accountability, Central Valley Defenders of Clean Water & Air, Animal Legal Defense Fund, Center for Food Safety, and Food & Water Watch (collectively, “Commenters”). Most of the objections are related to CARB’s methodology and strategy and should be addressed at the Board level regarding policy, not at the implementation of the LCFS pathways. Furthermore, the same objections raised have already been rebutted in our previous responses. Regardless, FEF addresses each of the five Commenters’ claims below.

1. “First, the application applies an unlawfully truncated system boundary that ignores feedstock production at the source factory farm—Jerseyland Dairy in Sturgeon Bay, Wisconsin, which confines 6,000 cows—and other emissions such as those from storage and disposal of digestate, resulting in artificially low Carbon Intensity (CI) values and inflated credit generation”

“this application overcounts environmental benefits by ignoring that this is, in in one factory farm owner’s words, “lucrative” feedstock production.”

These statements are inaccurate. The analyses have been conducted according to the LCFS requirements and verified by CARB staff. FEF has fully utilized the CA-GREET3.0 life cycle analysis tool for our pathway application. We understand that this tool will continue to evolve over time due to changing technology and continually improving emissions inventory accounting. Perhaps the Commenters take issue with the CA-GREET3.0 tool, but it is the most-accurate and comprehensive well-to-wheel tool available today.

The Commenters again oppose the application because the facility has opted to make its digester gas available for book and claim accounting. The financial attractiveness of a pathway should not disqualify an application, but rather it should be considered a positive example of the LCFS program working to incentivize low carbon fuel production and

utilization. Finally, the Commenters cite a paper<sup>1</sup> and suggest that flaring is a better use for GHG emissions, but this ignores the local air quality impacts.

2. “CARB has failed to ensure that the additionality requirements of Health and Safety Code § 38562 are met.”

Again, this statement is inaccurate. The analyses have been conducted according to the LCFS requirements and verified by CARB staff. The life cycle emissions are calculated using the GHG assessment boundary defined in Chapter 4 of the Compliance Livestock Offset Protocol, which delineates the Sinks, Sources, and Reservoirs that must be included or excluded when quantifying the net change in emissions associated with the installation and operation of a dairy digester. The life cycle analysis includes an assessment of the baseline manure management practices at the dairies and because methane emissions from dairy operations are not regulated, reductions from these facilities exceed regulatory requirements and are therefore additional.

3. “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.”

This is an editorial comment on the policy, not the application pathway and is therefore not addressed.

4. “this application is so opaque that it is impossible for Commenters or other stakeholders to meaningfully evaluate it.”

The information referenced by the Commenters is business confidential, was identified in accordance with section 95488.8., sub-section (c) Designation of Confidential Business Information under the Low Carbon Fuel Standard Regulation, and was reviewed by CARB staff.

5. “CARB’s unlawful and unjust administration of the LCFS program is causing environmental and public health harms not just in California, but to communities and ecosystems across the United States—in this case Wisconsin—by incentivizing and rewarding some of the worst factory farm practices by making them more “lucrative.”

Again, the analyses were conducted according to the LCFS requirements and verified by CARB staff. The Commenters offer no analyses that communities will be further harmed through this pathway, specifically quantifying the higher levels of pollution from fossil transportation fuel and dirty vehicles. If such data exist, these should be evaluated and used to change the CA-GREET 3.0 model inputs.

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<sup>1</sup> See Emily Grubert, At Scale, renewable natural gas systems could be climate intensive: the influence of methane feedstock and leakage rates, 15 ENVTL. RES. LETTERS (Aug. 2020)

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FEF appreciates the opportunity to respond to the public comments received for the Tier 2 Pathway Application No. B0391. However, the Commenters do not present any factual basis to oppose the application. FEF respectfully requests the CARB proceed with the certification as recommended by staff.

Sincerely,



Matt Miyasato, Ph.D.  
Vice President  
Strategic Growth & Government Affairs  
FirstElement Fuel, Inc.