U.S. Venture

Finding a better way

September 20, 2022

Liane M. Randolph, Chair
California Air Resource Board
Low Carbon Fuel Standard
1001 I Street
Sacramento, CA 95814

Re: Tier 2 Pathway Application Nos. B0282; Response to The Association of Irritated 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

Dear Chairperson Randolph:

U.S. Venture, Inc. ("Pathway Applicant") is responding within the scope of the Low Carbon Fuel Standard ("LCFS") program §95488.7(d)(5)(A) to the commenters, Association of Irritated 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"), in a letter submitted September19, 2022 regarding the Tier 2 Pathway Application (B0282) (the "Application").

Pursuant to §95488.7(d)(5)(A), "only comments related to potential factual or methodological errors will require responses from the fuel pathway applicant". The public comments received on the Application are not related to factual or methodological errors and incorrectly claim adverse environmental damage results from the dairy manure project. To the contrary, the dairy manure project results in long-term air quality improvements and greenhouse gas emission reduction.

Notwithstanding the foregoing, Pathway Applicant will address the Commenters' letter, identified by sections in **bold**, and respond to all comments raised by the Commenters. We believe that no revisions to our pending Application are needed following sufficient review and approval of our response by California Air Resource Board ("CARB").

> **First, the application incorporates an unlawfully truncated system boundary that ignores feedstock production at the source factory farm, Jerseyland 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." 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. 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.3 Yet, CARB and the pathway applicant ignore these and other emissions. In other words, this application dramatically undercounts the greenhouse gas emissions associated with this fuel by failing to apply the required "well-to-wheels" analysis.**
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> **Concurrently, this application overcounts environmental benefits by ignoring that this is, in one factory farm owner's words, "lucrative" feedstock production. 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 Jerseyland Dairy's intentional management decisions designed to maximize profits and externalize pollution costs. CARB cannot ignore that the emissions the pathway applicant claims as captured from Jerseyland Dairy's lagoons are intentionally created in the first place. The manure handling practices at this facility are integrated parts of generating and using factory farm**

gas. Thus, the gas generated at this facility is an intentionally produced product and cannot now be claimed as "captured" to secure a lucrative negative CI value.

Certification of this pathway would not violate the LCFS regulation or corrupt the integrity of the LCFS program in our view. The project within this Application has had a life cycle analysis prepared according to the guidance laid out in the 2014 California Livestock Projects Compliance Offset Protocol. The project establishes a baseline that considers the applicable dairy operation and quantifies the additive emissions from the capture and purification of methane for beneficial use. The baseline assumes that without the use of an anaerobic digester, the project would deposit dairy manure into lagoons as is common practice amongst dairy farms. The project quantifies the avoided methane from the diversion of dairy manure from lagoons and the purification and use of this methane as a vehicle fuel. As a result of this process, the project shows avoided methane emissions from the baseline, resulting in the generation of credits by diverting methane from the farm. Methane would be emitted with or without the implementation of the LCFS program as the primary business of S&S Jerseyland Dairy, LLC ("S&S") is the production of milk and milk products. Dairy manure, and the associated methane is a byproduct of this process. The only incentive that the LCFS program provides to dairy farms is one to reduce the amount of GHG emissions that the milk producing operations emit. Furthermore, the costs associated with implementing the technologies and processes to capture inevitable methane emissions is high, and the LCFS program helps implementation of these to be a viable option for many. This is not increasing the methane production but helping to capture the emissions from waste that will be emitted with or without the incentive of the LCFS program benefits.

Second, CARB has failed to ensure that the additionality requirements of Health and Safety Code section 38562 are met. If CARB had done so, it would have concluded that the methane capture at issue is patently not additional. The Jerseyland Dairy digester has existed since 2012 without taking advantage of the LCFS. Accordingly, any purported emission reductions associated with this digester have already been occurring and presumably will continue to occur with or without being subsidized by the LCFS program. Stated differently, these are emission reductions that "otherwise would occur." Thus, certification of this pathway with this proposed CI value would openly violate section 38562 by crediting nonadditional reductions.

Certification of this pathway would not violate the LCFS regulation or Health and Safety Code[1]. Per California Code, Health and Safety Code - HSC § 38562 (b)(3), it is noted that the State Board will "Ensure that entities that have voluntarily reduced their greenhouse gas emissions prior to the implementation of this section receive appropriate credit for early voluntary reductions." The LCFS program was not designed to punish those that were already voluntarily reducing emissions but to incentivize reductions so others would also begin to participate in these efforts.

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. Jerseyland Dairy is not a sustainable family farm. It is a large industrial operation that confines 6,000 cows. Especially disconcerting is the fact that Jerseyland Dairy had only 3,600 cows in 2016—so this factory farm seems to have expanded in anticipation of installation of U.S. Gain's upgrading facility in 2019, which was done in preparation for participating in the LCFS. Community members opposed this factory

[1] *See CARB's statement issued at footnote 4 of its April 25, 2022 LCFS Reconsideration Petition Response.*

> **farm's expansion, citing "too little topsoil," "too many cows," and "high water tables." Community members also opposed the expansion because the area's waterways are already impaired by factory farm pollution. "One resident brought up the expansion of S&S Jerseyland Dairy and others felt that if the TMDL determined most of the pollution came from agricultural land, the farms should be the ones to pay for the clean up." CARB should not allow this factory farm— or the applicant—to profit from the LCFS.**

S&S was founded in 1908, is now a fourth-generation family-owned farm, is committed to protecting and enhancing the quality of the environment, and does not fit the "factory farm" label that the Commenters seem to be at odds with. S&S manages all of its own farmland to provide all of the forages and grains that each of its cows consumes. S&S follows a strict comprehensive nutrient management plan to guarantee that the right amount of fertilizer is being applied to the right soil zones at the right time. After the main crops are harvested, cover crops are planted to reduce the potential for erosion. S&S also works with the Door County Soil and Water Department and the NRCS to evaluate its fields and install waterways and buffers where needed to protect lakes and streams. The Commenters speculates and implies that participation in the LCFS has led S&S to expand its herd. Pathway Applicant wishes to underscore the speculative nature of the comment and state that the primary business of S&S is the production of milk and milk products with associated crop growth and management, not gas production. Herds and herd sizes are managed based on demand for those products. Dairy manure, and the associated methane associated with its decomposition, is a byproduct of the dairy farming process. The project has designed systems to divert this methane to the California vehicle fuel market. This results in both avoided dairy farm emissions and reduced emissions from vehicle fuels relative to other vehicle fuel alternatives. The project has not taken any action to increase the amount of methane produced by the farm. The farm operations exist wholly separate from the fuel production process. Furthermore, the LCFS program awards credits on the continued emissions reduction compared to a baseline, and this is reviewed annually through an independently verified process to ensure projects are continually reducing GHG pollutants.

> **Fourth, this application is so opaque that it is impossible for Commenters or other stakeholders to meaningfully evaluate it. Specifically, the lifecycle analysis redacts information critical to understanding the CI calculation.**

Pathway Applicant's were within CARB's guidance, approved by CARB, and very minimal. See attached CARB-approved redacted Life Cycle Analysis. The only redactions made were to do with specific volumes, cow counts, and specific equipment that included the brand names.

> **Finally, 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.**

The Pathway Applicant believes this pathway benefits communities and ecosystems in California through reduced emissions from vehicle fuels. The Carbon Intensity (CI) score is a rigorous calculation, with the LCFS ultimately seeking to achieve a 20% reduction in the CI of California's transportation fuels by 2030, with increasingly stringent target reductions. The Pathway Applicant follows all CARB guidance while performing these calculations and work with CARB and a third-party validator throughout the entire application process to ensure accuracy. A negative CI score is not obtained easily or without much time, effort and cost to reduce the carbon footprint.

Additionally, finished RNG from S&S is transported to the decant station and then the gas quality is checked twice prior to injection; first at the decant station and then by the pipeline company.

As this application highlights, 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." If California is serious about being a climate leader, this is not the example to set.

This Application focuses exclusively on the addition of a biogas upgrading facility to collect and purify methane for beneficial use. As stated previously, the addition of this facility does not impact the operation of the dairy farm. The Pathway Applicant believes this pathway benefits communities and ecosystems in both California and, in this case, Wisconsin through the avoided dairy farm emissions and the economic activity that surrounds the farm operations in Wisconsin, and the reduced emissions from vehicle fuels in California. The only incentive that the LCFS program provides to farms is one to reduce the amount of GHG emissions that the milk producing operations emit.

In summary, while U.S. Venture, Inc. is thankful for the opportunity to address the Commenters for their interest in this project, we further contend that no changes to the pending Application under CARB review are required and see no reason to deny or stay a certification decision on this pathway.

Sincerely,

Michael L. Koel

Michael L. Koel
President – Oil and Gain
U.S. Venture, Inc.