June 28, 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. B0283; Response to The Association of Irritated Residents, Leadership Counsel for Justice & Accountability, Animal Legal Defense Fund, 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, Animal Legal Defense Fund, Food & Water Watch, and Public Justice (collectively "Commenters"), in a letter submitted June 21, 2022 regarding the Tier 2 Pathway Application (B0283) (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 applies CARB's unlawfully truncated system boundary that ignores feedstock production at the factory farm and other emissions such as those from disposal of digestate, resulting in exaggerated Carbon Intensity values. In other words, this application fails to apply the required "well-to-wheels" analysis, which must include "feedstock production." This waste management practice and the methane emissions that it creates are the result of the animal agriculture industry's intentional management decisions designed to maximize profits and externalize pollution costs. It is therefore entirely inappropriate to ignore the upstream emissions associated with Deer Run Dairy LLC, the factory farm in Kewaunee, Wisconsin where this feedstock is intentionally produced.**

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 Deer Run Dairy, LLC's ("Deer Run") primary business is the production of milk, milk products and crop growth. 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 § 38562 are met. If CARB had done so, it would have concluded that the methane capture at this facility is patently not additional. Deer Run Dairy LLC's digester has been in operation for a decade without the revenue from LCFS credit generation. In other words, whatever emissions reductions are associated with this digester have occurred without the LCFS and are not additional. Thus, certification of this pathway with this proposed Carbon Intensity would openly violate § 38562.**

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 their further expansion, which does more climate harm than good. Deer Run Dairy LLC is not a small family farm—it is a large industrial dairy that contributes to the severe environmental harms and environmental injustice plaguing Kewaunee County, Wisconsin. And this factory farm appears to be expanding as it ramps up factory farm gas production and begins participating in the LCFS—in 2020, when the refining facility was completed, the factory farm had between 1,300 and 1,500 cows. Today, it has ballooned by upwards of 33% to 2,000 cows. The additional cows produce significant enteric emissions (more per cow than manure methane emissions), which effectively cancels out the claimed mitigation of methane emissions.**

Deer Run was founded in 2008 as the result of merging two small dairy farm operations, one of which was a third-generation family-owned farm established in 1984, and does not fit the "factory farm" label that the Commenters seem to be at odds with. In fact, Deer Run is among the winners of the 2022 U.S. Dairy Sustainability Award. The Commenters allege that Deer Run increased its herd size from 1,300-1,500 cows to 2,000 cows in order to increase biogas production. However, the sources cited in Commenters' footnote 5 do not support this claim. The herd size cited from *bioenergyinternational.com* (1,700 milking cows) is in agreement with the milking cow population in Pathway Applicant's validated calculator, while the citation from *wisfarmer.com* (1,500 milking cows) is slightly lower but does not align with the "upwards of 33%" herd expansion being claimed. It is possible Commenters mistook the milking cow population for the total livestock population. Also, there was a temporary increase of cows housed at the Deer Run farm due to a barn fire at a nearby farm. Deer Run housed these cows as a favor to the nearby farmer while his barn was being rebuilt. The primary business of Deer Run is the production of milk and milk products and crop growth and management. Dairy manure, and the associated methane, is a byproduct of this process. The project has designed systems to divert this methane to the California vehicle fuel market. This results in both avoided dairy farm emissions

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

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.

> **Finally, the inflated Carbon Intensity 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 Carbon Intensities 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 Deer Run 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.**

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
President – U.S. Gain Division
U.S. Venture, Inc.