



Finding a better way

March 28, 2023

Steven Cliff, Executive Officer
California Air Resource Board
Low Carbon Fuel Standard
1001 I Street
Sacramento, CA 95814

Re: Tier 2 Pathway Application Nos. B0393; Response 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

Dear Mr. Cliff:

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 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"), in a letter submitted March 24, 2023 regarding the Tier 2 Pathway Application (B0393) (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—Clover Hill Dairy LLC in Campbellsport, Wisconsin, which confines 4,350 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. 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. 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-wheel" analysis.

Concurrently, this application overcounts environmental benefits by ignoring that this is, in one factory farm owner's words, "lucrative" feedstock production.⁴ 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 Clover Hill 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 this factory farm'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 will not violate the LCFS regulation or corrupt the integrity of the LCFS program. Rather, the project associated with this Application will achieve precisely the beneficial outcomes for which the LCFS program was designed. 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 Clover Hill Dairy 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 are 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 applicants acknowledge that the digester system (and associated emission reductions) at Clover Hill Dairy has existed since 2007 and would continue to exist without the LCFS. Further, the project participates in the federal RFS program. Accordingly, any purported emission reductions associated with these digesters 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 Code¹. 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. Further, Commenters “presume” that the digester operations “will continue with or without being subsidized by the LCFS program.” This is a false presumption. Operating a digester system is expensive with large ongoing capital expenditures that will be necessary in order to continue its operation. Without the LCFS program and the associated avoided methane crediting to assist in subsidizing such expense, it is more likely that Clover Hill Dairy’s methane mitigation techniques from the use of the digester system would stop, and emissions would continue as if no digester existed. Without incentive programs like the LCFS, mitigation of emissions would backslide.

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.

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

Clover Hill Dairy is not a sustainable family farm, it is a large industrial operation that confines 4,350 cows. CARB should not allow this factory farm—or the applicant—to profit from the LCFS.

Clover Hill Dairy is an innovative, fifth-generation dairy farm that strives to continually improve its operations, prevent pollution of the land, comply with regulations, and ultimately leave its land better for generations to come. The dairy employs an Environmental Management System to help comply with regulatory demands and to ensure that it is protecting and improving the health and safety practices for its employees and the public. Clover Hill Dairy also utilizes a Nutrient Management Plan to help protect water quality and soil health and takes proactive steps to prevent soil erosion.

The Commenters speculate and imply that participation in the LCFS has led Clover Hill Dairy to expand its herd. The LCFS program and market demand for low carbon fuels, like RNG, have facilitated resources and support for dairy farms to implement additional measures to enhance environmental quality. Improvements to Clover Hill Dairy occurring as a result of Pathway Applicant's facility have helped the farm maintain compliance with its environmental obligations.

Pathway Applicant wishes to underscore the speculative nature of the comment and state that the primary business of Clover Hill Dairy is the production of milk and milk products, not gas production. Since the implementation of the digester in 2007 to control methane emissions, one additional free-stall barn was added to the main farm in 2018 and two additional barns were added to the heifer farm in 2014 and 2016, each to accommodate gradual, organic growth of Clover Hill Dairy's dairy cow, heifer, and steer population. 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. The lifecycle analysis redacts information critical to understanding the CI calculation.

Pathway Applicant's redactions 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 calculated values.

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.

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