

December 24, 2024

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

RE: Tier 2 Pathway Application Nos. B0699; Response to Leadership Counsel for Justice & Accountability, Central Valley Defenders of Clean Water & Air, and Animal Legal Defense Fund

Dear Dr. Cliff

Brightmark RNG Holdings LLC ("Pathway Applicant") is responding within the scope of the Low Carbon Fuel Standard ("LCFS") program §95488.7(d)(5)(A) to the commenters, Leadership Counsel for Justice & Accountability, Central Valley Defenders of Clean Water & Air, and Animal Legal Defense Fund (collectively "Commenters"), in a letter submitted December 19, 2024 regarding the Tier 2 Pathway Application (B0699) (the "Application").

Section §95488.7(d)(5)(A) of the LCFS states "only comments related to potential factual or methodological errors will require responses from the fuel pathway applicant." We don't believe the public comments received on the Application are related to factual or methodological errors and believe that the comments incorrectly claim adverse environmental damage results from the dairy manure project. Dairy manure projects result in significant long-term air quality improvements and greenhouse gas emission reductions through the use of RNG in transportation that displaces diesel trucking and the reduction of methane and other fugitive emissions from improved dairy manure management. Pathway Applicant will address the Commenters' letter, identified by sections in *italics*, 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 in Sherman, South Dakota— Moody Farm, which confines a total of 6,600 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 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. 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 the source factory farm'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 the factory farm's lagoons are intentionally created in the first place. The manure handling practices at this facility are an integrated part 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.

The carbon intensities quantified in the pathway application process utilize a lifecycle analysis methodology which accounts for all emissions within the designated boundary based on the existing LCFS regulations. The CI score of the project incorporates baseline manure management practices and follows the life cycle analysis according to the guidance laid out in the 2014 California Livestock Projects Compliance Offset Protocol which includes project emissions from the storage and disposal of digestate. 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. An approved third-party verifier confirmed the inputs, project boundary, and CA-GREET3.0 model for the project's CI score through a desktop analysis and site visit to ensure all emissions were accounted for.

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 issues is patently not additional, as this project also participates in the federal RFS program. The purported methane emission reductions would have occurred without the LCFS and are not additional. Certification of these pathways with this proposed CI values would openly violate section 38562 by crediting nonadditional reductions.

The LCFS is a GHG reduction program that is not meant to punish those entities that were early adopters in implementing emission reduction projects. The LCFS program has provided the incentives necessary for the continued operation (and thus emission reductions) of this and other similar projects. The assumption that this project would operate without the LCFS is false. The capital and operating costs of digester system are significant and ongoing throughout the life of the project. Without these financial incentives, it is more likely that these projects would cease to operate, and the dairies would begin using their previous manure management practices including significant methane emissions.

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. The source factory farm is not a sustainable family farm—it is a large industrial operation that confines 6,600 cows. CARB should not allow this factory farm—or the applicant—to profit from the LCFS.

The above comment is not related to potential factual or methodological errors and therefore does not require a response from the fuel pathway applicant. The Pathway Applicant provided all the required information and supporting documentation necessary to certify the Tier 2 fuel pathway application to both CARB staff and an approved third-party verifier.

The main production output at Moody Farm is milk and milk products, and dairy manure is a waste. The LCFS has not incentivized them to increase their herd size.

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.

The Pathway Applicant met all of the pathway application requirements laid out in the regulation. This application was reviewed by CARB staff and validated by the third-party verifier. The Pathway Applicants redactions were within CARB's guidance, approved by CARB, and minimal. The pathway application included all aspects of the lifecycle analysis required by the LCFS.

Fifth, 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 above comment is not related to potential factual or methodological errors and therefore does not require a response from the fuel pathway applicant. It should be noted all CARB guidance was followed to quantify the lifecycle emissions which includes the

transport of the finished fuels. For CARB to achieve the emission reduction goals of a 90% CI reduction by 2045, it will be necessary for the transportation fuel mix to not only include zero emission fuels, but also carbon negative fuels.

As this application highlights, CARB's unlawful and unjust administration of the LCFS program is causing environmental and public health harms in California and elsewhere – in this case South Dakota - 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.

The LCFS program is a transportation GHG reduction policy that has resulted in significant decreases in conventional fuel consumption and GHG emissions from the transportation sector in California. Where the dairy farms are located, there are reduced methane and fugitive emissions from the use of digesters instead of uncovered anaerobic lagoons. Reductions of fugitive methane emissions is necessary to meet California, and overall United States climate goals.



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In summary, Brightmark RNG Holdings LLC believes that no changes to the pending application under CARB review are required and sees no reason to deny or stay a certification decision on this pathway.

Sincerely,

Gerrud Wallaert

Gerrud Wallert
Vice President
Brightmark RNG Holdings LLC