

September 20, 2024

Submitted via ca.gov

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

Re: Tier 2 Pathway Application No. B0543

Dear Chair Randolph,

Leadership Counsel for Justice & Accountability, Central Valley Defenders of Clean Water & Air, Animal Legal Defense Fund, and Food & Water Watch (collectively, “Commenters”) write in opposition to Calgren Dairy Fuel’s Tier 2 pathway application. As Commenters have explained through numerous comments, the Petition for Rulemaking to Exclude All Fuels Derived from Biomethane from Dairy and Swine Manure from the Low Carbon Fuel Standard Program (included and incorporated here as Exhibit A), and the Petition for Reconsideration (included and incorporated here as Exhibit B), the California Air Resources Board’s (“CARB”) treatment of factory farm gas under the Low Carbon Fuel Standard (“LCFS”) is flawed and staff’s assessment of this application is no different. CARB cannot certify this application.

Commenters oppose this application for several reasons. First, the application incorporates an unlawfully truncated system boundary that ignores feedstock production at the source factory farm—Vintage Dairy in Pixley, California, which confines 6,900 cows, Hettinga Farms in Tipton, California, which confines 6,900 cows, Avenue 128 Dairy in Tipton, California, which confines 5,300 cows, V2 Cattle in Tipton, California, which confines 2,470 cows, Williams Family Dairy Pixley, California, which confines 14,750 cows, JR Dairy in Tipton, California, which confines 6,300 cows, Mario Simoes Family Dairy in Tipton, California, which confines 4,600 cows, and Joe M. Simoes Family Dairy in Tipton, California, which confines 2,700 cows; **49,920 cows in total**¹—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.”² In addition to the evidence provided in Exhibits A and B, more recent research indicates that emissions from factory farm gas production are significantly

¹ Application B0543 CARB Staff Summary at 2-4.

² Cal. Code Regs. Tit. 17 §§ 95481(a)(66), 95488.7(a)(2)(B).

higher than currently appreciated, with especially high emissions from digestate storage.³ 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.⁴ 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.⁵ 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 six dairies’ 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.

Second, CARB has failed to ensure that the additionality requirements of Health and Safety Code section 38562 are met.⁶ If CARB had done so, it would have concluded that the methane capture at issue is patently not additional. The applicant acknowledges that the digesters were installed between 2021 and 2022, without taking advantage of the LCFS.⁷ Further, all eight dairies have participated in the federal RFS program.⁸ 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,

³ Semra Bakkaloglu et al., *Methane Emissions Along Biomethane and Biogas Supply Chains Are Underestimated*, 5 ONE EARTH 724 (2022), <https://www.sciencedirect.com/science/article/pii/S2590332222002676>.

⁴ *Id.* at 728; Michael A. Holly et al., *Greenhouse Gas and Ammonia Emissions from Digested and Separated Dairy Manure During Storage and After Land Application*, 239 AGRIC. ECOSYSTEMS & ENV’T 410, 418 (Feb. 15, 2017), <https://doi.org/10.1016/j.agee.2017.02.007>; Roger Nkoa, *Agricultural benefits and environmental risks of soil fertilization with anaerobic digestates: a review*, 34 AGRONOMY FOR SUST. DEV. 473 (2014), <https://link.springer.com/article/10.1007/s13593-013-0196-z>; F. Montes et al., *SPECIAL TOPICS — Mitigation of methane and nitrous oxide emissions from animal operations: II. A review of manure management mitigation options*, 91 J. OF ANIMAL SCI. 5070 (2013), <https://academic.oup.com/jas/article/91/11/5070/4731316>; Kurt Möller & Walter Stinner, *Effects of different manuring systems with and without biogas digestion on soil mineral nitrogen content and on gaseous nitrogen losses (ammonia, nitrous oxides)*, EUROPEAN J. OF AGRONOMY (2009), <https://www.sciencedirect.com/science/article/abs/pii/S1161030108000695?via%3Dihub>.

⁵ Stacey Smart, *Deer Run Dairy wins national sustainability award*, DAIRY STAR (June 27, 2022), <https://dairystar.com/Content/Home/Home/Article/Deer-Run-Dairy-wins-national-sustainability-award/80/254/18626> (emphasis added) (“Installed in 2011, the digester supplied power to nearly 600 homes. In 2020, the farm converted over to renewable natural gas that is injected into the pipeline, which Duane said is a more lucrative option.”).

⁶ See Ex. A, Petition for Rulemaking, section III.A.2; Ex. B, Petition for Reconsideration, section III.A.3.

⁷ Application B0543 CARB Staff Summary at 2-4.

⁸ *Id.* at 2.

these are emission reductions that “otherwise would occur.”⁹ Thus, certification of this pathway with this proposed CI value would openly violate section 38562 by crediting nonadditional reductions.

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 eight dairies are not sustainable family farms—they are large industrial operations that confine between 2,470 and 14,750 cows each, with an average size of 6,240 cows.¹⁰ CARB should not allow this factory farm—or the applicant—to profit from the LCFS.

Fourth, this application is so opaque that it is impossible for Commenters or other stakeholders to meaningfully evaluate it.¹¹ The lifecycle analysis redacts information critical to understanding the CI calculation.

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.¹²

Finally, the certification of this pathway would result in a discriminatory impact, in conflict with CARB’s obligations under California Government Code 11135 and Title VI of the Civil Rights Act, which impose an affirmative duty on CARB to ensure that its policies and practices do not have a discriminatory impact on the basis of race. The facility is located in Tulare County, which has a significantly higher Latino/a/e/ population than California (approximately 67% compared to approximately 40%) according to US Census Data.¹³ Additionally, Tulare County has a significantly higher poverty rate than California as a whole, and its residents have lower incomes compared to others in the state.¹⁴

The unincorporated disadvantaged community that this facility occupies, Pixley, already faces a substantial and disproportionate pollution burden, including extreme and disproportionate

⁹ Health & Saf. Code, § 38562, subd. (d)(2).

¹⁰ Application B0543 CARB Staff Summary at 2-4.

¹¹ Publicly posted application materials “must provide sufficient information to allow for meaningful stakeholder review.” CAL. AIR RES. BD., LOW CARBON FUEL STANDARD (LCFS) GUIDANCE 20-051 (Apr. 2020), <https://perma.cc/856Y-CVVZ>.

¹² See 2020 Mobile Source Strategy at 26–27, <https://perma.cc/4P3H-HG3Z>.

¹³ *QuickFacts California; Tulare County, California*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/CA,tularecountycalifornia/PST045223>.

¹⁴ *Id.*

impacts from ozone, PM 2.5, drinking water contamination, and groundwater contamination,¹⁵ all of which are caused and exacerbated by dairy operations. According to a study by UC Davis, Tulare County already has one of the highest asthma-related emergency room visit rates for children in the state.¹⁶ Pixley residents are surrounded by over 25 dairies, yet the County does not have mitigation measures to keep manure from seeping into their groundwater or to prevent spillage and runoff of manure. According to CalEnviroScreen, Tipton and Pixley rank in the 92nd and 96th percentile of the overall pollution burden, respectively. Residents of Pixley report continuous odors of ammonia and issues with flies that are a result of heavy air pollution formulated by a mixture of agriculture, dairies, transportation, and industrial land use around them.

The certification of this pathway would do nothing to address this disproportionate impact. Rather, it would incentivize the most polluting herd and manure management practices and incentivize the expansion of herd populations. Further, it would violate section 38562 by failing to ensure that such certification would not disproportionately impact low-income communities (§ 38562(b)(2)) and by failing to ensure that it would not interfere with efforts to achieve and maintain federal and state ambient air quality standards (§ 38562(b)(4)).

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

Commenters request that CARB deny the application. To do otherwise will violate California law, further destroy the integrity of the LCFS market, undermine the state's climate change mitigation efforts, and harm communities in California and across the country.

Respectfully,

Jamie Katz
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Leadership Counsel for Justice and Accountability

¹⁵ *CalEnviroScreen 4.0*, OEHHA, https://experience.arcgis.com/experience/11d2f52282a54cee6184203/page/CalEnviroScreen-4_0/ (last visited Dec. 20th, 2023) (the census tract in which FM Jerseys Dairy is located is in the 85th percentile for ozone, 95th percentile for PM 2.5, 97th percentile for drinking water contaminants, and 100th percentile for groundwater threats).

¹⁶ UC DAVIS ET AL., CALIFORNIA'S SAN JOAQUIN VALLEY: A REGION AND ITS CHILDREN UNDER STRESS 21–22 (Jan. 2017), https://regionalchange.ucdavis.edu/sites/g/files/dgvnsk986/files/inline-files/CA%20San%20Joaquin%20Valley%20Jan%202017%20-1_0.pdf.