

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. B0615

Dear Chair Randolph,

Leadership Counsel for Justice & Accountability, Central Valley Defenders of Clean Water & Air (Defensores), Animal Legal Defense Fund, and Food & Water Watch (collectively, “Commenters”) write in opposition to FC Jerseys Energy, LLC’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,¹ the Petition for Reconsideration,² and most recently in response to the proposed amendments to the Low Carbon Fuel Standard (“LCFS”),³ the California Air Resources Board’s (“CARB”) treatment of factory farm gas under the LCFS is flawed, and staff’s assessment of this application is no different. Certifying this pathway while several fundamental aspects of this application are actively being contested in the ongoing LCFS rulemaking would be inappropriate and irresponsible. For this reason and the reasons below, we urge CARB to either deny this application or at least exercise its clear authority⁴ to defer consideration of the application during the pendency of the LCFS rulemaking.

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—FC Jerseys Dairy in Dalhart, Texas that confines a total of 4,500 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.”⁵ As explained and demonstrated in prior comments, research indicates that emissions from factory farm gas production are significantly higher than currently appreciated, with especially high emissions from digestate storage.⁶ This 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

¹ Leadership Counsel et al., Petition for Rulemaking, <https://perma.cc/UWG6-P68L>.

² Leadership Counsel et al., Petition for Reconsideration, <https://perma.cc/8Y4D-EYKH>.

³ Leadership Counsel for Justice and Accountability et al., Comments on Proposed Amendments to LCFS, https://www.arb.ca.gov/lispub/comm/iframe_bccomdisp.php?listname=lcfs2024&comment_num=7060&virt_num=377.

⁴ The LCFS provides that the Executive Officer “may” consider provisional pathway applications. Cal. Code Regs. tit. 17, § 95488.9(c).

⁵ Cal. Code Regs. Tit. 17 §§ 95481(a)(66), 95488.7(a)(2)(B).

⁶ Semra Bakkaloglu et al., *Methane Emissions Along Biomethane and Biogas Supply Chains Are Underestimated*, 5 ONE EARTH 724–736 (June 17, 2022), <https://doi.org/10.1016/j.oneear.2022.05.012>.

cycle analysis.⁷ Digestate storage lagoons as used by this project are especially concerning in terms of increased emissions and local air quality impacts.⁸ 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.⁹ Liquified manure stored in massive anaerobic “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 FC Jerseys Dairy’s intentional management decisions. CARB cannot ignore that the emissions the pathway applicant claims as captured from the 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” waste to secure a lucrative negative CI value.

Second, CARB has failed to ensure that the additionality requirements of Health and Safety Code section 38562¹⁰ or the terms of Operating Condition 3 are met.¹¹ It appears that CARB has no idea if these are emission reductions that “otherwise would occur”¹² or whether FC Jerseys Dairy, FC Jerseys Energy, LLC, or other another entity is claiming these environmental attributes elsewhere for “any other purpose” such as utility/consumer promotional programs in Texas, other state low carbon fuels programs, product marketing, et cetera. Thus, CARB is potentially allowing this applicant to generate illegitimate LCFS credits. CARB cannot certify this pathway without making this assessment.

Third, this application is a good example of how CARB’s flawed approach is rewarding the biggest factory farms and incentivizing further expansion and herd consolidation, which does more climate harm than good. FC Jerseys Dairy is not a sustainable family farm, it is an industrial operation that confines 4,500 cows.¹³ CARB should not allow this factory farm—or the applicant—to profit from the LCFS for intentionally operating an intensely polluting facility.

⁷ *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>.

⁸ See U.S. Dept. of Agric., Nat. Res. Conservation Serv., Conservation Practice Standard 366: Anaerobic Digesters (2023), https://www.nrcs.usda.gov/sites/default/files/2023-08/366_NHCP_CPS_Anaerobic_Digester_2023.pdf (“There is potential for methane and ammonia emissions from the storage of digester effluent. Consider covering digestate storages and incorporating the resulting biogas into the gas collection, transfer, control and utilization system or incorporating other measures to reduce the potential for emissions. Anaerobic digestion of livestock waste can increase amount of nitrogen that is converted to ammonia and subsequently emitted from the resulting wastewater.”).

⁹ Stacey Smart, *Deer Run Dairy wins national sustainability award*, DAIRY STAR (June 27, 2022), <https://issuu.com/dairystar/docs/6-25-22-zone2> (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.”).

¹⁰ See Ex. A, Petition for Rulemaking, section III.A.2; Ex. B, Petition for Reconsideration, section III.A.3.

¹¹ Condition 3 states that “biomethane and its environmental attributes claimed under this pathway shall not be claimed by any entity for any other purpose, nor under any other program notwithstanding the exceptions listed in LCFS Regulation section 95488.8(i)(2).”

¹² Health & Saf. Code, § 38562, subd. (d)(2).

¹³ Application B0615 CARB Staff Summary at 1.

Fourth, this application is so opaque that it is impossible for Commenters or other stakeholders to meaningfully evaluate it.¹⁴ The lifecycle analysis redacts information critical to understanding the CI calculation.

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.¹⁵

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 Texas—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—or at least defer consideration of—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,



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¹⁴ 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>.

¹⁵ See 2020 Mobile Source Strategy at 26–27, <https://perma.cc/4P3H-HG3Z>.