May 19, 2017

Sam Wade
California Air Resources Board
1001 I Street
Sacramento, CA 95814

RE: Dairy Cares LCFS Comments on April 17th LCFS Workshop

Dear Mr. Wade,

Dairy Cares[1] is pleased to provide the following comments on the April 17th LCFS Workshop and Staff Discussion Paper on Renewable Natural Gas from Dairy and Livestock Manure. Dairy Cares members were deeply engaged in the development of Senate Bill ("SB") 1383 (Lara, Chapter 395, Statutes of 2016), including the provisions encouraging emission reductions in the dairy sector and the LCFS crediting provisions. SB 1383 sets an aggressive 40% by 2030 emissions reduction target for short-lived climate pollutants ("SLCP"). SB 1383 also recognizes the role of the Low Carbon Fuel Standard ("LCFS") regulations in meeting these targets by establishing a minimum crediting period of 10 years.[2] Nothing in SB 1383 requires the ARB to set a sunset for credit generation by dairies.

We strongly support the ARB's efforts to provide new pathways for credit generation by dairies in the LCFS program because the LCFS program will play an important role in meeting the SB 1383 emission reduction targets. Indeed, the program is already driving potential development at clusters of multiple dairies in close proximity to achieve required scale. Meeting the aggressive SB 1383 targets will require much more development in the near term and into the longer term through sustainable projects. If designed properly, the LCFS will enable the dairy sector to be a heavy-duty freight transportation fuel source for California.

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[1] Formed in 2001, Dairy Cares (www.dairycares.com) is a coalition of California's dairy producer and processor organizations, including the state's largest trade associations representing dairy farmers (*California Dairy Campaign, California Farm Bureau Federation, Milk Producers Council and Western United Dairymen)*, other cattle ranchers (*California Cattlemen's Association*) and the largest milk processing companies and cooperatives (including *California Dairies, Inc., Dairy Farmers of America-Western Area Council, Hilmar Cheese Company, and Land O' Lakes, Inc.*), and others with a stake in the long-term environmental and economic sustainability of California dairies.

[2] Cal. Health and Safety Code Sec. 39730.7(e).

As discussed below, the ARB should balance the various policy goals of the LCFS program (e.g., additionality and minimizing leakage) by not setting a hard cutoff date for credit generation in this iteration of the LCFS rulemaking. These comments also address some of staff's questions in the discussion paper and encourage a program design that sends clear signals and creates certainty in the program for dairy operators and developers.

Discussion

1. **The ARB Should Provide Near Term Market Signals that Projects Utilizing the Dairy RNG Pathways Justify Considerable Investments.**

Project finance is one of the major hurdles in developing a robust dairy Renewable Natural Gas ("RNG") market. To engender investor confidence, the ARB should signal in the upcoming rulemaking that projects will be eligible for at least a 10-year credit period, as required in SB 1383. The regulations should also include clear criteria for extending credit generation for a definite period of time (as contemplated in SB 1383). In other words, the regulations should specify the criteria a project must meet in order to receive an additional credit period of another period (e.g., additional 10 years). These signals would improve the ability of developers to obtain project financing.

The ARB should also avoid creating unnecessary rules that undermine financial confidence. The goal of achieving administrative efficiency by using the existing offset project registry for livestock projects may create a perception that dairy RNG projects are riskier than other types of fuel pathways that aren't tied to an offset protocol. Cap-and-Trade offset credits can be invalidated due to non-conformance with laws or permits that are minor and unrelated to the GHG reductions of the project. Moreover, financial markets will look to the history of the offset credit program and consider past invalidations of livestock credits, and potentially other protocols in assessing the relative risk of the LCFS program and an individual project's ability to generate revenue over a given period of time. In light of these concerns, we do not believe the administrative efficiencies of relying on the livestock protocol justify the additional challenges this program linkage may create for project finance. To address this concern, the ARB should incorporate the existing offset protocols and processes it believes should apply to dairy fuel pathways. The process could be similar and rely on the ARB's expertise in reviewing and verifying offset protocols. However, the process should be LCFS-specific (i.e., separate and distinct from the Cap-and-Trade program).

2. **The ARB Should Enable Projects to Balance Their Energy Production, Including Both Electricity and Vehicle Fuel Production.**

The ARB should enable LCFS credit generation at projects that have both electricity and vehicle fuel production. Projects that are engaged in both types of energy production require flexibility in the design of the fuel pathway to balance electricity and vehicle fuel generation and respond to market signals for both products. The power purchase agreements ("PPAs") for electricity generation provide greater certainty than the current outlook for the Renewable Identification Numbers ("RINs") and LCFS credit markets. The electricity market can provide a hedge against the fuels market, particularly for dairies with existing PPAs. By requiring an annual commitment for vehicle fuel, project developers may be required to forego the certainty of the electricity market. The ARB should consider ways it can allow greater flexibility in enabling projects to balance their electricity and fuel generation through new, innovative LCFS fuel pathways rules. For example, a pathway true up or use of a multi-year average might enable a project to balance their electricity and transportation fuel generation.

3. AB 32 and SB 1383 Do Not Require a Strict Additionality Rule Where Crediting Is Cut Off in 2025.

The ARB will need to strike an appropriate balance between a number of overarching LCFS program policy goals. We agree that emissions reductions must be real and verifiable. We also believe that the ARB should strive to balance the goal of ensuring that emission reductions are "additional" to legally mandated reductions with the equally important policy goal of minimizing emissions leakage. Neither SB 1383, nor the implementing statute for the LCFS (AB 32) require the ARB to adhere to a strict construction of "additionality". However, SB 1383 and AB 32 both direct the ARB to minimize leakage. In fact, minimizing leakage is an explicit component of the emission reduction regulations contemplated in SB 1383,[3] and the SLCP identifies leakage risk minimization as a critical component of future policy developments.[4]

SB 1383 provides the ARB with broad discretion in structuring the LCFS crediting rules, and in other sectors, the ARB has construed the additionality requirements more liberally. For example, sources in the electricity sector are subject to similar, sector-wide emission reduction targets under AB 32. Mandatory programs such as the Cap-and-Trade and the RPS are driving down emissions in the electricity sector. Despite these mandatory emission reduction requirements, the crediting provisions for residential charging do not include the same sort of additionality restrictions the ARB is contemplating for dairy RNG projects. The Electric Vehicle ("EV") pathways not only continue despite mandatory emission reduction requirements in the electricity sector, but credit generating entities benefit from the emission reduction measures through updates to the grid carbon intensity calculations. The ARB should ensure the consistent application of policies across its program by not subjecting dairy RNG projects to a hard "additionality cut-off" for projects that originate after 2025.

The ARB should wait to determine post 2025 additionality rules until we know more about the dairy industry's progress in achieving the 2030 targets. A possible future exists where there are no mandatory controls required, or where mandatory reductions are low enough that there is significant "head room" for additional reductions through the LCFS program. In other

[3] Cal. Health and Safety Code Sec. 39730.7(b)(4)(D).
[4] See SLCP at p. 64, available at: https://www.arb.ca.gov/cc/shortlived/meetings/03142017/final_slcp_report.pdf See also, Final Environmental Analysis for the Short Lived Climate Pollutant Strategy, available at: https://www.arb.ca.gov/cc/shortlived/meetings/03142017/appendixe.pdf.

words, it is possible for any post-2025 regulation to allow a hybrid approach to achieving methane reduction goals that employs ongoing incentive-based mechanisms, such as the ongoing ability to generate LCFS credits. SB 1383 explicitly requires the ARB to determine whether the dairy industry has made sufficient progress in overcoming technical and market barriers to meeting the emission reduction targets.[5] We believe this will be the appropriate time to determine whether additional crediting is warranted post 2025 or whether there should be new rules that allow credit generation for projects that go above and beyond any regulatory requirements, if ultimately adopted pursuant to SB 1383. As part of this analysis, the ARB should establish facts and data that determine whether a decline in LCSF credits from the dairy sector will still allow California to achieve the 40% reduction in methane by 2030 without significant emissions leakage.

In sum, signaling a hard cutoff now does nothing to further the program's environmental integrity goals. We are concerned that if the ARB signals a strict cutoff now, that signal will limit investment and exacerbate leakage risks. Instead, the ARB should focus on developing protocols that facilitate a robust and sustainable dairy transportation fuels market in the upcoming rulemaking.

Conclusion

The LCFS will be integral to meeting the SB 1383 emission reduction goals. The ARB should focus the upcoming rulemaking on providing clear signals for dairy RNG credit generation, with the goal of instilling confidence in the market. The ARB should not directly link the dairy fuel pathways to the Cap-and-Trade livestock protocols and should not signal a hard cut off in 2025. The ARB should monitor and analyze the market and its progress towards the 2030 SLCP goals before determining whether and how future dairy RNG projects can generate LCFS credits. Dairy Cares looks forward to working with staff on this important rulemaking.

Respectfully submitted,

/s/

Michael Boccadoro
Dairy Cares

[5] Cal. Health and Safety Code Sec. 39730.7(c).