REGENIS
AN ANDGAR COMPANY

October 6, 2017

Mr. Sam Wade, Branch Chief
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Comments on Proposed Changes to LCFS Regulations

Dear Mr. Wade:

I am submitting these comments on behalf of Regenis, which is a Washington State based company specializing in on-farm anaerobic digesters for production of electricity and/or renewable natural gas (RNG). We have several concerns about the proposed changes to the LCFS program. While discussed in more detail below, the main concerns reside in proposed changes adversely affecting Tier 2 projects such as dairy RNG by proposing language that is not well defined in regard to Executive Administrator ability to adjust default CI scores to more appropriate levels while 24-months operational data is secured and as to whether or not credits incurred during use of default or probationary CI scores will in fact be credited to the alternative fuel supplier bank. These issues bring uncertainty to project financing as well as a potential for undermining the viability of project. We ask that the wording be looked at more closely and with exactness to ensure timely, fair implementation that aids project development. Lastly, as a final, verified CI score is a score that exists from initiation of project, it makes only fair and sound sense that credits based on use of a prior default or probationary value be clearly assigned to the project. Our concerns are described below in more detail.

1. Biogas is Essential to LCFS, SLCP and Air Quality Programs.

Biofuels are essential to the success of the LCFS program, providing 89 percent of the total LCFS credits. Verified biogas pathways have the lowest carbon intensity of all biofuels and of all LCFS certified fuels. In addition to providing a growing share of LCFS compliance, the Air Board's *Short-Lived Climate Pollutant Reduction Strategy* makes clear that reducing methane emissions from diverted organic waste and dairy waste will require putting that organic waste to beneficial use, including as a transportation fuel.[1] As the SLCP Strategy says:

"Utilizing clean technologies to put organic waste streams to a beneficial use can also serve to improve regional air and water quality and support economic growth in agricultural and other communities throughout the State."[2]

California has adopted many policies over the past decade to promote biogas use for transportation, including:

[1] *Short-Lived Climate Pollutant Reduction Strategy*, adopted March 2017, at page 3.
[2] SLCP Strategy at page 28.

6920 Salashan Parkway A-102 | P.O. Box 2708 | Ferndale, WA 98248 | Office: 866.578.8630 | Fax: 360.366.5800
www.regenis.net

- SB 1505 (Lowenthal, 2006) requires one-third of all hydrogen at publicly funded hydrogen fueling stations to be renewable.
- AB 1900 (Gatto, 2012) calls on the CPUC to adopt policies to promote the instate production and distribution of biomethane for transportation fuel and energy production.
- SB 840 (2016, Section 10) states that biomethane provides a clean and sustainable fuel that can protect air and water quality, create jobs, and reduce greenhouse gas emissions by tens of millions of metric tons per year.
- SB 1383 (Lara, 2016) requires state agencies to adopt policies and incentives to significantly increase renewable gas, including biogas and biomethane, production and use to further the state's short-lived climate pollutant goals.
- The Sustainable Freight Action Plan (2016) calls for maximizing near-zero emission vehicles powered by renewable fuels wherever zero-emission vehicles are not available.

Biogas is essential to reduce SLCP emissions, to provide renewable fuel for near-zero emission trucks, and to provide immediate reductions in toxic air contaminants from diesel powered trucks where there is no electric option. Despite the many policies calling for increased biogas production and use, the proposed changes to the LCFS program would do the opposite.

2. The LCFS Proposal Increases the Carbon Intensity for Biomethane without Providing the Background Data or Explanation

The staff presentation proposes to significantly increase the default values for biomethane (both BioCNG and BioLNG), without providing the supporting documentation, data or explanation to justify these increases. The proposed default values are several times higher than the current values for biomethane from diverted organic waste and dairy waste. If the default values are applied to biomethane from these sources, they will severely hamper the development of the biogas market that is called for in SB 1383 and the *Short-Lived Climate Pollutant Reduction Strategy*.

3. Several of the Proposed Changes are Not Fuel-Neutral and Disproportionately Hurt Biogas Production and Use.

One of the biggest strengths of the LCFS program is that it is fuel neutral and based on lifecycle analyses of each fuel's carbon intensity. This puts science before dogma and protects both the program itself and consumers by promoting the lowest carbon fuels in a competitive market. Unfortunately, several of the proposed changes to the LCFS would move away from fuel neutrality and set punitive requirements for biogas producers that would not be applied to electricity or other fuel providers.

The most alarming proposal is the proposed creation of a Buffer Account that allows ARB to keep LCFS credits even after a biogas producer has verified that the fuel has a lower carbon intensity than the default pathway. This is particularly egregious since the LCFS proposal also proposes to increase the default values for biogas, in some cases by orders of magnitude. While it may make sense for ARB to hold LCFS credits during pathway verification for a specific project, there is no

rationale for ARB to keep the credits if the pathway is ultimately verified as being lower than the default value. This is highly problematic for several reasons:

a. The LCFS credits have value and allowing ARB to keep them even if the biogas producer verifies a lower carbon intensity would constitute a taking of real property in violation of the Takings Clause of the U.S. Constitution.
b. Without the value of these credits, financing biogas projects will become much more difficult and many will not go forward.
c. Biogas producers would have little incentive to continue to reduce the carbon intensity of the fuels they produce if they lose the benefit of reducing the carbon intensity for the first two years of the fuel's production.
d. This "taking" is only applied to biofuels that must verify their carbon intensity. Since it is not applied to electric vehicles – whose carbon intensity can also vary significantly depending on the electricity source – it creates a huge barrier to one group of fuels rather than treating all fuels equally.

4. The Process and Timeline to Adopt these Changes is Insufficient.

The changes proposed to the LCFS are very serious and will have significant effects on the program itself and the state's ability to meet the requirements of SB 1383. Requiring public comments on the proposed changes before the public has been given the opportunity to review the background material and supporting documentation means that the public – and key stakeholders – will not have adequate opportunity for meaningful public comment.

We urge ARB to extend the public comment by 30 days after ARB releases the full text of the proposed changes and all supporting documentation. Limiting public comment to the staff presentation and regulatory proposal, without background details, denies full public participation and invites unintended consequences later.

For all these reasons, we urge ARB to revise the proposed changes to the LCFS and to release the full, revised proposal with all supporting documentation for a second round of public comment.

Sincerely,

Craig Frear, PhD
Director Research and Technology