



Dairy Environmental Justice Fund Comments on Draft Analysis of Progress toward Achieving the 2030 Dairy and Livestock Sector Methane Emissions Reduction Target (“Draft Analysis”)¹

July 14, 2021

On behalf of the Dairy Environmental Justice Fund (“DEJF”), we appreciate the opportunity to provide the following comments and legal analysis of the statutory framework for the Draft Analysis. The DEJF was formed to support legal, research, and advocacy efforts regarding environmental and sustainability issues affecting the California dairy industry. Our comments are focused solely on the statutory framework governing the Draft Analysis. These comments recommend certain changes to the Draft Analysis to account for statutory directives in Section 39730.7 of the Health and Safety Code which clearly frame the ARB’s authority over enteric emissions in the dairy and livestock sector. These comments respectfully offer the following recommendations on the Draft Analysis:

- I. The ARB should revise the Draft Analysis to clarify that enteric emissions must be achieved through incentive-based mechanisms until such time as an administrative record supports certain findings specified in Section 39730.7(f) of the California Health and Safety Code.
- II. The ARB should revise the Draft Analysis to reflect the language in Section 39730.7(b)(1) which requires the establishment of a 2013 emissions baseline based solely on dairy and livestock manure management operations (“MMOs”).

DISCUSSION

I. Section 39730.7(b)(1) Expressly Governs Livestock Manure Management Operations and Dairy Manure Management Operations, Not Enteric Emissions. Enteric Emissions are expressly addressed in Section 39730.7(f).

The Draft Analysis misinterprets the SB 1383 statutory framework. The Draft Analysis states, “SB 1383 requires the California dairy and livestock sector to reduce methane emissions *from enteric fermentation* and manure management to 40 percent below 2013 levels by 2030.”² (emphasis added). This interpretation is inconsistent with the plain language of Section 39730.7(b)(1), which only provides authority for the reduction of methane emissions from

¹ See June 14, 2021 Draft Analysis, available at: <https://ww2.arb.ca.gov/sites/default/files/2021-06/draft-2030-dairy-livestock-ch4-analysis.pdf>.

² CARB 2030 Methane Emissions Analysis, p. 2.

“livestock manure management operations and dairy manure management operations.” Regulation of enteric emissions is governed and is expressly limited by Sections 39730.7(f) and (g):

...

(f) Enteric emissions reductions shall be achieved only through incentive-based mechanisms until the state board, in consultation with the department, determines that a cost-effective, considering the impact on animal productivity, and scientifically proven method of reducing enteric emissions is available and that adoption of the enteric emissions reduction method would not damage animal health, public health, or consumer acceptance. Voluntary enteric emissions reductions may be used toward satisfying the goals of this chapter.

(g) Except as provided in this section, the state board shall not adopt methane emissions reduction regulations controlling the emissions of methane from dairy operations or livestock operations to achieve the 2020 and 2030 greenhouse gas emissions reduction goals established pursuant to the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500)).³

The Draft Analysis should be clarified as to the statutory authority under Section 39730.7(b)(1) and the limitations and conditions of Sections 39730.7(f) and (g). The Draft Analysis should be corrected to ensure that CARB and the various stakeholders are able to properly plan for the emissions reduction needed to fulfill its obligations under Section 39730.7(b)(1) and focus on voluntary, incentive-based emission reduction measures, as intended by the Legislature.

II. Baseline 2013 Emission Levels Should Only Account for Dairy and Livestock Manure Management Operations, not Enteric Emissions.

Dairy Environmental Justice Fund is concerned that the Draft Analysis’ 9 million metric tons carbon dioxide equivalent (MMTCO_{2e}) emission reduction target is based on “2013 levels” that include enteric emissions. Interpreting the term “levels” to incorporate enteric emissions into baseline levels is neither consistent with the express statutory language of SB 1383, Health and Safety Code Section 39730.7, nor the legislative history of SB 1383.

In November 2019, Legislative Counsel Diane F. Boyer-Vine provided a legislative counsel opinion to Assemblymember Jim Wood on whether the CARB could interpret “levels” to include enteric emissions. Mr. Wood’s office has disclosed this letter, and a copy is provided as Attachment A. The attached Legislative Counsel analysis concludes that Section 39730.7 “does not authorize the State Air Resources Board to adopt regulations that would require by 2030, the livestock and dairy industry to reduce methane emissions from livestock and dairy and manure management operations MMOs by more than 40 percent below the level of methane

³ Cal. Health and Safety Code Section 39730.7.

emissions produced by livestock and dairy manure management operations in 2013.”⁴ Section 39730.7(b)(1) should be interpreted to clearly apply only to “manure management operations” based on the express use of the term and absence of any reference to enteric emissions:

(b)(1) The state board, in consultation with the department, shall adopt regulations to reduce methane emissions from livestock manure management operations and dairy manure management operations, consistent with this section and the strategy, by up to 40 percent below the dairy sector’s and livestock sector’s 2013 levels by 2030.

While we believe this statutory provision should only be applied to MMOs given the express language, we also acknowledge that the phrase “dairy sector and livestock sector’s 2013 levels by 2030” could be susceptible to two reasonable interpretations.⁵ If a statute’s terms are ambiguous, courts may look to a variety of extrinsic aids, including the ostensible objects to be achieved, evils to be remedied, legislative history, public policy, contemporaneous administrative construction, and statutory scheme to which the statute is part.⁶

There are two grammatically possible interpretations of Section 39730.7. The first plausible interpretation is that methane emissions from industry MMOs are required to be reduced, by 2030, by up to 40 percent below the 2013 levels of methane emissions caused by industry MMOs (the “narrower interpretation”). Second, methane emission from industry MMOs are required to be reduced, by 2030, by up to 40 percent below the 2013 levels of the total methane emissions caused by the dairy and livestock sector (i.e., the “broader interpretation”).

The context and the regulatory scheme in which Section 39730.7(b)(1) exists supports the first, narrower interpretation. MMO emissions are the only source of methane emissions mentioned in Section 39730.7 (b)(1). Enteric emissions are addressed separately in Section 39730.7(f), making clear that the Legislature intended for enteric emissions to be accounted for separately from MMO emissions.

Moreover, Section 39730.7(b)(4) places the following five conditions on implementing any regulations created pursuant Section 39730.7 (b)(1), which are clearly focused on MMO emissions:

(A) The regulations are technologically feasible.

(B) The regulations are economically feasible considering milk and live cattle prices and the commitment of state, federal, and private funding, among other things, and that markets exist for the products generated by dairy manure

⁴ Legislative Counsel Letter (Attachment A), p. 9.

⁵ See, e.g., *People v. Dieck*, 209 P.3d 623, 625 (Cal. 2009).

⁶ *People v. White*, 77 Cal. App. 3d Supp. 17, 21 (App. Dep’t Super Ct. 1978).

management and livestock manure management methane emissions reduction projects, including composting, biomethane, and other products. The analysis shall include consideration of both of the following:

(i) Electrical interconnection of onsite electrical generation facilities using biomethane.

(ii) Access to common carrier pipelines available for the injection of digester biomethane

(C) The regulations are cost effective.

(D) The regulations include provisions to minimize and mitigate potential leakage to other states or countries, as appropriate.

(E) The regulations include an evaluation of the achievements made by incentive-based programs.

Section 39730.7(b)(4)(B) specifically references MMOs, suggesting the Legislature was focused on MMOs in drafting Section (b)(1), not enteric emissions. Sections 39730.7(b)(4)(A) and (C) require the regulations be technologically feasible and cost effective. Section 39730.7 (f) places an entirely separate requirement for findings related to enteric emissions that are distinct from the five conditions specified for MMO regulations. Section 39730.7(f) expressly limits enteric emission reduction measures to “incentive-based” emissions reductions measures until the ARB makes certain determinations, including a finding of cost effectiveness. The establishment of separate prerequisites for the ARB implementing regulations pursuant Section 39730.7(b)(1) vs. Section 39730.7(f) suggests the Legislature intended for only emissions associated with MMOs to be targeted.

Further, the legislative history also supports the narrow interpretation of Section 39730.7(b)(1). The Senate Committee on Environmental Quality and Senate Rules Committee analyses describes the purpose of the Bill to reduce methane from MMOs:

Requires ARB, in consultation with the California Department of Food and Agriculture (CDFA) to adopt regulations to reduce methane emissions from livestock and dairy manure management operations by up to 40% below 2013 levels by 2030.⁷

The Assembly Committee on Natural Resources analysis states:

Require ARB to adopt regulations to reduce methane emissions from dairy and livestock manure management operations, subject to

⁷ Senate Committee on Environmental Quality Analysis (Aug. 31, 2016), p.3; Senate Rules Committee, Senate Floor Analysis, p.3 (Aug. 31, 2016).

the following limitations: i. Reductions are limited to 40% below 2013 levels by 2030;⁸

These analyses demonstrate that the Legislature did not intend for the CARB to calculate baseline emissions “levels” under Section 39730.7(b)(1) to include enteric emissions.

Finally, in resolving statutory ambiguities courts have questioned whether a particular interpretation would lead to an “absurd result.”⁹ An interpretation that enteric emissions are subject to the emissions baseline that is expressly focused on MMO emission reductions creates an absurd result because the ARB would effectively establish an emission reduction requirement for MMO emissions that are far greater than 40%. Put differently, if enteric emissions are included in the denominator for emissions reduction levels, the ARB would need to require far greater than 40% emission reductions from MMO measures. Requiring greater than 40% emissions levels is at odds with the express authorization to require reductions “up to” 40%. This is clearly not what the Legislature intended and would be an “absurd result,” as noted in the attached Legislative Counsel opinion.

In conclusion, DEJF recommends that the ARB amend the Draft Analysis to make clear that Section 39730.7 does not authorize the regulation of enteric emissions until certain conditions are met under Section 39730.7(f). In addition, the Draft Analysis should be amended to remove any enteric emission reduction targets from the overall SB 1383 emission reduction target applicable to MMO emissions. The Dairy Environmental Justice Fund looks forward to working with CARB on the development of voluntary, incentive-based measures to achieve enteric emission reductions.

Respectfully submitted,

/s/

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⁸ Senate Committee on Environmental Quality Analysis (Aug. 31, 2016), p. 6.

⁹ *Warner v. Kenny*, 27 Cal. 2d 627, 629 (1946).

ATTACHMENT A

November 2019 Letter from Legislative Counsel, Diane F. Boyer-Vine,
to Assemblymember Jim Wood regarding
**Short-Lived Climate Pollutants: Dairy And Livestock
Industry: Methane Emissions Reductions - # 1915885**

Honorable Jim Wood
Room 6005, State Capitol

**SHORT-LIVED CLIMATE POLLUTANTS: DAIRY AND LIVESTOCK
INDUSTRY: METHANE EMISSIONS REDUCTIONS - #1915885**

Dear Mr. Wood:

You have asked whether Health and Safety Code section 39730.7 authorizes the State Air Resources Board to adopt regulations that would require, by 2030, the livestock and dairy industry to reduce methane emissions produced by livestock and dairy manure management operations to more than 40 percent below the amount of methane emissions produced by livestock and dairy manure management operations in 2013. You also asked whether the State Air Resources Board has the authority to use methane emissions from enteric fermentation as a rationale to adopt regulations requiring, by 2030, the livestock and dairy industry to reduce methane emissions produced by livestock and dairy manure management operations by more than 40 percent below the amount of methane emissions produced by livestock and dairy manure management operations in 2013.

Background

1. California Global Warming Solutions Act of 2006

In 2006, the Legislature granted the State Air Resources Board (hereafter ARB) broad authority to regulate greenhouse gas emissions, which includes methane emissions,¹ when it enacted the California Global Warming Solutions Act of 2006 (hereafter GWSA).² In 2014, the Legislature added Health and Safety Code section 39730³ to the GWSA, requiring ARB to

¹ Methane is a short-lived climate pollutant, which is a class of air pollutants that heat the atmosphere in the short term. (ARB, Short-Lived Climate Pollutants, at <<https://ww2.arb.ca.gov/our-work/programs/short-lived-climate-pollutants/about>> [as of Aug. 27, 2019].) Methane is commonly emitted by the livestock and dairy sectors.

² Health & Saf. Code, §§ 38500 & 38510; see also Assem. Bill No. 32 (Stats. 2006, ch. 488).

³ All further section references are to the Health and Safety Code, unless otherwise indicated.

complete a strategy for reducing emissions of short-lived climate pollutants.⁴ ARB published its first proposed "Short-Lived Climate Pollutant Reduction Strategy" (hereafter strategy) in April of 2016, its revised proposed strategy in November of 2016, and its final strategy in March of 2017.⁵

In September of 2016, the Legislature further amended the GWSA by enacting Senate Bill No. 1383 (2015-2016 Reg. Sess.)⁶ (hereafter SB 1383), which, among other things, added section 39730.5 to the GWSA. Section 39730.5 required ARB, by January 1, 2018, to approve and begin implementing the strategy to achieve a reduction in methane emissions statewide by 40 percent below 2013 levels by 2030 (hereafter statewide reduction requirement).⁷ SB 1383 also added section 39730.7 to the GWSA, which requires ARB to adopt regulations to reduce the methane emissions from dairy and livestock industry (hereafter industry) manure management operations "by up to 40 percent below the dairy sector's and livestock sector's 2013 levels by 2030,"⁸ requires enteric emissions reductions be achieved only through incentive-based mechanisms,⁹ and prohibits ARB from adopting methane emissions reduction regulations controlling industry emissions except as provided for in that section.¹⁰

2. ARB's strategy for reduction of dairy and livestock methane emissions

The majority of methane emissions produced by the industry is from two primary sources: enteric fermentation¹¹ and manure management operations¹² (hereafter MMOs). In the final strategy, ARB calculated that total methane emissions from the industry constituted

⁴ Sen. Bill No. 605 (Stats. 2014, ch. 523).

⁵ See ARB's resources on short-lived climate pollutants published on its website at <<https://ww2.arb.ca.gov/our-work/programs/short-lived-climate-pollutants/resources>> (as of Sep. 27, 2019).

⁶ Stats. 2016, ch. 395.

⁷ § 39730.5, subd. (a).

⁸ § 39730.7, subd. (b)(1).

⁹ § 39730.7, subd. (f).

¹⁰ § 39730.7, subd. (g).

¹¹ Enteric fermentation refers to the digestive process in ruminant animals that emits methane as a by-product mostly in the form of belching but also by way of expelling from the intestines. (U.S. Environmental Protection Agency, AP-42: Compilation of Air Pollutant Emission Factors (5th ed. Feb. 1998) vol. 1, ch. 14, § 14.4-1, at <<https://www3.epa.gov/ttn/chief/ap42/ch14/final/c14s04.pdf>> (as of Sep. 27, 2019).)

¹² The term "manure management operations" is commonly understood within the industry to mean the management of manure produced by dairy livestock within the industry, including anaerobic digesters and nondigester methane

about 55 percent of the total statewide methane emissions in 2013.¹³ Of the 55 percent produced by the industry, ARB calculated that 25 percent was from dairy MMO methane emissions, and 20 percent was from dairy enteric fermentation emissions.¹⁴

Also in the final strategy, ARB estimated that in order to reach the statewide reduction requirement, a reduction equivalent to 26 metric tons of methane in the dairy and livestock sector's emissions would need to be achieved.¹⁵ The 26 metric tons appears to have been calculated using the industry's total amount of methane emissions in 2013 not just methane emissions produced by MMOs.¹⁶ In addition, the reduction would come entirely from MMO methane emissions as the final strategy concedes that further research is needed before enteric fermentation emissions can be regulated.¹⁷

In sum, it appears ARB used the total amount of methane emissions produced by both enteric fermentation and MMOs in 2013 in order to estimate how many metric tons of methane the industry will be required to reduce from MMOs by 2030. By setting the amount to be cut based on both methane emissions rates in 2013, MMO methane emissions would have to be cut by more than 40 percent from their 2013 levels in order to meet the 26 metric ton reduction goal.

Currently, ARB has not adopted regulations requiring any reduction in methane emissions by the industry. However, because of the information in the final strategy described above, you have asked us to assume for the purposes of this opinion that ARB intends to adopt regulations requiring the industry to cut 26 metric tons from its MMO methane emissions.

¹³ ARB, Cal. Environmental Protection Agency, Short-Lived Climate Pollutant Reduction Strategy (Mar. 2017) Figure 4, p. 56, at <https://ww3.arb.ca.gov/cc/shortlived/meetings/03142017/final_slep_report.pdf> [as of July 17, 2019] (hereafter SLCP Reduction Strategy).

¹⁴ SLCP Reduction Strategy, *supra*, Figure 4, p. 56.

¹⁵ SLCP Reduction Strategy, *supra*, Table 2, p. 12; see also *id.*, Table 8, p. 63.

¹⁶ ARB does not detail how it arrived at the 26 metric ton reduction amount it proposes in the final strategy, but it appears to have calculated it in the following manner. According to ARB, 118 metric tons of methane was emitted statewide in 2013. (SLCP Reduction Strategy, *supra*, Table 1, p. 6.) Forty percent of 118 metric tons is 47.2 metric tons. Thus, 47.2 metric tons of methane would need to be reduced in order to meet the statewide reduction requirement. The

which would be more than 40 percent of the MMO methane emissions levels for 2013.¹⁸ Accordingly, assuming those calculations to be true, you have asked us whether ARB has the authority to require the industry to reduce methane emissions produced by MMOs by more than 40 percent below the 2013 level of methane emissions produced by MMOs.

Analysis

1. Does section 39730.7 give ARB the authority to adopt regulations requiring the industry, by 2030, to reduce methane emissions from MMOs by more than 40 percent below the level of methane emissions produced by MMOs in 2013?

¹⁹ In order to answer this question we must first look at the words of the statute. Section 39730.7 states in pertinent part:

"(b)(1) The state board,⁽¹⁹⁾ in consultation with the department,⁽²⁰⁾ shall adopt regulations to reduce methane emissions from livestock manure management operations and dairy manure management operations, consistent with this section and the strategy,⁽²¹⁾ by up to 40 percent below the dairy sector's and livestock sector's 2013 levels by 2030.

"(f) ... (f)

"(f) Enteric emissions reductions shall be achieved only through incentive-based mechanisms until the state board, in consultation with the department, determines that a cost-effective, considering the impact on animal productivity, and scientifically proven method of reducing enteric emissions is available and that adoption of the enteric emissions reduction method would not damage animal health, public health, or consumer acceptance. Voluntary enteric emissions reductions may be used toward satisfying the goals of this chapter.

"(g) Except as provided in this section, the state board shall not adopt methane emissions reduction regulations controlling the emissions of methane from dairy operations or livestock operations" (Emphasis added.)

The fundamental task of statutory construction is to ascertain the intent of the Legislature in order to effectuate the purpose of the statute.²² When construing statutes, a court looks first to the words of the statute, which should be given their usual, ordinary, and

¹⁸ The analysis in this opinion is specific to these assumed facts, and any change to those

commonsense meaning.²¹ However, "The meaning of a statute may not be determined from a single word or sentence; the words must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible."²⁴ When the language of a statute is clear and unambiguous, the court ends the analysis.²⁵

However, the terms of a statute may be deemed ambiguous when more than one grammatically plausible interpretation can be tendered.²⁶ If a statute's terms are ambiguous, courts may look to a variety of extrinsic aids, including the ostensible objects to be achieved, evils to be remedied, legislative history, public policy, contemporaneous, administrative construction, and statutory scheme of which the statute is a part.²⁷

Turning to your question, the first part of section 39730.7, subdivision (b)(1)²⁸ makes clear that the industry reductions in methane emissions shall come only from "methane emissions from livestock manure management operations and dairy manure management operations." What is not clear is whether the word "levels" in the final phrase of that sentence, "by up to 40 percent below the dairy sector's and livestock sector's 2013 levels by 2030" refers to the levels of methane emissions produced by the MMOs in 2013 or whether the word "levels" refers to the total levels of methane emissions produced by the industry in 2013.

Accordingly, in our view, there are two grammatically plausible interpretations of subdivision (b)(1). First, methane emissions from industry MMOs are required to be reduced, by 2030, by up to 40 percent below the 2013 levels of methane emissions caused by industry MMOs (hereafter the narrow interpretation). Second, methane emissions from industry MMOs are required to be reduced, by 2030, by up to 40 percent below the 2013 levels of the total methane emissions caused by the industry (hereafter the broad interpretation). As a result, we believe that subdivision (b)(1) is ambiguous. Thus, we will next analyze which interpretation is more likely to prevail in court.

1.1 Argument in favor of the narrow interpretation

The phrase "by up to 40 percent below the dairy sector's and livestock sector's 2013 levels by 2030" can be read narrowly to apply to the 2013 levels of methane emissions produced by the MMOs. The statutory scheme of which subdivision (b)(1) is a part can be construed as supporting the narrow interpretation. By its plain language, the only source of methane emissions mentioned in subdivision (b)(1)'s requirement to reduce methane emissions is MMOs. Moreover, subdivision (b)(4)(B) and (D) prohibits ARB from implementing any regulations under the authority of subdivision (b)(1) unless they determine a market exists for products generated by MMO methane emissions reductions projects and include in the regulations provisions to minimize and mitigate potential leakage of methane to other states or

²¹ *People v. Mejia* (2012) 211 Cal.App.4th 586, 611.

countries.²⁹ Thus, the focus here appears to be on the development of markets for biomethane created from manure.

In addition, subdivision (b)(4)(A) and (C) prohibits ARB from implementing any regulations under the authority of subdivision (b)(1) until it determines the regulations are technologically feasible and cost effective. And subdivision (f) assumes that there is no existing cost-effective way to reduce methane emissions produced by enteric fermentation. The subdivision specifically prohibits ARB from regulating enteric emissions reductions, except through incentive-based mechanisms, until certain conditions are fulfilled.³⁰ Thus, when these two subdivisions are read in conjunction, it further supports the argument that the Legislature intended subdivision (b)(1) to require a reduction of methane emissions produced only by MMO methane emissions when it referred to "levels."

A review of the legislative history also supports the narrow interpretation.³¹ Both the analysis by the Senate Committee on Environmental Quality and the Senate Rules Committee state that SB 1383 "Requires ARB, in consultation with the California Department of Food and Agriculture (CDFA) to adopt regulations to reduce methane emissions from livestock and dairy manure management operations by up to 40% below 2013 levels by 2030."³² Additionally, the Assembly Committee on Natural Resources and Senate Third Reading analyses, in discussing SB 1383, state that it "Requires ARB to adopt regulations to reduce methane emissions from dairy and livestock manure management operations, subject to the following conditions: [¶] i) Reductions are limited to 40% below 2013 levels by 2030."³³

Finally, adopting the broad interpretation may lead to absurd results and a court would disfavor a construction leading to an absurd result.³⁴ In that regard, if the term "levels" within the phrase "by up to 40 percent below the dairy sector's and livestock sector's 2013 levels by 2030" were interpreted to mean total levels of methane emissions produced by the industry, the industry would be required in meeting the 26 metric ton reduction to reduce its

²⁹ And ARB is required, in consultation with certain state agencies, to establish energy infrastructure development and procurement policies to encourage dairy biomethane projects to meet the goals identified for industry methane emissions reductions. (Subd. (d).)

³⁰ As was previously discussed, ARB appears in its final strategy to acknowledge that those conditions have not yet been fulfilled. (See SLCP Reduction Strategy, *supra*, at p. 70.)

³¹ See *Matus v. Board of Administration* (2009) 177 Cal.App.4th 597, 606; see also *Toyota Motor Corp. v. Superior Court* (2011) 197 Cal.App.4th 1107, 1118, fn. 7 (Committee and floor analyses are properly considered in determining a statute's meaning).

³² Sen. Com. on Environmental Quality, Analysis of SB 1383, as amended Aug. 31, 2016, p. 3 (hereafter Sen. Com. EQ analysis of SB 1383); Sen. Rules Com., Off. of Sen. Floor Analyses, Unfinished Business Analysis of SB 1383, as amended Aug. 31, 2016, p. 3 (hereafter Sen. floor analysis of SB 1383).

MMO methane emissions by an amount very close to the entire amount of methane emissions produced by the MMOs in 2013. That may result in a regulation that is neither technologically feasible, economically feasible, nor cost effective as required by section 39730.7, and therefore could not be implemented. In sum, the narrow interpretation finds support in the statutory scheme and legislative history, and the broad interpretation may lead to an absurd result. Thus, we believe that a court would favor the narrow interpretation.

1.2 Argument in favor of the broad interpretation

The phrase "by up to 40 percent below the dairy sector's and livestock sector's 2013 levels by 2030" can also be read broadly to apply to the 2013 levels of methane emissions produced by the entire industry. In support of the broad interpretation, several committee analyses for SB 1383 state that amendments to the bill would "limit the dairy sector's reduction obligation to 40% below 2013 levels"³⁵ without specifying that those 2013 levels only refer to the MMO 2013 levels.

In addition, the statutory framework of section 39730.7 does not explicitly exclude the broad interpretation, and in some respects implies that the broad interpretation is proper. As the industry is the largest single emitter of methane in the state and ARB does not have the power or technology to regulate enteric emissions,³⁶ meeting the statewide reduction requirement³⁷ would require the reductions to MMO methane emissions to exceed 40 percent of their 2013 levels. Subdivision (b)(2)(C) specifies that ARB is empowered to conduct or consider research on dairy methane emissions reduction projects like "scrape manure management systems, solids separation systems, and enteric fermentation." Most of these potential projects are MMO related, but it also includes consideration of enteric fermentation related projects. The inclusion of enteric fermentation research as a way to reach the reduction goal specified in subdivision (b)(1) supports the application of the broad interpretation.³⁸

Also, subdivision (f) and certain committee analyses state that voluntary reductions of enteric fermentation emissions may be used toward reduction goals identified for the dairy and livestock sectors.³⁹ The only reduction goals identified for the livestock and dairy sectors are within subdivision (b)(1). And if voluntary enteric fermentation emission reductions count

³⁵ Assem. Com. Nat. Res. analysis of SB 1383, *supra*, at p. 7; Sen. 3d reading analysis of SB 1383, *supra*, at p. 6; Sen. Com. EQ analysis of SB 1383, *supra*, at p. 10.

³⁶ SLCP Reduction Strategy, *supra*, at pp. 56, 62, 63 & 70.

³⁷ As stated previously, the Legislature set a statewide reduction requirement of a 40 percent reduction in methane emissions below 2013 levels by 2030. (§ 39730.5, subd. (a).)

³⁸ Also, if ARB were to rely on section 39730.7 as authority to adopt a duly enacted regulation requiring a more than 40 percent reduction of methane emissions from MMOs, a court may give some deference to that interpretation. (See *Yamaha Corp. of America v. State Bd. of*

toward the reduction goals in subdivision (b)(1), that could also support the broad interpretation. In sum, each of these points lend support for the broad interpretation.

1.3 Conclusion regarding Question No. 1

As discussed above, however, an adoption of the broad interpretation may lead to absurd results. Moreover, each of the statements in committee analyses offered to support the broad interpretation occur after the unambiguous statement that the MMO methane emissions reduction requirements would be up to 40 percent of the 2013 MMO levels. Thus, in our view, the narrow interpretation finds greater support within the legislative history, and the statutory scheme itself gives greater weight toward the narrow interpretation. Accordingly, we think a court would be more likely to find the argument supporting the narrow interpretation persuasive. Thus, in our opinion, subdivision (b)(1) does not authorize ARB to adopt regulations that require the industry to reduce MMO methane emissions by more than 40 percent below the level of methane emissions produced by MMOs in 2013.

2. Does ARB have the authority to use methane emissions from enteric fermentation as a rationale to adopt regulations that require, by 2030, the industry to reduce MMO methane emissions by more than 40 percent below the level of methane emissions produced by MMOs in 2013?

In general, an administrative agency has only those powers that have been granted expressly or impliedly by Constitution or statute.⁴⁰ Upon review by a court, an administrative regulation "comes before the court with a presumption of correctness and regularity."⁴¹ With respect to the requirement that an agency's regulations comply with its underlying statutory authority, Government Code section 11342.2 states, in pertinent part, that "no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute." Therefore, in an agency's determination of the scope of its own power with regard to a particular regulation, there are two basic considerations: (1) whether the regulation is consistent with the enabling statute, and (2) whether it is reasonably necessary to effectuate the purpose of that statute.⁴²

Because we have concluded that a court would likely find that section 39730.7 only authorizes ARB to require the industry to reduce MMO methane emissions by no more than 40 percent below the 2013 levels of methane emissions produced from industry MMOs, a regulation requiring a larger reduction would not be consistent with the enabling statute. Accordingly, we conclude that ARB does not have the authority to use the level of methane emissions produced by enteric fermentation as a rationale for requiring the industry to reduce, by 2030, the methane emissions produced by MMOs by more than 40 percent of the level of methane emissions produced by MMOs in 2013.

Conclusions

In our opinion, Health and Safety Code section 39730.7 does not authorize the State Air Resources Board to adopt regulations that would require, by 2030, the livestock and dairy industry to reduce methane emissions from livestock and dairy manure management operations by more than 40 percent below the level of methane emissions produced by livestock and dairy manure management operations in 2013. Additionally, in our opinion, the State Air Resources Board does not have the authority to use methane emissions from enteric fermentation as a rationale for adopting regulations that require, by 2030, the livestock and dairy industry to reduce methane emissions produced by livestock and dairy manure management operations by more than 40 percent below the level of methane emissions produced by livestock and dairy manure management operations in 2013.

Very truly yours,

Diane F. Boyer-Vine
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Sue-Ann Peterson
By *on behalf of*
Sue-Ann Peterson
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SP:kam