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August 27, 2024

Via Electronic Submittal

Clerk of the Board
California Air Resources Board
1001 I. Street
Sacramento, CA 95814

Re: Comments on the Additional Modifications to the Proposed Amendments to the Low Carbon Fuel Standard

Dear Honorable Members of the California Air Resources Board:

This firm represents Leadership Counsel for Justice and Accountability ("Leadership Counsel") in matters relating to the California Air Resources Board's ("CARB") Proposed Amendments to the Low Carbon Fuel Standard Regulation ("LCFS"). Central Valley Defenders of Clean Water & Air, Animal Legal Defense Fund, and Food & Water Watch have informed us that they also join in this letter. On February 20, 2024, we submitted comments demonstrating that CARB's proposed amendments to the LCFS would greatly incentivize concentrated animal feeding operations ("factory farms") to expand their herds and install anaerobic digesters, which will have devastating environmental impacts. These impacts were not adequately evaluated, or even acknowledged, in the Draft Environmental Impact Analysis ("DEIA"). The additional modifications to the proposed amendments published on August 12, 2024 do not eliminate, and would likely increase, the incentive for factory farms to expand their herds and install anaerobic digesters.

Leadership Counsel intends to provide more comprehensive comments on the inadequate Recirculated Draft Environmental Impact Analysis ahead of the September 30, 2024 public comment deadline. However, as discussed below, Leadership Counsel notes that the modifications do not address its concerns regarding the incentives for factory farms created by the LCFS.

Key Modifications to the Proposed Amendments

Strengthening the Carbon Intensity Benchmark

Currently, the LCFS includes a carbon intensity benchmark requiring a 20% reduction from the 2010 baseline by 2030. The proposed amendments, released in December 2023, strengthened the carbon intensity benchmark to a 30% reduction from the 2010 baseline by 2030, and established a new 90% carbon intensity reduction benchmark by 2045.[1] In our February 2024 comments, we pointed out that strengthening the carbon intensity would increase demand for LCFS credits, and thus increase the money eligible fuel producers, including factory farms, receive for LCFS credits. The additional modifications to the proposed amendments would further increase the required carbon intensity reduction in the first five years following adoption (2025, 2026, 2027, 2028, and 2029). Notably, the initial increase in stringency will be a 9% reduction from the 2010 baseline benchmark[2] in 2025 as compared to the 5% reduction included in the amendments published in December. Put differently, the recent amendments update the 2025 benchmark schedule to achieve a 22.75% CI reduction compared to the 13.75% CI reduction specified in the 2018 adopted regulation, and the 18.75% reduction specified in the December 2023 amendments. CARB explained this change is intended to increase the stringency to bring deficits and credits into balance.[3] If adopted, this modification would provide even more financial benefits for eligible fuel producers, and thus increase the incentive factory farms have to expand their herds and install anaerobic digesters.

Avoided Methane Crediting

The proposed amendments published in December 2023 drew a bright line between factory farm fuel pathways certified before, and after, January 1, 2030, with respect to avoided methane crediting.[4] Factory farm fuel pathways certified before January 1, 2030 would be eligible to be renewed for up to three consecutive 10-year crediting periods, whereas fuel pathways certified after January 1, 2030 would only be eligible to generate LCFS credits until 2045 at the latest. Leadership Counsel argued in our February 2024 comments that this proposed amendment would provide a significant

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[1] CARB Staff Report: Initial Statement of Reasons, at 22-26 (December 19, 2023) (“ISOR”).
[2] CARB, Notice of Public Availability of Modified Text and Availability of Additional Documents and/or Information, at 5 (August 12, 2024) (Notice of Additional Modifications).
[3] *Id*.
[4] ISOR, at 31.

incentive for factory farms to expand their herds and/or install anaerobic digesters before December 31, 2029, to take advantage of maximum LCFS crediting. The additional modifications to the proposed amendments would limit the number of crediting periods for fuel pathways that are certified before January 1, 2030 to two, rather than three.[5] However, even with this modification, factory farms would still be greatly incentivized to expand their herds and install digesters before December 31, 2029.

Biomethane Deliverability Requirements

Under the current LCFS Regulation, all factory farms across the nation can generally qualify for LCFS credits on the same basis as factory farms in California. The proposed amendments included new deliverability requirements that would limit the biomethane eligible for LCFS crediting to biomethane "carried through common carrier pipelines that physically flow within California or toward end use in California."[6] Leadership Counsel argued that these deliverability requirements would limit the supply of LCFS credits, thereby increasing the amount of money eligible fuel products would receive per credit, providing a substantial incentive for factory farm herd expansion and digester installation in California. Moreover, it would limit eligible fuel producers to those in California or providing fuel for California, thus providing a greater market share for California livestock operations. The additional modifications would add a condition that would move up the starting point for deliverability requirements under specified circumstances.[7] Leadership Counsel anticipates this additional modification will only further incentivize the expansion of herds and installation of digesters in California.

Limitations on Fossil Hydrogen Favor Livestock Methane

The Notice of Additional Modifications states that "staff proposes to remove LCFS credit generation eligibility for hydrogen produced using fossil gas as a feedstock, effective January 1, 2031.[8] The text of the proposed amendment, however, provides that hydrogen produced using fossil gas as a feedstock will still be eligible after January 1, 2031, if "biomethane attributes are matched to the hydrogen production."[9] This change will require that fossil hydrogen producers that wish to generate credits through the LCFS to purchase the environmental attributes of biomethane. This methane laundering will

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[5] Notice of Additional Modifications, at 12.
[6] ISOR, at 30-31.
[7] Notice of Additional Modifications, at 12.
[8] Notice of Additional Modifications, at 3.
[9] CARB, Notice of Additional Modifications, Attachment A-1, at 37 (August 12, 2024), https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2024/lcfs2024/15day_atta-1.pdf.

both expand the market and demand for livestock biomethane and send a signal to the market that the demand for livestock biomethane will increase. This change, too, will increase the value of livestock methane and will encourage the production of biomethane and with it the production and concentration of livestock manure.

Very truly yours,

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