

October 16, 2024

Via Electronic Submittal

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

Re: Comments on the Second 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. We previously submitted multiple sets of comments explaining that the Proposed Amendments greatly increase the incentivize that large dairies with liquid manure handling systems (“factory farms”) have to expand their herd sizes and install anaerobic digesters. Both the original Draft Environmental Impact Analysis (“DEIA”) and the Recirculated Draft Environmental Impact Analysis (“Recirculated DEIA”) omitted *any* analysis of the environmental impacts of herd expansion and included an insufficient, cursory analysis of the impacts associated with digesters.

Instead of supplementing its deficient environmental analysis, CARB issued a second set of modifications¹ that provide an even greater incentive than the previous versions of the Proposed Amendments to expand herd sizes and install anaerobic digesters at factory farms. Most significantly, the second set of modifications provide that the rule limiting avoided methane crediting if there is a law, regulation, or mandate

¹ California Air Resources Board, Second Notice of Public Availability of Modified Text and Availability of Additional Documents and/or Information (October 1, 2024) (“Second Additional Modifications”).

requiring methane reductions only applies to pathways that break ground after December 31, 2029.² Additionally, the second set: (1) requires hydrogen dispensed as a vehicle fuel to be at least 80 percent “renewable” by 2030, which includes hydrogen produced using fossil gas as a feedstock if biomethane attributes are matched to the production;³ (2) reverts to CARB’s original proposal to allow three, ten-year avoided methane crediting periods for pathways certified before the effective date of the regulation;⁴ and (3) allows book-and-claim for biomethane used to produce electricity for electric vehicle charging if the electricity is generated using a fuel cell.⁵

CARB contends that “no additional environmental analysis or recirculation of the EIA is required.”⁶ CARB is wrong. CEQA requires lead agencies to recirculate an environmental impact report when the agency makes changes to the project that substantially increase the severity of an environmental impact previously considered or a new significant environmental impact would result from the project. Pub. Res. Code § 21092.1; 14 Cal. Code Regs. § 15088.5; *Laurel Heights Improvement Ass’n v. Regents of Univ. of Cal.* (1993) 6 Cal.4th 1112, 1130; *Western Placer Citizens for an Agricultural & Rural Environment v. County of Placer* (2006) 144 Cal.App.4th 890, 899-903.

Each of the additional modifications discussed herein send a clear, stronger signal than prior iterations of the proposed regulation to factory farms to increase their herd sizes and install anaerobic digesters in the near-term to take advantage of the lucrative benefits provided by the LCFS, many of which will no longer be available if pathways are certified too late.⁷ The greater incentive to expand herds and install digesters will undoubtedly increase the severity of the significant and unavoidable air quality, water quality, greenhouse gas, and public health impacts that CARB acknowledges, and those that it does not. CARB must recirculate the DEIA and conduct a comprehensive analysis of the environmental impacts caused by the substantial increase in herd expansion and anaerobic digesters, particularly in the Central Valley communities that already bear a substantial pollution burden.

² *Id.* at 8-9 (subsection 95488.9(f)(3)(B)).

³ *Id.* at 3 (section 95482(h)).

⁴ *Id.* at 8 (subsection 95488.9(f)(3)(A)).

⁵ *Id.* at 8 (subsection 95488.8(i)(2)).

⁶ *Id.* at 10.

⁷ Also concerning are proposals to add a new temporary carbon intensity for electricity produced by fuel cell from dairy and swine manure and update the temporary fuel pathway for hydrogen produced from biomethane. *Id.* at 8.

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Very truly yours,

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