



STATE OF WASHINGTON

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December 13, 2024

Department of Ecology

CC: Josh Grice, Bill Flagg, Vera Pfeiffer, Rebecca Sears, Jordan Wildish

RE: Clean Fuel Standard Draft Rule Language

Dear Clean Fuel Standard Program,

Thank you for the opportunity to comment on your draft rule language prior to Ecology's filing the CR-102 on this rulemaking. We understand that the rule is complex and that your team aims to move forward using the best available information. Washington State Department of Agriculture (WSDA) provides formal input to Ecology on several other climate related laws, rules, and policies related to agriculture. We would like to highlight the potential outcomes of the draft rule language proposed on November 26, 2024 and offer our expertise and technical assistance on the matter.

Overview:

Limiting avoided methane crediting for dairy anaerobic digesters as proposed in draft rule language raises the following concerns:

- **Equity and Agricultural Viability:** There are currently no dairy biogas projects within the state of Washington participating in Ecology's Clean Fuel Standard (CFS) program. The proposed rule language would further disincentivize market participation from the majority of Washington dairy farms, creating a market likely only accessible to the largest 3% of operations within the state and large-scale out-of-state projects.
- **Misalignment with Existing Law:** The Climate Commitment Act (CCA) exempts agriculture from emissions reductions mandates, yet the CFS rule infers that anaerobic digester (AD) will be considered as baseline practice for farms participating in the program after a certain date.
- **Increased Emissions:** Disallowing credit for avoided methane emissions may result in an increase in the state's baseline methane emissions due to the increased likelihood of digesters shutting down as a result of lost revenue from avoided methane crediting.
- **Decreased Efficacy of Other State Laws, Rules, and Policies:** Several other state mandates implemented by Ecology are dependent on increased development of dairy anaerobic digesters within the state; including diversion of food and other organic wastes from landfills.

Background:

Debate has occurred in recent years over California Air Resources Board's (CARB) Low Carbon Fuel Standard (LCFS) program crediting of dairy anaerobic digesters within the program for avoided methane despite the mandate (Senate Bill (SB)1383) on their state's dairy industry to reduce methane emissions. CARB has just recently proposed policies to limit the amount of credit for avoided methane from dairy anaerobic digesters in the LCFS program. Considering that much of Ecology's CFS program has been modeled after CARB's LCFS program, it might seem logical to apply policies adopted by CARB into Ecology's program. However, there are considerable differences between California and Washington dairy digester economics and technologies that pose negative implications for adopting similar rule. This letter aims to outline what those implications are to support strong Washington policy that will incentivize localized energy production from dairy anaerobic digesters.

As proposed, the draft rule language introduced November 26, 2024, would unnecessarily limit and disincentivize the adoption of AD systems used to capture manure-generated methane on dairy farms and the production of low carbon fuels. Even as Ecology's CFS program is in early development stages, and is under current rulemaking/revision, there are already attempts to disallow credit from avoided methane for dairy biogas projects, increasing the level of uncertainty within this already risky market for agricultural producers. The draft rule language on avoided methane emissions crediting is outlined below:

- “(i) The avoided methane crediting period for projects that break ground after January 1, 2023, is limited to two seven and a half year periods, counting from the quarter following ecology approval of the pathway application.
- (ii) The avoided methane crediting period for projects that started operations to produce biomethane before January 1, 2023, is subject to the following conditions:
 - (A) The crediting period for a facility that started operation in 2022 is limited to 14 years. (B) The crediting period reduces by one year per each year dating back from 2022 that a facility started operations to produce biomethane. For example, a facility that started operation in 2020 is eligible for avoided methane credits for 12 years.
 - (C) Facilities that started operations to produce biomethane before 2009 are not eligible for avoided methane crediting”.

Under the CCA or any other existing state law, agriculture has no mandate to reduce the emission of greenhouse gas such as methane. As such, there is no sound argument for why credit from avoided methane should be phased out under Ecology's CFS program, particularly for in-state projects. The draft rule proposal will create an environment where only the largest of Washington dairy producers may be able to participate in this market, posing implications for overall stakeholder equity and the efficacy of other state climate and energy laws, rules, and policies dependent on AD adoption on farms.

CARB's LCFS program operated for over a decade, accepting hundreds of dairy biogas project pathways, prior to entertaining limitations on avoided methane crediting. In CARB's 2022 report, 'Analysis of Progress towards Achieving the 2030 Dairy and Livestock Sector Methane Emissions Target', they recognize the need for strong incentives and creating market certainty to enable further project development. Rules like the ones Ecology is proposing would deter dairy biogas project development in the state and impede upon Washingtonians' desires for sustainable communities with localized energy and food production.

Ecology has several mandates under the CCA, including established funding for dairy anaerobic digester development under the Climate Commitment Account (RCW 70A.65.260). This was seen as critical for the state to continue to incentivize their biogas production so that the economic return on investment supports participation in these programs. This funding was established to promote voluntary adoption of AD from dairies within the state due to the success of a similar funding program in California for dairy digester development (DDRDP).

Carbon intensity scoring and the number of credits a project generates is greatly impacted by credit from avoided methane, particularly for small-medium scale projects that do not generate large quantities of biogas on their own.

When a biogas project submits a pathway for approval under the CFS/LCFS program, a carbon intensity (CI) score is assigned to their specific project. The CI score has a significant impact on the number of credits a project can generate and, therefore, its revenues.

The formulas related to CFS/LCFS programs below show the relationship between CI scoring and revenue:

Credit Generation (Number of Credits) = (CI Score Assigned to Project x Quantity of Fuel Produced)

Revenue (\$) = (Number of Credits x LCFS/CFS Price)

Dairy biogas projects earn some of the lowest carbon intensity scores within CARB's LCFS program, where credit from avoided methane enables them to have a lower CI score compared to other low carbon fuel generators. CARB's LCFS database shows the average CI score assigned to dairy biogas projects from 2018 to 2023 to be -328 gCO₂e/MJ¹. Credit from avoided methane may account for up to -150 gCO₂e/MJ.

Based on Ecology's list of Approved Fuel Pathways last updated July 15, 2024, there is only one dairy biogas pathway approved within the program. The project is located outside of the state of Washington and has been assigned a CI score of -150 gCO₂e/MJ. Credit from avoided methane in this case may make up a large proportion of the CI score. In order for projects like these financial proformas' to work, they need to be of considerable scale (i.e., large-scale dairies producing large quantities of biogas).

Many other types of low carbon fuel producers participating in LCFS/CFS programs do not earn credit for avoided methane emissions, such as landfills and ethanol production. Therefore, revenues are not largely influenced by the CI score, but the quantity of gas itself. This makes sense however, because the averaged sized dairy, on their own, produces a fraction of the amount of biogas in comparison to other low carbon fuel generators. *Credit from avoided methane enables smaller scale dairy digester projects (<5,000 mature head) to "pencil out",* where producers can also partner with private developers that can also help bear some of the risk with these projects, helping shield market dairy farmers from market risk (i.e., price fluctuations). *Although the rule proposes to allow avoided methane crediting for up to 14 years for new projects, this does not offer great certainty in investment decision making.* With credit prices in low carbon fuel markets being historically volatile, dairy farmers who are traditionally risk-averse, see little to no incentive to participate and risk their operation's financial viability. Increasing the level of uncertainty in this market through introducing added complexity to carbon intensity scoring and subsequently decreasing the

¹ "LCFS Pathway Certified Carbon Intensities." California Air Resources Board. Accessed January 2024. <https://ww2.arb.ca.gov/resources/documents/lcfs-pathway-certified-carbon-intensities>

level of state incentives, will create a market where only the largest of farms will be able to participate in the program.

In addition to incentives through CI scoring from CARB, California Department of Food and Agriculture (CDFA) has provided \$214 million in cost share for 131 digester projects installed from 2015 to 2023². Private developers, Mass Energy and California Bioenergy are the two main project developers utilized by dairies in California, submitting funding requests on their behalf and providing matching cost share for digester installation. These developers have targeted the largest of California dairy operations, with the average herd size for farms with installed digesters at approximately 6,150 dairy cattle per facility³.

Both the avoided methane crediting from CARB and grant funds from CDFA incentive mechanisms have been available for California dairy biogas projects even with the mandate on their industry to reduce methane emissions (Senate Bill (SB) 1383). In theory, no dairy biogas pathway in California would have received credit for avoided methane due to the mandate on the state's industry to reduce methane emissions. *However, policymakers in California understood the necessity to allow for avoided methane crediting policy to enable project development due to the economics of dairy biogas projects.* Private investment in dairy anaerobic digesters has been a vital component to their economic development in the state of California, providing 50% matching costs or greater, providing capital and established partnerships to help shield dairies from risk associated with volatile LCFS pricing.

California regulators found that if they used a “stick-approach” instead of an incentive-based approach for farms to reduce their emissions, they would likely cause them to exit the industry and re-open their doors in other states without emissions reduction targets, essentially shifting the pollution elsewhere. The “carrot-approach” to emissions reductions from California’s dairy industry has led to the installation of approximately 100 covered lagoon digesters since 2015 producing compressed natural gas (CNG), with another fourteen producing renewable electricity⁴ based on EPA’s AgSTAR Database. GHG reductions by dairies through digester deployment have accounted for 30% of the state’s GHG reduction goal thus far, despite only utilizing 2% of the state’s funding for climate investments⁵. According to CDFA, dairy digesters are one of the most efficient GHG removal technologies in terms of each ton of GHG reduced.

In 2024, CARB created future policy fixes to the LCFS that will limit the amount of avoided methane crediting awarded to projects. California has proposed to allow avoided methane crediting for dairy and swine RNG limited to two ten-year periods, where pathways certified before the effective dates of these amendments will be grandfathered to allow for three potential ten-year periods. Even with their state’s dairy industry under a mandate to reduce emissions, these policies are still more favorable for project development and viability for participants in their program than what Washington’s CFS program is proposing.

² "Dairy Digester Research & Development Program." Report of Funded Projects (2015-2023), July 2023. https://www.cdca.ca.gov/oefi/ddrdp/docs/2023_ddrdp_legislative_report.pdf

^{3,4} "Livestock Anaerobic Digester Database". Environmental Protection Agency (EPA). Last updated October 1, 2024. <https://www.epa.gov/agstar/livestock-anaerobic-digester-database>

⁵ Mitloehner, Frank. No BS – Dairy Digesters Work. University of California Davis CLEAR Center (March 31, 2022). <https://clear.ucdavis.edu/blog/no-bs-dairy-digesters-work>

If adopted, disallowing avoided methane crediting will cause project developers with private capital to be more risk-averse to small-medium sized farms, comprising most of Washington's dairy industry (88%).

Equity and Agricultural Viability

To date, there are no dairy biogas projects within the state of Washington participating in the state's CFS program. Of the state's approximately seven operating dairy digesters, one digester produces renewable natural gas for CARB's LCFS program, two digesters generate credits under Oregon's Clean Fuels Program, and the others partake in renewable electricity markets with local utilities⁶.

All seven of the current operational dairy digesters within Washington have their own unique challenges, and several have a history of technology failures that have necessitated outside funding from clean fuels programs to maintain operations. Several of these projects "lead the way" towards creating an AD framework for accepting food and other organic wastes diverted from landfills for dairy anaerobic digesters within the state. Because these projects do not produce large quantities of biogas compared to other low carbon fuel generators, their viability is threatened by the proposed rule change. There are several more digesters that are shut down due to a lack of viable markets for their biogas and their high ongoing operations and maintenance (O&M) costs.

Under the draft rule language, roughly half of Washington's operational dairy digesters may not be eligible to receive any avoided methane credits under Washington's CFS program. For new projects (breaking ground after 2023), avoided methane crediting is limited to two seven and a half year periods, which is usually not enough time for a project to reach their return on investment given variable market conditions, and high capital investment, and ongoing maintenance costs. These rules are not inviting for private interest in Washington's CFS market for development of dairy digesters, an attribute that is needed in order to scale digester development within the state.

Washington has approximately 260 dairy farms home to approximately 218,000 milk cows. Altogether, in Washington state, there are only 23 dairy farms with 2,500 or more mature milking cows. 88% of Washington dairy farms have less than 2,000 mature milking cows. 75% have less than 1,000 mature milking cows and can be considered "small" to today's standard, not capable of deploying anaerobic digestion technology unless there are robust market incentives and funding support⁷. *Only seven Washington dairies (3% of the total farm population) have 5,000 mature head dairy cows or greater, where digester development may be economically feasible in the absence of viable clean fuel markets.*

Dairy cows and other ruminants do emit methane, however theirs is part of the biogenic carbon cycle, which differs from the atmospheric cycle and residence times involving fossil derived sources. In the mass balance of methane emissions from cattle within the biogenic carbon cycle, new methane that is added is broken down into carbon-dioxide in the atmosphere and is taken up at the same rate through photosynthesis. With methane having a greater short-term warming effect on the atmosphere, reducing the

⁶ "Livestock Anaerobic Digester Database". Environmental Protection Agency (EPA). Last updated October 1, 2024. <https://www.epa.gov/agstar/livestock-anaerobic-digester-database>

⁷ "Dairy Farm Size and Distribution Data". Retrieved October 2024. Washington State Department of Agriculture.

rate of methane emissions from cattle can have a cooling effect on the atmosphere⁸. Instead of being deemed a problem for climate change, through the right incentive mechanisms, cattle can be a climate solution through deployment such as methane capture from manure storage (i.e., anaerobic digesters) and feed additives that reduce methane from enteric fermentation, having a cooling effect on the climate overall so long as no new cattle are added to the equation.

Volatile milk prices and high environmental regulatory costs facing Washington dairy producers have led the necessity for producers diversify revenue streams on-farm and become as efficient as possible. Small-scale family farms wanting to diversify and become more sustainable and partake in renewable energy production may want to participate but aren't likely to benefit under these rules.

Furthermore, individual dairy farmers do not control the price they receive for producing milk⁹. They cannot simply raise their prices to offset additional costs incurred from implementing AD or other climate smart technologies, like other industries can.

In addition, ensuring incentives for Washington dairy digester may be even more crucial in Washington when compared to California due to the capital costs associated with AD technology appropriate for Washington farms. Covered lagoon digesters, as deployed by California dairies, are not a proven technology for Washington dairy, and as such, are not funded by the Washington State Conservation Commission's CCA proviso funds for dairy digester development allotted through the CCA. Covered lagoon digesters have significantly lower capital costs compared to complete-mix or plug-flow digesters found on Washington dairy farms, thus ensuring adequate CI scoring and associated revenues will be essential to covering their associated capital and ongoing maintenance costs.

Washington dairy participation in its state's CFS program only looks feasible for the top 3% of dairy farms based upon current science and trends in AD project development. With California and Oregon considering future policies to limit the amount of imported energy into their programs in the coming years, and Washington state's clean fuel program simultaneously disincentivizing in-state production of energy from dairy biogas, it is unclear if there will be a viable clean fuel market for them to participate in in the future. It would likely be preferred for these dairies to instead seek private contracts not dependent on clean fuel programs if this draft rule language is adopted.

Misalignment with Existing Law –and- Increased Emissions

The state of California has approximately 1,300 dairy farms containing approximately 1.7 million milk cows¹⁰. The industry's baseline emissions are substantially higher to those of Washington's dairy industry, both influenced by higher volume of animals, but also, climatic conditions that lead to higher emissions volatilization rates.

⁸ Liu, S., Proudman, J. & Mitloehner, F.M. Rethinking methane from animal agriculture. CABI Agric Biosci 2, 22 (2021). <https://doi.org/10.1186/s43170-021-00041-y>

⁹ "Tracking Milk Prices and Feed Costs". Penn State Extension (May 22, 2023). <https://extension.psu.edu/tracking-milk-prices-and-feed-costs>

¹⁰ "The Changing Landscape of US Dairy". RaboBank (August 20, 2019). <https://www.rabobank.com/knowledge/q011335544-the-changing-landscape-of-us-dairy>

With Washington's dairy industry 13% the size of California's in terms of total number of mature dairy cows, there is little room for an argument that the state's industry should see a similar mandate to the one imposed on California's industry (SB 1383). Dairy farm numbers within the state, and across the country, have been decreasing for decades, while the number of animals on farm have increased, coinciding with an industry trend towards consolidation, as larger farms tend to be more efficient and can operate at economies of scale, significantly reducing marginal costs. Total dairy cattle inventories across the country have decreased over the past twenty years though, as on-farm efficiencies have increased¹¹.

If the state were to impose an emissions reductions mandate on the state's dairy industry, small-medium sized farms would go out of business at an accelerating rate, as they would be unable to cope with the costs of compliance of such regulations and operational risk presented when installing carbon capture/reduction technologies on farm.

Washington dairies already are subject to some of the strictest environmental regulations in the country, subject to regular inspections under the state Water Pollution Control Act (90.48 RCW), annual soil testing requirements, and strict no discharge laws. Many producers still operating in the state have made sustainability pledges and are motivated and eager to explore ways of decarbonizing their farms and produce renewable energy.

Adopting restrictive rules around avoided methane crediting prior to an increase in project development in-state signals uncertainty and lack of reliability to industry and private development. If digesters in the state became dependent on the CFS program for revenue, then incurred an increase in their CI score, some may have no choice but to shut down all together at a future date, particularly if prices within the market were insufficient.

Decreased Efficacy of Other State Laws, Rules, and Policies

There are several existing laws and rules, and some currently under revision, by Ecology that call on the use of dairy anaerobic digesters to help the state meet its regulatory goals including Organics Management Laws, Overburdened Communities, Comprehensive Climate Action Plan (CCAP). The CFS incentives remain an important revenue stream to ensuring their success. Dairy anaerobic digesters development is also listed as a key strategy to reducing livestock methane within the state's draft Comprehensive Climate Action Plan (CCAP) and is a recognized strategy by EPA for reducing methane pollution with other environmental co-benefits.

An overview of these laws and programs within Washington state dependent on the success of dairy anaerobic digesters:

1) Organics Management Laws:

These laws/rules rely upon alternative waste disposal options such as dairy anaerobic digesters to accept organic wastes that would otherwise go to landfills. Most landfills have stopped accepting many organic wastes due to the need to limit their own methane emissions under the CCA, creating public health and environmental hazards due to waste producers' disposal options being now

¹¹ "All Cattle and Calves Inventory". United States Department of Agriculture National Agricultural Statistics Survey (January 31, 2024). <https://www.nass.usda.gov/Newsroom/2024/01-31-2024.php>

limited. Rule is scheduled this winter will encourage landfill diversion of organic wastes to dairy digesters. These organic wastes however, hurt projects' CI score, where many dairies, already do not want to accept them. Implementing a reduced avoided methane crediting policy on top of this will further disincentivize dairy anaerobic digesters.

2) Overburdened Communities Rules:

This rule requires established Overburdened Communities within the state to reduce criteria air pollutants including particulate matter. There are several peer reviewed publications and EPA methodologies showing dairy anaerobic digesters as a key strategy to helping reduce criteria air pollutants including particulate matter and precursors to particulate matter.

3) Comprehensive Climate Action Plan (CCAP):

Climate leadership staff within WSDA are advising Ecology on emissions reductions measures agriculture can take towards helping the state meet its GHG reduction targets within Ecology's CCAP. Action taken within the livestock agriculture sector is one of the most tangible solutions towards helping the state address and meet its GHG reduction targets from agriculture, where the draft plan recognizes that economic incentives are greatly needed to enable industry participation towards helping the state meet its GHG reduction goals.

With the state's two leading dairy industry cooperatives (i.e., Dairgold, Organic Valley) encouraging producers to implement sustainable practices on farm, only farms of large scale will likely able to deploy technologies such as anaerobic digestion in the absence of adequate incentives from the state CFS market. In the scenario of non-viable clean fuel markets for dairy biogas, these large-scale projects would instead, likely sign private agreements for a guaranteed price over a certain amount of time. Under this scenario, the state of Washington will have trouble claiming the emissions reductions achieved from installing AD in the state if they are not participating in its climate programs (i.e., CFS, Cap-and-Invest), otherwise known as double counting, if entities such as Dairgold and its customers are also counting these emissions reductions within their supply chains.

This does leave room, however, for dairy farms participating under the CFS or Cap-and-Invest programs and their associated emissions reductions to be counted towards Washington's baseline emissions reductions through projects participating within its programs. This should motivate Ecology to continue to create reliable incentives for agricultural participating in its mandated climate and clean fuel programs.

Conclusion

Department of Ecology's Clean Fuel program has the potential to alter the renewable energy landscape in the state of Washington. While Washington has the greatest fraction of renewable energy from hydropower in the nation, it is still reliant on some forms of fossil derived coal and natural gas for on-demand energy. Dairy biogas produced in the state of Washington could help replace fossil derived natural gas to help increase the overall renewable energy portfolio of the state. WSDA sees disallowing credit from avoided methane as a missed opportunity to increase localized renewable energy production, address criteria air pollutants in over-burdened communities, and increase the efficacy of several other Ecology mandated laws and rules.

There is still tremendous opportunity to improve agricultural/industrial symbiosis within the state through increased dairy digester development, leading to increased environmental co-benefits to overburdened communities, farm workers, and creation of “green” jobs. Removing unnecessary policy roadblocks for dairy anaerobic digesters’ economic viability is a vital component to seeing new project development within the state. Out-of-state fuels are currently creating the highest volume of credits within the program, leading the CFS team to take drastic action to reduce the number of credits in circulation, but proposing actions that will disincentivize in-state renewable energy production.

Using a mix of government incentive programs and market forces, Washington has the potential to collaborate with livestock operations, primarily dairies, to encourage the adoption of AD. To be effective, incentives must adequately compensate livestock operations for the long-term capital investment necessary to plan, install and operate the systems necessary to collect methane. A sufficient CI score is needed for dairy biogas projects to help offset risk associated with these markets. Limiting avoided methane crediting is likely to increase the risk threshold beyond what the majority of dairy producers can tolerate.

We ask that Department of Ecology take a critical look at the current state of this rule and its implications to ensure it’s in alignment with the state’s broader climate and energy goals. If the state of Washington wants to see increased localized renewable energy development from dairy anaerobic digesters, we suggest rule language that does not create limits to the timeframe projects can receive avoided methane crediting, so long as they meet additionality requirements.

Sincerely,



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