November 10, 2025

Via electronic submittal

Lauren Sanchez, Chair
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: On-Road Heavy-Duty Engine and Vehicle Omnibus, Low Carbon Fuel Standard, and Emergency Vehicle Emissions Regulations – Proposed Low Carbon Fuel Standard Amendments – Appendix F: Supplement to Initial Statement of Reasons

Dear Chair Sanchez:

Defensores del Valle Central para el Aire y Agua Limpio, Leadership Counsel for Justice & Accountability, Food & Water Watch, Animal Legal Defense Fund, and Center for Food Safety (Commenters) oppose the California Air Resources Board's (CARB) proposed amendments to the Low Carbon Fuel Standard (LCFS) to allow book-and-claim accounting of pipeline-injected biomethane for electricity produced in a linear generator ("Proposed Linear Generator Amendments" or "Proposed Amendments").[1] The Proposed Amendments threaten to exacerbate the many problems with factory farm biogas and the LCFS's role in incentivizing its production, which Commenters have raised numerous times and are currently challenging in court.

Commenters and others have explained to CARB in great detail the legion problems with incentivizing factory farm biogas. For example, Commenters have filed a Petition for Rulemaking and extensive public comments and have engaged in discussions with CARB staff and leadership. As we have explained, and have consistently supported with reliable evidence, providing exceptionally lucrative incentives for production of factory farm biogas through avoided methane crediting undermines the integrity of the LCFS, encourages more climate pollution, and harms communities living near factory farms in the San Joaquin Valley and across the country. In addition, numerous researchers, prior CARB staff, climate specialists, and even CARB's own Environmental Justice Advisory Committee have raised serious concerns with avoided methane crediting and factory farm biogas in the LCFS.[2]

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[1] CARB, Appendix F: Supplement to Initial Statement of Reasons – Proposed Low Carbon Fuel Standard Amendments, Proposed Amendments to the On-Road Heavy-Duty Engine and Vehicle Omnibus and Low Carbon Fuel Standard Regulations (Sep. 23, 2025), https://perma.cc/23A8-KYQD.

[2] *See, e.g.*, Kevin Fingerman et al., *Risks of Crediting Carbon Offsets in Low Carbon Fuel Standard: Lessons Learned from Dairy Biomethane*, 206 ENERGY POLICY 114738 (Nov. 2025), https://www.sciencedirect.com/science/article/pii/S0301421525002459; Earthjustice Comments on the Low Carbon Fuel Standard Staff Report: Initial Statement of Reasons (Feb. 20, 2024), https://perma.cc/XC2F-PHHL; Letter from Jim Duffy to CARB (Feb. 19, 2024), https://perma.cc/75TU-VM4W; Jeremy Martin, *Something Stinks: California Must End Manure Biomethane Accounting Gimmicks in its Low Carbon Fuel Standard*, UNION OF CONCERNED

CARB has already doubled down on avoided methane crediting in the 2024 LCFS Amendments, and any further incentives and expanded markets for factory farm gas will only further exacerbate the problems Commenters have identified, including foreseeable compliance responses like producing more factory farm gas from larger and more geographically concentrated factory farms. This in turn increases the environmental and public health impacts associated with the production, accumulation, concentration, and handling of manure as feedstock for the production of factory farm gas as well as the handling and disposal of digestate; these impacts include but are not limited to increased groundwater pollution, increased ammonia, NOx, and volatile organic compound emissions, and increased odor and flies.[3] Therefore, all of the same concerns that Commenters raised with CARB during the 2024 LCFS Amendment process apply here as well, and we incorporate them by reference into these comments in opposition to the Proposed Amendments.

This proposal is tainted by CARB's unlawful treatment of factory farm biogas, as embodied in the 2024 LCFS Amendments, and CARB's justification for these Proposed Linear Generator Amendments also falls short on CARB's own account. First, the Proposed Amendments do not accomplish the stated need for the Proposed Amendments. Second, CARB's justifications for failing to analyze the foreseeable adverse environmental impacts of the Proposed Linear Generator Amendments are flawed. CARB's conclusion that the proposed change to allow more book-and-claim accounting of factory farm biogas credits will not create negative environmental impacts relies on ignoring emissions from biomethane sources, faulty assumptions, and contradictory assertions. CARB also relies on the faulty environmental analysis of the recently adopted 2024 LCFS Amendments, which is currently subject to pending litigation.[4] We therefore request that CARB withdraw the Proposed Linear Generator Amendments. If CARB does not withdraw them, it must at least conduct a full environmental review of potentially significant adverse environmental impacts that will flow from creating even more incentives for factory farm biogas.

SCIENTISTS, THE EQUATION (Feb. 15, 2024), https://perma.cc/7BUR-WKZY; Assembly Bill 32 Environmental Justice Advisory Committee (EJAC) DRAFT Recommendations to the California Air Resources Board (CARB) on the Low Carbon Fuel Standard Regulation Updates (Aug. 28, 2023), perma.cc/38H6-Z922.

[3] Shute, Mihaly & Weinberger LLP on behalf of Leadership Counsel for Justice & Accountability et al., Comments on the Recirculated Draft Environmental Impact Analysis for the Proposed Amendments to the Low Carbon Fuel Standard (Sep. 30, 2024), https://perma.cc/CZ7P-WWBS; Shute, Mihaly & Weinberger LLP on behalf of Leadership Counsel for Justice & Accountability et al., Comments on the Proposed Amendments to the Low Carbon Fuel Standard (Feb. 20, 2024), https://perma.cc/Z9ML-LJZX; Leadership Counsel for Justice & Accountability et al. Comments on Proposed Amendments to the Low Carbon Fuel Standard (Feb. 20, 2023), www.arb.ca.gov/lists/com-attach/app-zip/7060-lcfs2024-WyhcNFA3AiIBcm0d.zip.

[4] *See Low Carbon Fuel Standard, Proposed Low Carbon Fuel Standard Amendments*, CARB (July 7, 2025), https://perma.cc/NX3K-DAAH; *Groups sue CARB over environmental impacts of flagship climate program*, LEADERSHIP COUNSEL FOR JUSTICE & ACCOUNTABILITY (Dec. 18, 2024), https://perma.cc/SG5A-JMPW.

I. CARB has failed to justify its proposal.

CARB has not articulated a rational need for the Proposed Amendments. Nor has it justified its failure to conduct a full environmental review of the foreseeable adverse impacts to the environment that will arise from the Proposed Amendments. Adoption of the Proposed Amendments would therefore violate CARB's environmental review obligations as well as the California Administrative Procedure Act.

A. The Proposed Amendments do not accomplish the stated need.

CARB's stated need for the Proposed Linear Generator Amendments is to increase the near-term availability of low-carbon intensity electricity for electric truck fueling. But CARB proposes to accomplish this not by increasing the actual production of low-carbon intensity electricity in California or making it more accessible to trucks, but instead by allowing the use of illusory, non-additional, inflated credits from factory farm biogas operations to reduce carbon intensity on paper. In other words, CARB proposes an accounting trick. Without real, additional, and verifiable reductions in carbon intensity, CARB is not meeting its stated need for the Proposed Amendments.

B. CARB's air quality analysis improperly excludes consideration of emissions from factory farms generating LCFS credits.

CARB summarily concludes that there will not be changes to NOx or PM because the linear generators are already operational at sites that may choose to use book-and-claim accounting to match biomethane credits with fossil gas.[5] In other words, it looks solely at the site of the linear generator to assess air impacts, ignoring entirely the air quality impacts associated with the production of factory farm gas for which book-and-claim accounting would be available. CARB cannot have it both ways by taking advantage of avoided methane crediting and factory farm biogas credits to reduce the carbon intensity of electricity from linear generators while ignoring where those credits originate. As Commenters have explained in detail, increased factory farm gas production causes increased local air pollution in several ways.[6] The most likely effect of the Proposed Linear Generator Amendments is to increase incentives for factory farm gas credit generation, and CARB cannot ignore associated air quality impacts.

C. CARB's analysis relies on faulty economic assumptions.

Next, CARB concludes that few linear generators will utilize book-and-claim accounting of biomethane because the costs of procuring biomethane compared with revenue generation by current and recent credit prices are insufficient to change the status quo. First, data from the real world indicate that CARB's conclusion that LCFS credit prices in the $67 range are not high enough to encourage procurement of factory farm gas credits in response to the Proposed Linear Generator Amendments is incorrect. Looking to factory farm gas credit generation generally, production and credit generation continued to grow in 2024 even while weekly average credit

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[5] Proposed Amendments, *supra* note 1, at 7–8.

[6] *Supra* note 3.

values dipped from approximately $75 dollars to approximately $62 dollars.[7] Therefore, being able to sell credits at this price has been a sufficient motivator generally, and CARB has failed to explain why the Proposed Amendments' creation of a new use of those credits would be any different. Furthermore, relying on historic credit prices is not a sound methodology considering that the 2024 LCFS Amendments establish increased stringency standards that CARB specifically intended to increase credit prices between now and 2035.

D. CARB's analysis is riddled with inconsistencies.

Finally, CARB's effects analysis is inconsistent in at least two ways. It claims on the one hand that the rule change will provide another low-carbon fueling option, but on the other hand, based on the current economics of the LCFS, CARB staff does not anticipate significant usage of book-and-claim accounting of biomethane for linear generators.[8] CARB justifies the rule change by saying it will encourage more use of biomethane and explains away environmental impacts by saying that operators of linear generators are unlikely to utilize the new rule.

Similarly, CARB's stated need for the Proposed Amendments is that it will potentially provide a near-term solution to accelerate prospective electric vehicle charging sites.[9] That statement suggests that CARB anticipates increased usage of linear generators and/or specifically increased usage of linear generators utilizing book-and-claim accounting of avoided methane crediting at factory farms. However, CARB then claims that the economics of the LCFS will not support significant use of book-and-claim accounting of factory farm gas used in linear generators and that there will be no increase in the production of factory farm gas to satisfy this newly authorized use of book-and-claim.[10] CARB justifies the Proposed Amendments by claiming that they may meet the need to accelerate development of electric truck charging through more permissive use of book-and-claim and then explains away environmental impacts by saying that no factory farms will generate credits and no linear generator operators will purchase LCFS credits or build new generators in response to the newly authorized use. Both statements cannot be true.

In short, CARB's inability to articulate a coherent justification for the Proposed Linear Generator Amendments underscores why it should withdraw the proposal.

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7 *LCFS Data Dashboard*, CARB https://perma.cc/ZNE8-VQKB (last visited Nov. 7, 2025); Weekly LCFS Credit Activity (up to 2 November, 2025), CARB (Excel file uploaded with these comments and obtained on Nov. 7, 2025, from *Weekly LCFS Credit Transfer Activity Reports*, CARB, https://ww2.arb.ca.gov/resources/documents/weekly-lcfs-credit-transfer-activity-reports, https://perma.cc/XG52-82T7).

8 Proposed Amendments, *supra* note 1, at 7, 10.

9 *Id.* at 7.

10 *Id.* at 7–8, 10.

II. If CARB does not withdraw the Proposed Amendments, it must at least conduct a full environmental analysis.

CARB contends that the rule changes are exempt from CEQA under the common-sense exemption because "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment."[11] CARB is wrong. To the contrary, the Proposed Amendments would provide yet another incentive to increase production of factory farm biogas. As explained above, that will result in foreseeable adverse environmental effects that CARB must analyze and seek to mitigate. CARB cannot hide behind arbitrary and inconsistent rationales to ignore the consequences of the Proposed Amendments. Moreover, CEQA requires agencies to provide sufficient "factual support" for use of the common-sense exemption, which is "'all the more important where the record shows, as it does here, that opponents of the project have raised arguments regarding possible significant environmental impacts."[12] By failing to mention, let alone provide substantial evidence to dispute, the overwhelming evidence cited by Commenters demonstrating the adverse environmental impacts associated with book-and-claim accounting of factory farm gas, CARB violates its duty under CEQA.

CARB also attempts to dodge its responsibility to analyze environmental impacts by relying on its prior analysis during the 2024 LCFS Amendments.[13] CARB references "previously identified significant effects" as apparent cover for failing to analyze any here. CEQA authorizes agencies to forego environmental analysis for a project if that project's environmental impacts were adequately considered in a previously certified Environmental Impact Analysis (EIA), *and* no new information of substantial importance not known at the time the prior EIA was certified shows the project will have new, or substantially more severe impacts not analyzed in the prior EIA.[14] Here, however, CARB's prior analysis was fatally and fundamentally flawed when it came to factory farm biogas, avoided methane crediting, and incentivizing factory farms to get bigger and pollute more. Commenters are currently suing CARB over that very analysis and therefore oppose CARB's reliance on it to ignore even more environmental harm caused by the LCFS. CARB's continued failures to address or even acknowledge the significant problem with how the LCFS incentivizes factory farm biogas have thoroughly poisoned the well it now draws from to support these Proposed Amendments.

Additionally, since CARB adopted the EIA for the 2024 LCFS Amendments, new information of substantial importance further confirming the link between avoided methane crediting and the expansion of factory farms has surfaced. Notably, on January 15, 2025, the Department of Treasury promulgated final regulations implementing the credit for production of clean hydrogen and certain provisions of the energy credit, as well as final regulations regarding the clean electricity production credit and the clean electricity investment credit, both of which were established by the Inflation Reduction Act. In that rulemaking, Treasury explains plainly

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11 *Id.* at 11.

12 *Muzzy Ranch Co. v. Solano Cnty. Airport Land Use Com.*, 41 Cal. 4th 372, 386, as modified (Sept. 12, 2007) (cleaned up).

13 Proposed Amendments, *supra* note 1, at 10.

14 Pub. Resources Code § 21166; 14 Cal. Code Regs. § 15162.

how factory farms can increase their methane pollution to take advantage of lucrative crediting, including by "[s]hifting management practices for existing quantities of manure from land application to lagoon, thereby significantly increasing methane generation," and "increasing the overall numbers of animals raised."[15] CEQA requires CARB to re-evaluate its prior analysis in light of this new information.

Sincerely,

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On behalf of:

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[15] Section 45Y Clean Electricity Production Credit and Section 48E Clean Electricity Investment Credit, 90 Fed. Reg. 4006, 4080 (Jan. 15, 2025) (codified at 26 C.F.R. Part I).