November 4, 2025

Joel Creswell
Climate Pollution Reduction Program Manager Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Dear Mr. Creswell:

This is an appeal of SEPA # 202504385 as amended on October 20, 2025. This appeal focuses entirely on Section 16 of WAC 173-424-610, Avoided Methane Crediting.

SEPA # 202504385 Determination of Non-Significance (DNS) should be revisited and Ecology should issue a Determination of Significance (DS) for the following reasons:

A. RCW 43.21C.031 and WAC 197-11-360 require a DS if there are negative environmental impacts related to a either a project or a non-project. Ecology has recognized likely negative environmental impacts in statements regarding WAC 173-424-610 (16):

- "Ecology acknowledges that industrial agriculture, including concentrated dairy operations, can cause negative environmental and public health impacts on rural communities."[1]
- "Ecology has adopted changes to the final rule based on requests for environmental safeguards to prevent negative environmental impacts from dairy biomethane-based pathways."[1]
- "This language was added to the final rule to . . . (2) reduce the risk that CFS credits fund projects that result in adverse environmental and public health impacts for vulnerable populations, overburdened communities, and other rural communities that may experience direct harms from large agricultural operations."[1]
- "Ecology understands concerns about the effect avoided methane credits may have on the size of dairy operations, and we have added additional guardrails to prevent

[1] Concise Explanatory Statement Chapter 173-424 WAC Clean Fuels Program Rule, page 56, Concise Explanatory Statement (CES) Chapter 173-424 WAC, Clean Fuels Program

against some of the negative environmental impacts related to industrialized dairies."[2]

- "In the meantime, guardrails adopted in this rule to prevent against unintended negative environmental impacts are the best mechanism within the authority of the CFS to ensure credits are going to dairies that are also good environmental stewards."[2]
- "Applicants using dairy and swine manure as a feedstock would be required to demonstrate their use of a liquid manure management system prior to their participation in the program. Liquid manure management produces higher methane emissions and is utilized to establish the baseline avoided methane benefit."[3]
- "It is premature to predict specific impacts from the amended avoided methane crediting periods established in rule, given that most digester projects take several years to develop and the new crediting periods have not yet gone into effect."[4]
- "Representatives shared resources from California, which has experienced a substantial increase in dairy digester operations in recent years as a method of generating credits in the state's Low Carbon Fuel Standard (LCFS) program, and voiced concerns about the environmental and public health impacts of the Washington dairy industry. Resources shared included reports and links claiming negative impacts on rural communities from dairy facility expansion, including increased pollution from larger herd sizes, noxious odors, and higher concentrations of air pollutants such as particulate matter, carbon monoxide, sulfur dioxide, and oxides of nitrogen."[5]
- "AMC (Avoided Methane Crediting) is a controversial framework because of its disputed carbon accounting assumptions, association with large-scale livestock operations, potential environmental and health impacts on frontline communities living near dairy and swine farms, and other factors."[6]
- "Commenters and workshop attendees also expressed concerns about upstream and downstream effects of producing dairy biomethane, such as increased emissions from transporting and burning biomethane, food production and land use

[2] Concise Explanatory Statement Chapter 173-424 WAC Clean Fuels Program Rule, page 58, Concise Explanatory Statement (CES) Chapter 173-424 WAC, Clean Fuels Program
[3] Final Regulatory Analysis, page 54, Final Regulatory Analyses for Chapter 173-424 WAC, Clean Fuels Program Rule
[4] Clean Fuel Standard Environmental Justice Assessment, page 17, Environmental Justice Assessment Clean Fuels Program Rule
[5] Clean Fuel Standard Environmental Justice Assessment, page 27, Environmental Justice Assessment Clean Fuels Program Rule
[6] Clean Fuel Standard Environmental Justice Assessment, page 30, Environmental Justice Assessment Clean Fuels Program Rule

impacts, and negative impacts from the construction of digesters, pipelines, and other fuel infrastructure."[7]

- "Various environmental harms could result from the expansion of dairy facilities and the use of anaerobic digesters to generate dairy biomethane claimed in the CFS. Potential harms vary depending on the digester technology used, maintenance and upkeep of the digester, facility and herd size, proximity to neighboring communities, and other factors."[8]

  Specific impacts may include:

  • Herd size increases at participating dairies to generate additional biomethane, thereby increasing baseline methane emissions in opposition to the program's goals, and increasing upstream emissions from factors such as increased feed production.

  • Air quality impacts from burning biogas to produce energy, producing oxides of nitrogen (NOx), particulate matter, and other pollutants.

  • Increased traffic from large vehicles transporting manure.

  • Runoff from digestate (the leftover material from the digester) seeping into nearby waterways, increasing nutrient pollution and harming aquatic ecosystems.

  • Increased consolidation of the dairy industry, meaning a higher proportion of dairies are large, as many small- to medium-sized dairies lack the funding and manure levels to make digester construction and CFS program participation economically viable.[8]
- "Rural communities located near dairy farms may experience harm because of this rule if avoided methane crediting incentives lead to an increase in pollution from dairy farms that participate in the CFS program. Residents of Washington may also experience harm if avoided methane crediting inadvertently leads to an increase in methane emissions and diminished effectiveness of the CFS program."[9]
- "The expansion of dairy operations because of biomethane credit incentives in the CFS could cause negative air quality, water quality, soil, odor, and other environmental impacts on nearby communities."[10]

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[7] Clean Fuel Standard Environmental Justice Assessment, page 31, Environmental Justice Assessment Clean Fuels Program Rule

[8] Clean Fuel Standard Environmental Justice Assessment, page 37, Environmental Justice Assessment Clean Fuels Program Rule

[9] Clean Fuel Standard Environmental Justice Assessment, page 38, Environmental Justice Assessment Clean Fuels Program Rule

[10] Clean Fuel Standard Environmental Justice Assessment, page 39, Environmental Justice Assessment Clean Fuels Program Rule

- "Ecology explored various methods of limiting negative environmental impacts that could potentially occur because of dairy digester construction and dairy herd size expansion."[11]
- "To the extent that new digesters are built in Washington, such construction is also unlikely to result in significant adverse impacts on the environment. While under certain condition digesters may cause increases in ozone (O3), particulate matter (PM2.5), and other air contaminants, studies have shown these impacts to be limited in scale. For example, an analysis of potential air quality effects from widespread digester installation in California found minor public health impacts from all scenarios considered in the analysis, as well as minimal influence on compliance with the National Ambient Air Quality Standards (NAAQS) under the Clean Air Act."[12]

B. There is abundant data from California that demonstrates concerns regarding negative environmental impacts from "avoided methane crediting". Below we copy some small sections of legal data from California to highlight the pitfalls of not carefully following state environmental laws.

- In December of 2024 Defensores del Valle Central para el Aire y Agua Límpio ("Defensores"), Food & Water Watch, and Animal Legal Defense Fund submitted a Petition for a Writ of Mandate challenging a decision by the California Air Resources Board regarding the California Low Carbon Fuel Standard and "avoided methane crediting". [13]

This action challenges the decision of the California Air Resources Board ("CARB") to adopt amendments to the Low Carbon Fuel Standard, 17 Cal. Code Regs. §§ 95480 et seq. ("LCFS") and to certify the environmental impact analysis ("EIA"). The LCFS is a market-based compliance mechanism intended to reduce greenhouse gas emissions in the transportation sector by creating credits that producers of low-carbon fuel sell to producers of high-carbon fuel. In 2017, CARB changed its approach to certifying pathways for fuel produced from animal manure by including "avoided methane crediting" as part of the fuel's carbon intensity score, thus providing a substantial incentive to operators of large dairies and other operations with industrial-scale manure management systems ("factory

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[11] Clean Fuel Standard Environmental Justice Assessment, page 44, Environmental Justice Assessment Clean Fuels Program Rule

[12] SEPA Environmental Checklist, page 9, WAC 173-424 Amended SEPA DNS and Environmental Checklist_JEC.pdf

[13] DEFENSORES DEL VALLEY CENTRAL PARA EL AIRE Y AGUA LIMPIO; FOOD & WATER WATCH; and ANIMAL LEGAL DEFENSE FUND, Petitioners, v. CALIFORNIA AIR RESOURCES BOARD, an agency of the State of California; STEVEN S. CLIFF, in his official capacity as Executive Officer of the California Air Resources Board; and DOES 1-10, inclusive, Respondents. Microsoft Word - Final LCFS Petition(1856169.11).docx

farms") to both expand their operations and install anaerobic digesters to collect methane and convert it to fuel. Petitioners Defensores del Valle Central para el Aire y Agua Límpio ("Defensores"), Food & Water Watch, and Animal Legal Defense Fund (collectively, "Petitioners") have initiated this action to ensure CARB adequately discloses, analyzes, and mitigates the significant environmental impact caused by the amendments ("LCFS amendments"), as required by the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 et seq and the CEQA Guidelines, 14 California Code of Regulations section 15000 et seq.

- In December of 2024 Earth Justice and Communities for a Better Environment submitted a Petition for a Writ of Mandate challenging a decision by the California Air Resources Board regarding the California Low Carbon Fuel Standard.[14]

This Verified Petition for Writ of Mandate and Complaint for Injunctive Relief ("Petition") challenges the decision of the California Air Resources Board ("CARB") to approve amendments to the Low Carbon Fuel Standard ("Amendments" or "Project") that lock in decades of subsidies for polluting fuels without the required analysis and mitigation of their wide-ranging environmental harms. As explained below, CARB's actions in approving the Project, certifying an inadequate Final Environmental Impact Assessment ("Final EIA"), and adopting related findings and a statement of overriding considerations violated the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 et seq., and the CEQA Guidelines, 14 California Code of Regulations section 15000 et seq.

- In July of 2025 Defensores del Valle Central para el Aire y Agua Límpio ("Defensores"), Food & Water Watch, and Animal Legal Defense Fund filed a Verified Petition for Writ of Mandate; Complaint for Declaratory and Injunctive Relief challenging a decision by the California Air Resources Board regarding the California Low Carbon Fuel Standard and "avoided methane crediting".[15]

INTRODUCTION

1. This action challenges CARB's decision to adopt amendments to the California Low Carbon Fuel Standard, 17 Cal. Code Regs. §§ 95480 et seq. ("LCFS") which became effective on July 1, 2025 ("2025 LCFS Amendments"), in a manner that exceeded CARB's

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[14] COMMUNITIES FOR A BETTER ENVIRONMENT, Petitioner, v. CALIFORNIA AIR RESOURCES BOARD; STEVEN S. CLIFF, in his official capacity as Executive Officer of the California Air Resources Board; and DOES 1-20, Respondents. 2024-1218-petition-for-writ-of-mandate_lcfs.pdf

[15] DEFENSORES DEL VALLEY CENTRAL PARA EL AIRE Y AGUA LIMPIO; FOOD & WATER WATCH; ANIMAL LEGAL DEFENSE FUND; and CENTER FOR FOOD SAFETY, Petitioners/Plaintiffs, v. CALIFORNIA AIR RESOURCES BOARD, an agency of the State of California; Steven S. Cliff, in his official capacity as Executive Officer of the California Air Resources Board; and DOES 1-10, inclusive, Respondents/Defendants. 2025.07.25-Defensores-et-al.-v.-CARB-II-Petition-Complaint-Final.pdf

statutory authority; was arbitrary, capricious, and contrary to law; and was unsupported by substantial evidence.

2. CARB adopted the LCFS in 2009 to reduce greenhouse gas ("GHG") emissions from fuels used in the transportation sector to help CARB meet the statewide greenhouse gas emissions limit by 2020.

3. The LCFS has evolved far beyond that initial conception. Today, the LCFS is a sprawling program that reaches far beyond 2020, or the statewide greenhouse gas emissions limit it was intended to help CARB meet. And CARB is using the LCFS to achieve goals and purposes beyond the transportation sector. In short, the LCFS has become something it was never intended to be when initially conceived and adopted.

4. One result of this massive expansion of the program is that the LCFS is now a leading driver of "factory farm biogas" production in California and across the country. Factory farm biogas is also known as "biomethane" when it has been processed so that it can be injected into natural gas pipelines.

5. Factory farm biogas is derived from animal manure stored at factory farms. Factory farms are large-scale industrial operations that generally confine thousands—if not tens of thousands—of cows, hogs, or other animals without access to pasture.

6. The LCFS establishes a declining carbon intensity benchmark against which transportation fuels are measured. Fuels that are more carbon intense than the benchmark generate deficits; those that are less carbon intense than the benchmark generate credits. To determine the carbon intensity of a fuel, CARB must account for the GHG emissions associated with all of the steps of producing, transporting, and consuming the fuel, also known as the well-to-wheel fuel lifecycle.

7. CARB treats factory farm biogas as the fuel with the lowest carbon intensity of any fuel in the LCFS, lower than other fuels such as electric vehicles charged by zero-emissions solar power.

8. CARB recently expanded the LCFS again in numerous ways through the Amendments Petitioners challenge here. For example, CARB extended the scope of the program to incentivize factory farm biogas in not only the transportation sector but other non-transportation sectors of the economy as well, such as the industrial sector and for hydrogen production, for decades to come.

9. This significantly increased the incentives for factory farms to produce biogas in order to generate LCFS credits.

10. These increased incentives to produce biogas in turn increase the environmental and public health harms caused by larger and more concentrated factory farms managing manure to maximize biogas production.

11. The 2025 LCFS Amendments increased the carbon intensity benchmarks between 2025 and 2030 and established declining benchmarks between 2031 and 2045. CARB intends for these amendments to increase the market price of LCFS credits. These increased costs associated with the increased price of credits will be borne by people purchasing gasoline and diesel fuels, and will be borne disproportionately by low-income people and people of color.

12. Despite CARB's major amendments to existing LCFS regulations and adoption of new regulations, CARB claims nearly unbounded discretion to operate the LCFS without considering the requirements and restrictions imposed by its enabling statute, Assembly Bill 32: the Global Warming Solutions Act of 2006, as amended by Senate Bill 32, Assembly Bill 197, and Assembly 1279 (collectively "Global Warming Solutions Act"). This exceeds CARB's authority under the Global Warming Solutions Act, which expressly delineates CARB's authority to adopt rules and regulations.

C. Conclusions: Ecology should issue a Determination of Significance

Ecology acknowledges that anaerobic manure lagoons produce methane and that methane has a serious negative impact on the environment because it is a greenhouse gas that contributes to global warming. Ecology states that manure management in our state contributes well over a million megatons of CO_2 equivalents of greenhouse gas to the atmosphere every year, primarily from liquid manure management (lagoons).

Multiple proponents of Anaerobic Digesters (ADs), including the WA State Dept. of Agriculture, have emphasized that private funding for digesters will not be forthcoming if the crediting period is not at least 20 years. Ecology accepted this argument by increasing the crediting period for ADs from 15 to 20 years. Friends of Toppenish Creek (FOTC) does not disagree with these facts.

For clarity FOTC proposes, and we hope readers will agree, that

1. WAC 173-424-610 (16) as currently written commits Washington State to 20 years of using anaerobic digesters for manure management.
2. Anaerobic digesters are Ecology's currently recommended solution for reducing methane that is produced by and emitted from manure lagoons.
3. There are alternative methods of manure management that do not involve manure lagoons and consequently do not generate methane from this source.

4. Liquid manure management using lagoons and ADs will be more firmly established as the preferred practice in our state if/when this rule is put into effect.
5. It does not cost a lot of money to dig a hole in the ground in which to store manure. It does cost a lot of money to dig a hole in the ground and install a synthetic liner with a leak detection system.

FOTC submits that entrenching liquid manure management as a preferred agricultural practice has a negative impact on the environment because such entrenchment would supplant alternative methods of manure management that ultimately lead to less methane production. Alternative less polluting methods of manure management are readily available and less costly to producers and to the public. Producers will not convert to less polluting practices if they receive economic benefits from ADs and liquid manure management.

FOTC asks some related questions. We believe the answer to each question is "Yes".

1. Can ADs impose negative environmental impacts?
2. Could the "no action" alternative have a smaller environmental impact than the proposed rule?
3. Does budgeting public funds to promote ADs shift funding from other green projects in ways that have a negative impact on the environment?
4. Would this rule likely change the practice of animal agriculture in Washington State?
5. Are there negative environmental impacts due to such changes in animal agriculture as practiced in Washington State?

For the above reasons it would be prudent for WA Ecology to retract the agency's issuance of a DNS for this rule and issue a Determination of Significance. This would prompt a more careful evaluation of the many factors at play by requiring an Environmental Impact Statement. An EIS would ideally provide the in depth analysis that this complex issue deserves. An EIS would comply with the spirit and intent of the WA State Environmental Policy Act.

Thank you for considering our concerns.

Sincerely,

Executive Director
Friends of Toppenish Creek