November 4, 2025

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

Dear Mr. Creswell:

While fully mindful of the many important and significant actions that you all, collectively and individually, take to protect our environment, the Friends of Toppenish believe that Ecology got it wrong when you adopted updates to WAC 173-424. For that reason, pursuant to RCW 34.05.330, FOTC appeals that decision.

While reading our appeal, please ask this question. "What is the difference between a guard rail and a road block?" The answer, we believe, begins on page 5.

The purpose of WAC 173-424 is: "This rule establishes requirements for suppliers and consumers of certain transportation fuels in Washington in order to reduce the lifecycle greenhouse gas emissions per unit energy (carbon intensity) of transportation fuels used in the state."

This rule is about transportation fuels. It should not include a rider that subsidizes polluting agricultural practices and punishes alternatives. Meddling in agriculture is not part of the Clean Fuel Standard mandate. The meddling incurred by Section 16 of WAC 173-424-610, "Avoided Methane Crediting", will strongly and adversely impact Washington agriculture through provisions that benefit a few large dairies, harm other dairies, victimize the public. . . . . and barely relate to clean fuels.

There is nothing in the authorizing statute, RCW 70A.535, that requires the WA State Dept. of Ecology or Washington taxpayers to create a new revenue stream for Washington concentrated animal feeding operations (CAFOs). These operations contributed 4.6 million metric tons of carbon dioxide equivalents to Washington's 96.1 million metric tons of carbon dioxide equivalent emissions in 2021.[1]

[1] WA State Dept. of Ecology. Washington State Greenhouse Gas Emissions Inventory: 1990-2021. Available at Washington State Greenhouse Gas Emissions Inventory 1990-2021

People who commented on the proposed update of WAC 173-424 in 2025 understood the impact of adding WAC 173-424-610 (16), avoided methane crediting, to the rule.

Around 53 commenters spoke favorably regarding the Avoidable Methane section

Around 110 commenters spoke in opposition to the Avoided Methane section

Some of those speaking in favor of changes to Avoided Methane Crediting said:

Jay Gordon from the WA State Dairy Federation said: "The current language limits dairy farm renewable energy from methane capture to 15 years (after which the farm produce energy would not be considered "renewable"). This will severely hamper dairy farmers' ability to find financing to build dairy digesters, or to cover lagoons or manure tanks."

Kelly McLain from the WA State Dept. of Agriculture said: "The proposed rule to limit avoided menthane crediting to two seven and a half year periods could exacerbate the lack of recent AD development as well as jeopardize the economic viability of those new digester projects funded by the CCA. Project finance for dairy digesters typically spans at least twenty years. Altering a project's revenue stream prior to its payback period will increase the risk threshold needed for their investment, driving the state further away from obtaining low-cost investments in greenhouse mitigation."

Mark Stoermann Chief Operating Officer for Newtrient LLC said: "Newtrient recommends that the Department permit unlimited crediting for avoided methane emissions from dairy-based biomethane projects. . ."

Sam Wade Vice President of Public Policy for RNG Coalition, a California organization, said, "The Draft Rule's proposed avoided methane crediting structure of two 7.5-year blocks (totaling a maximum of 15 years) is simply insufficient to support new investment in RNG project development. At the credit prices likely to be achieved in the CFS, RNG methane capture systems in the agriculture and waste space cannot be economically justified over only a 15-year period. These projects require between 20 to 30 years of crediting to be financially viable."

Jason Sheehan from J&K Dairy said, "Increase avoided dairy methane emission crediting period to two or three 10-year periods, same as California's LCFS program. Investors in digester projects require at least 20-year crediting."

Dan DeRuyter from DeRuyter & Son Dairy said, "Follow the science and provide at least 20-year crediting for real and measurable avoided dairy methane emissions . . . "

Brian Bosma from Maple Grove Dairy said, “Follow the science and provide at least 20-year crediting for real and measurable avoided dairy methane emissions.”

Dan Evans from Promus Energy said, “Dairy digesters are designed to operate at least 25-30 years, and investors in our projects expect an adequate return on their investment for at least 20 years.”

Bill Levy, Founder & CEO Pacific Ag, LLC/Pacific Ag Renewables, LLC said, “PAR strongly urges Ecology to review CARB’s analysis and revise the CFS rule to harmonize with the 30 year credit period to stimulate development of digesters consistent with CARB’s approach.”

Some of those speaking against Avoided Methane Crediting said:

Caitlin Krenn from Washington Conservation Action said, “Avoided methane crediting is not technology neutral because it gives biomethane a lopsided advantage over other fuels in the CFP, which are not allowed to use offset accounting.” And, with supporting citation, “under California’s Low Carbon Fuel Standard during 2024, biomethane captured at dairy and swine farms across the country (and mostly outside California) generated about 20% of all program credits, while making up only about 3% of alternative fuel used in California”

Tyler Lobdell from Food and Water Watch said, “Avoided methane crediting was first adopted in the (California) LCFS approximately seven years ago and transformed that program into a lucrative profit center for factory farm operations around the country, spurring what the Wall Street Journal termed a “gold rush in cow manure.” As explained below, avoided methane crediting rewards factory farms for polluting, distracts from real climate solutions, undermines program integrity, and distorts dairy and livestock markets. Ecology must reject this backward policy.” And, with supporting citation, “Managing manure in “dry” systems can eliminate manure methane emissions by more than 90 percent. But that will not happen if Ecology allows avoided methane crediting in the CFS because of the large financial incentive to build or maintain manure management systems with massive methane emissions so a portion of it can be captured for profit.”

Pamela Gross said, “Sustainable and proper manure management alternatives emit far less methane but livestock operations that manage their manure this way receive no benefit through the CFS. That is truly unfair and makes it so much harder for real family farms. Consider how to reward the businesses that are responsibly reducing their emissions. Not the ones who want to create more emissions.”

James Hove from Climate Solutions said, “We appreciate the intent to incentivize methane capture, which can meaningfully reduce pollution. However, it is critical to ensure that the CI scoring is grounded in factual accounting and avoids creating perverse incentives. We are particularly concerned about how avoided methane credits have incentivized the expansion of large-scale industrial farms, which has happened in California’s LCFS program—an outcome that undermines climate and environmental goals of Washington’s program.”

Many contributors said, “Washington should learn from the mistakes of California’s LCFS, which included avoided methane crediting. The LCFS kicked off a manure gold rush that has enriched the largest factory farms at the expense of people already severely impacted by factory farm pollution. The LCFS is mired in controversy, is currently the subject of numerous lawsuits, and is causing more harm than good when it comes to factory farm’s impact on the climate.”

Coleen Anderson said, “The artificially low carbon intensity scores that biomethane will receive under the Clean Fuel Standard only encourages more manure and more emissions, the opposite of what we want. Small sustainable dairies can't compete and earn these credits and communities pay the price.”

Merivet Lombera from PoderLatinX said, “In Washington state, particularly in Yakima Valley and Whatcom County, communities are already experiencing the serious public health consequences of CAFO pollution. These industrial operations produce massive amounts of waste and methane, contaminating groundwater with nitrates and filling the air with harmful emissions. Many of the families most affected are Latino and farmworker communities who are forced to live with toxic water, foul odors, and increased health risks like asthma and long-term illnesses. . . . Now, under the current Clean Fuel Standard, factory farms could be rewarded for producing methane. That means the more pollution they generate, the more money they stand to make. This is a dangerous and perverse incentive that encourages more emissions and more harm to frontline communities. Ultimately, allowing CAFOs to earn avoided methane credits under this program creates a dangerous and perverse incentive: the more methane a farm produces, the more profit it stands to gain, effectively rewarding pollution instead of preventing it.”

Ecology’s Solution to concerns about Avoided Methane Crediting.

Ecology sided with dairies saying: “Ecology conducted substantial engagement with representatives from the biomethane and renewable natural gas industry, environmental groups, and others in order to devise a final rule that creates substantial incentives for

near-term methane capture, balances the need for biomethane credits with incentives for other alternative fuels, and limits negative impacts to overburdened rural communities. The final rule includes a maximum 20-year avoided methane crediting period for dairy digester projects that "broke ground" (defined as the initial earthmoving and construction operations for a dairy digester project) after the beginning implementation date of the CFS program on January 1, 2023, and before 2030."

Then Ecology tried to placate environmentalists and community members by saying, "Many of the impacts from dairies and concentrated animal feeding operations (CAFOs) are outside the scope of this rule, which is narrowly focused on reducing greenhouse gas emissions from the transportation sector. The CFS program has no direct regulatory authority over dairies and industrial agriculture. Any participation by dairies in the CFS is optional and would be to capture methane emitted by manure to be refined into biomethane for use as a transportation fuel or feedstock. Capturing methane and decarbonizing transportation fuel supports Washington's efforts to meet our statewide greenhouse gas emissions reduction limits. However, Ecology also strives to prevent potential negative impacts and unintended consequences wherever we can.

Therefore, Ecology has adopted changes to the final rule based on requests for environmental safeguards to prevent negative environmental impacts from dairy biomethane-based pathways. Language has been added to the final rule that would allow Ecology to suspend pathways from dairies that are found to be in violation of environmental standards by a regulatory authority with jurisdiction over the dairy facility. This provision ensures oversight of dairies participating in the CFS by regulatory authorities with direct authority and expertise on dairy and CAFO-related environmental impacts." Emphasis added.

Catch 22 !!!!!!!!!!!!!!!

But there is a catch. There is absolutely no regulation of dairy air emissions in Yakima County or in Washington State – Zero. People cannot ask Ecology to "suspend pathways from dairies that are found to be in violation of environmental standards" because there are no "environmental (air) standards" for dairies to violate.

Those who try to follow this advice from Ecology find that they must first lobby for creation of regulations. Second, they must find the violations and inform regulatory officials. Third they must explain the violations to officials and persuade them to take action that is usually discretionary. Finally, they must evidence of violations to those who

implement the Clean Fuel Standard and convince them to suspend payments to the bad actors.[2]

WAC 173-424-610 (16) is not a guardrail. It is a roadblock.

Moving on to environmental violations other than air, Ecology asserts there are regulations for ground and surface water pollution, solid and hazardous waste management, nutrient management and land applications, climate change or greenhouse gas emissions, and odor/nuisance management. Below we describe how these regulations play out at the community level.

a. **Ground and Surface Water Pollution**:

Water pollution is addressed by requiring facilities that discharge pollutants to waters of the state to acquire National Pollutant Discharge Elimination System (NPDES) permits. WA Ecology has known since the 1990's that clay lined manure lagoons leak and pollute groundwater but getting dairies with clay lined lagoons to acquire permits is difficult.

Ecology is constrained by RCW 90.64 and a Memorandum of Understanding[3] that gives WSDA sole authority to investigate and prove discharges. Consequently, at this time there are only 16 NPDES permits for Washington dairies and 4 of those permits are for dairies that no longer milk cows.[4]

Only one of the seven WA dairies with digesters has an NPDES permit. That dairy has violated terms of the permit in the past but has since come into compliance.[5]

b. **Solid and hazardous waste management**:

WAC 173-350-250 is a lengthy rule with many, many restrictions on anaerobic digesters. But WAC 173-350-250 (2) exempts digesters that process livestock manure from most of those requirements. For example, WAC 173-350-250 (2) states:

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[2] See efforts to enforce requirements in a conditional use permit for a calf ranch in Yakima County at www.friendsoftoppenishcreek.org

[3] Memorandum of Understanding Between WA State Department of Ecology and WA State Department of Agriculture a tMOUAgricultureEcology2011Final.pdf

[4] WA Ecology Permitting and Reporting Information System (PARIS) at Paris - Permit Lookup

[5] WA Ecology Permitting and Reporting Information System, George DeRuyter & Son Dairy. Paris - Facility Summary

"Digestate must be managed in accordance with a dairy nutrient management plan under chapter 90.64 RCW, Dairy nutrient management, that includes elements addressing management and use of digestate." And
"Digestate that is managed in accordance with the dairy nutrient management plan under chapter 90.64 RCW, Dairy nutrient management, is no longer a solid waste when those plans include elements addressing management and use of digestate."

c. **Nutrient Management and Land Application**:

Check out RCW 90.64 and WAC 16-611. You will find absolutely no mention of anaerobic digesters, manure digestion, and digestate. Look at the requirements for Dairy Nutrient Management Plans and you will find minimal reference to digesters or digestate.[6] Dairy Nutrient Management Plans are not subject to public review. Members of the public cannot access DNMPs to determine how or whether they address digesters and digestate. Most relevant data regarding dairies is protected information pursuant to RCW 42.56.610.

d. **Climate Change or Greenhouse Gas Emissions**:

Unlike other industries, dairies are not required to report emissions of greenhouse gasses or hazardous air pollutants under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or the Emergency Planning and Community Right-to-Know Act (EPCRA).[7]

e. **Odor/nuisance management:**

RCW 70A.15.4530 protects CAFOs from odor and dust complaints unless people can find an expert to testify that their heart attack or whatever was directly caused by CAFO air emissions. The statute says:
"Odors or fugitive dust caused by agricultural activity consistent with good agricultural practices on agricultural land are exempt from the requirements of this chapter unless they have a substantial adverse effect on public health. In determining whether agricultural activity is consistent with good agricultural practices, the department of ecology or board of any authority shall consult with a recognized third-party expert in the activity prior to issuing any notice of violation."

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[6] Washington Nutrient Management Planning at Washington Nutrient Management Planning - Nutrient Management

[7] CERCLA and EPCRA Reporting Requirements for Air Releases of Hazardous Substances from Animal Waste at Farms at CERCLA and EPCRA Reporting Requirements for Air Releases of Hazardous Substances from Animal Waste at Farms | US EPA

Think we are exaggerating? Try filing a complaint and see what happens. The Yakima Regional Clean Air Agency does not investigate complaints about dairy odor or dust. The Yakima Regional Clean Air Agency says they have been unable to find experts who will testify regarding good agricultural practices. There is no Ecology approved list of accepted best management practices.[8]

Proposed addition to WAC 173-424-610 (16) is misleading:

"To maintain eligibility for avoided methane emissions credits under this program, the facility providing biomethane to the path way holder should remain in compliance with all applicable federal, state, and local environmental regulations including, but not limited to, limitations on applicable air quality emissions, water quality and discharges, solid and hazardous waste management, climate change or greenhouse gas emissions, odor/nuisance management, concentrated animal feeding operations, and nutrient management and land applications. If a facility is found in violation of any of these applicable environmental regulations by a regulatory authority with jurisdiction, the pathway holder may be deemed ineligible to generate avoided methane emissions credits until the facility demonstrates that they have remedied the violation to the satisfaction of ecology, or ecology is satisfied that the facility is taking adequate steps to remedy the violation."

Note that potential tools for enforcing environmental protection are stated in ways that give Ecology the choice whether to enforce or not. In light of Ecology's long history of protecting the dairy industry there is no reason to expect that these measures would ever be taken.[9]

Section 16 does not "ensure(s) oversight of dairies participating in the CFS by regulatory authorities with direct authority and expertise on dairy and CAFO-related environmental impacts" by any stretch of the imagination.

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[8] Agricultural Pollution of Puget Sound, page 24, The Quest for the Holy Grail: Agricultural BMPs In Washington, Agricultural Pollution in Puget Sound: Inspiration to Change Washington's Reliance on Voluntary Incentive Programs to Save Salmon

[9] Ecology administers Washington's National Pollutant Discharge Elimination System program. Ecology has acknowledged since the 1990's that all clay lined manure lagoons leak. Yet the NPDES program currently only applies to 16 of the more than 250 Washington dairies and 4 of those 16 no longer milk cows.

US Legal at Ensure: Understanding Its Legal Definition and Implications | US Legal Forms defines "ensure" in this way:

"The term 'ensure' means to make certain that something happens or is the case. In legal contexts, it often refers to the obligation of a party to guarantee specific outcomes or compliance with regulations. For example, a regulatory agency may be required to ensure that certain standards are met to protect public health or the environment."

The terms "may" and "should" in WAC 173-424-610 (16) make use of the term 'ensure' inaccurate and meaningless.

Key Points:

Production of renewable natural gas by dairies is not agriculture. In this instance dairies are fuel and energy producers. Dairies that produce and sell natural gas should be regulated in the same manner as those who provide fossil fuels, wind and solar energy.

Not all dairies are the same and not all digesters are the same. Ecology has stated in the agency's Environmental Justice Assessment, page 46: "the baseline calculation for avoided methane is premised on the farm using liquid manure management." We question whether such a severe limitation that normalizes a certain method of dairying, that leads to financial support for only a select group, that limits the definition of dairying to only those farms that use liquid manure management, is in fact legal. We question whether Ecology has the authority or expertise to make this declaration.

Types of Digesters:

a. Digesters can be on-farm in which only manure from one farm is digested. These tend to be smaller digesters that generate energy for the farm or generate and sell electricity to the grid.
b. Digesters can be located near multiple farms as in hub and spoke digesters. In this case manure is trucked from the farms to the digester for treatment and digestate is later trucked back to the farms for use as fertilizer or animal bedding. Cost to transport manure becomes a factor with these operations.
c. Digesters can be mesophilic which means operating at temperatures of 30 to 42 degrees centigrade. Or they can be thermophilic, which means operating at temperatures of 43 to 55 degrees centigrade. Thermophilic digestion requires addition of heat energy and is more likely to kill pathogens.

d. Digesters can be passive in which case a cover is placed over a manure lagoon and the emitted gases are siphoned off. This is commonly practiced in California. This type of operations is inhibited in Washington by more severe weather conditions.
e. Digesters can be complete mix digesters which are basically tanks or a series of tanks in which manure is heated and mixed with an active mass of Incoming liquid. The incoming liquid displaces volume in the digester, and an equal amount of liquid flows out. Complete mix digesters function best when solids content is 3% to 6% so water may need to be added.
f. Digesters can be plug flow which means manure moves through the digester as a plug. Plug flow digesters do not require mechanical mixing. Total solids content of manure should be at least 15%, and some operators recommend feeding manure with solids as high as 20%.
g. Some dairies scrape manure from barns and milk parlors. The manure is then stacked and later spread or composted. Scrape dairies can easily use plug flow digesters on farm. In order for scrape dairies to engage in complete mix digestion they would have to dilute solid manure with water.
h. Some dairies flush manure from barns and milk houses into manure lagoons where it is stored anaerobically until it is applied to fields as fertilizer. This is called liquid manure management. Flush dairies require more water and require manure lagoons. Flush dairies can easily participate in passive systems or complete mix digestion.
i. Digesters can be for manure only, for manure mixed with crop waste such as corn stover or wheat straw, or for manure mixed with food and other waste products. This can be a complex process that requires close monitoring since different mixes have different reactions with microbes and produce methane and other gasses at different rates. If the microbial population in a digester tank dies, the operators are left with a huge mess.
j. Some digesters burn the harvested methane to produce electricity that is used on-farm or sold to the grid. Some digesters sell methane gas that may be refined to produce fuel grade methane or renewable natural gas.

Due to the variety of dairy manure management practices and the types of digesters there are issues with CFS policy that we do not see addressed in WAC 173-424-610 (16):

a. We do not see an accounting for leakage that varies by digester type and has been documented using aerial imagery. [10]

[10] A new interactive map launched by the Oakland-based nonprofit research institute examines the health risk associated with more than 1,300 large methane releases nationwide, including 32 in California, that occurred from 2016 to 2025. The tool estimates the concentrations of airborne pollutants and outlines at-risk areas. PSE's Methane Risk Map — Actionable, Scientific Data

b. We do not see an accounting of emissions from manure transport when multiple dairies send manure to a community digester. This can be significant.
c. We do not see an accounting for pipeline leakage. This can be significant.
d. We do not see an accounting for increased emission of ammonia and other air pollutants that has been shown to increase during digestion. This can be significant.
e. We do not see an accounting for increased emission of greenhouse gasses including nitrous oxide that are associated with digestate storage and application to cropland. This is variable depending on methods of application and can be significant.
f. We propose that WA Greet is inadequate to evaluate the many factors that make manure bio-digestion more or less protective of the environment. Data input from individual dairies is not specific enough to account for the many factors involved.
g. We are certain that estimates of life cycle greenhouse gas emissions, "the aggregated quantity of greenhouse gas emissions, including direct emissions and significant indirect emissions, such as significant emissions from changes in land use associated with the fuels, as approved by ecology" are incomplete which leads to totally inaccurate calculation of carbon intensity scores for manure methane.
h. What would happen if one out of several dairies involved in a community digester committed environmental violations? Would the entire digester be shut down? Would that dairy be prohibited from supplying manure and how would this impact digestion recipes?
i. How will regulators determine whether a dairy has liquid manure management or dry manure management? How will regulators evaluate dairies that have features of both?

Meeting requirements in the WA Administrative Procedures Act, RCW 34.05.330

RCW 34.05.330 (4) In petitioning for repeal or amendment of a rule under this section, a person is encouraged to address, among other concerns:

(a) Is the rule authorized?

The rule is authorized by Chapter 70A.535 RCW. But this statute does not direct Ecology to interfere with and influence farming practices any more than it directs Ecology to tell petroleum processors how to reduce carbon emissions within their refineries.

The stated reason for the "avoided methane" provision is to reduce methane emissions from CAFOs that end up in the atmosphere. This is not a traffic issue. This could be better accomplished outside the CFS, at a lower cost, by changing agricultural practices and moving away from liquid manure management.

(b) Is the rule needed?

WAC 173-424-610 (16) is not necessary to reduce greenhouse gas emissions from vehicle or air traffic. To the best of our knowledge methane is currently not used as a fuel for airplanes or for on-road vehicles. Few on-road vehicles are powered by methane.

The purpose of revising WAC 173-424 was "updating the Clean Fuels Program Rule to align it with recent legislation (Engrossed Substitute Senate Bill (ESSB) 5447, 2023-2024 Legislative session) that amended the rule's authorizing statute (Chapter 70A.535 RCW)." [11]

The original title of ESB 5447 was "Promoting the alternative jet fuel industry in Washington". Sustainable Aviation Fuels (SAF) were the focus because aviation fuels are hard to decarbonize. Previously, in 2021 the Legislature established the Sustainable Aviation Biofuels Work Group. That work group has delivered major reports on the topic and these reports never mention methane as an aviation fuel.[12]

(c) Does the rule conflict with or duplicate other federal, state, or local laws?

WAC 173-424-610 (16) admittedly favors large CAFO dairies. This conflicts with the intent of RCW 19.85.070, the Regulatory Fairness Act. Although Ecology did not look specifically at "avoided methane" when analyzing under the RFA, the end results are clear. Across the board commenters noted that manure methane digesters are expensive and can be afforded by only the largest CAFO dairies, or by cooperatives.

The RFA is supposed to consider the cost of "lost sales or revenue". Dairying is a highly competitive business. Giving large CAFO dairies an additional revenue stream that, in some cases, can be nearly as profitable as selling milk, provides an advantage that can put small producers out of business. This is not speculation. This is fact.

The WA State Constitution prohibits enacting laws that grant special privileges to any specific group.[13]

(d) Do alternatives to the rule exist that will serve the same purpose at less cost?

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[11] Final Regulatory Analysis, WAC 173-424, Clean Fuel Standard, page 13/147. Available at Final Regulatory Analyses for Chapter 173-424 WAC, Clean Fuels Program Rule

[12] Sustainable Aviation Fuel Opportunities for Washington. Available at SABWG-Final-Report-November-2020-compressed.pdf and Sustainable Aviation Fuel Updates and Recommendations (Opportunities for Washington). Available at GetPDF

[13] WA State Constitution, Article I, Section 12 - Special Privileges and Immunities Prohibited. No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations. washington-state-constitution.pdf

Alternatives to manure lagoons, liquid manure management and methane biodigesters exist [14] but these less costly alternatives are not currently subsidized in Washington State. WAC 173-424-610 (16), if implemented would subsidize manure methane biodigesters so much that these cheaper alternatives would fade away.

(e) Does the rule serve the purposes for which it was adopted?

Maybe not, because this section gives preference to and directs funding towards certain options, thereby excluding more effective alternatives.

The purpose of WAC 173-424 is: "This rule establishes requirements for suppliers and consumers of certain transportation fuels in Washington in order to reduce the lifecycle greenhouse gas emissions per unit energy (carbon intensity) of transportation fuels used in the state."

As stated by Washington Conservation Action, this avoided methane "gives biomethane a lopsided advantage over other fuels in the CFP, which are not allowed to use offset accounting."

As stated by Food and Water Watch, "Managing manure in "dry" systems can eliminate manure methane emissions by more than 90 percent. But that will not happen if Ecology allows avoided methane crediting in the CFS because of the large financial incentive to build or maintain manure management systems with massive methane emissions so a portion of it can be captured for profit."

The Cobra Effect [15]

- In colonial India, the British government wanted to reduce the number of cobras in Delhi, so it offered a bounty for dead cobras.
- Profit-seeking locals responded by breeding cobras to receive the bounty.
- What happens when we pay people to capture methane from cow manure

(f) Are the costs imposed by the rule unreasonable?

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[14] US Environmental Protection Agency. Practices to Reduce Methane Emissions from Livestock Manure Management. Available at Practices to Reduce Methane Emissions from Livestock Manure Management | US EPA

[15] from American Biogas Council Webinar June 23, 2023 DRIFTS SEMINAR

Real direct costs relate to monies from the CCA that are spent on manure methane bio-digesters and thus diverted from wind projects, solar projects, and other measures.

Indirect costs are environmental costs attributable to continued liquid manure management.

Costs are unreasonable in the sense that funding for digesters takes away money that might have been spent on more environmentally beneficial projects. Costs are unreasonable because money would be spent to perpetuate pollution. Costs are unreasonable because the return for each dollar spent on anaerobic biodigesters is low and other methods of reducing methane emissions from manure lagoons cost less.

(g) Whether the rule was adopted according to all applicable provisions of law.

The rule may not fulfill the purposes underlying applicable laws:

- **SEPA:** *The purposes of this chapter are: (1) To declare a state policy which will encourage productive and enjoyable harmony between humankind and the environment; (2) to promote efforts which will prevent or eliminate damage to the environment and biosphere; (3) and [to] stimulate the health and welfare of human beings; and (4) to enrich the understanding of the ecological systems and natural resources important to the state and nation*.
  To fully comply with SEPA intent, Ecology must issue a Determination of Significance and analyze the significant environmental impacts of WAC 173-424-610 (16). See FOTC appeal of SEPA # 202504385 as amended on October 20, 2025.

- **Final Cost-Benefit Analysis Requirements**: *Before adopting a rule, an agency must (d) Determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented*

  A proper analysis of cost benefit requirements must first ask three questions:

  1. How much could Washington State potentially pay to promote the use of anaerobic manure bio-digesters?
  2. How much renewable natural gas from manure methane will be used as transportation fuel?
  3. What is the reduction in CO_2 equivalents when such fuel is burned instead of traditional fuels?

A corollary, unrelated to transportation fuels, suggests that Ecology must decide whether the costs of supporting and entrenching liquid manure management in our state exceed the benefits of harvesting methane that is produced solely due to liquid manure management.

- **Least-Burdensome Alternative Analysis Requirements**: *Before adopting a rule, an agency must (e) determine, after considering alternative versions of the rule and the analysis required . . . , that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated under (a) of this subsection*
  It might be less burdensome for CAFO owners to convert to dry manure management rather than attempt to construct expensive anaerobic manure methane digesters.

- **Regulatory Fairness Act**: *The legislature finds that administrative rules adopted by state agencies can have a disproportionate impact on the state's small businesses because of the size of those businesses. This disproportionate impact reduces competition, innovation, employment, and new employment opportunities, and threatens the very existence of some small businesses. The legislature therefore enacts the Regulatory Fairness Act with the intent of reducing the disproportionate impact of state administrative rules on small business.*
  Ecology and others have clearly shown that WAC 173-424-610 (16) will impose highly disproportionate and possible insurmountable costs on dairies with less than 1,000 milk cows.

- **Climate Commitment Act**: *The legislature finds that climate change is one of the greatest challenges facing our state and the world today, an existential crisis with major negative impacts on environmental and human health. Washington is experiencing environmental and community impacts due to climate change through increasingly devastating wildfires, flooding, droughts, rising temperatures and sea levels, and ocean acidification. Greenhouse gas emissions already in the atmosphere will increase impacts for some period of time. Actions to increase resilience of our communities, natural resource lands, and ecosystems can prevent and reduce impacts to communities and our environment and improve their ability to recover.*
  WA agencies, as experts on environmental issues, should advise the legislature that the most effective way to reduce greenhouse gas emissions from animal agriculture would be to phase out liquid manure management.

- **HEAL Act**: *The purpose of this chapter is to reduce environmental and health disparities in Washington state and improve the health of all Washington state residents.* WAC 173-424-610 (16), as currently proposed, promotes placement of anaerobic biodigesters within overburdened communities while more affluent communities are not threatened by this environmental burden.

Thank you for considering our concerns. The Friends of Toppenish Creek are available to meet and discuss these issues further, if you like.

Sincerely,

Executive Director
Friends of Toppenish Creek

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