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CEC Regulation Title 20 CCR 3103 - AB 118 Funding Restrictions

Additional submitted attachment is included below.

WASTE MANAGEMENT

February 11, 2015

Janea A. Scott, Commissioner
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

Via Email: c/o Michele Lorton at Michele.Lorton@energy.ca.gov.

Subject: CEC Regulation Title 20 CCR 3103 – AB 118 Funding Restrictions

Dear Commissioner Scott:

Thank you for the opportunity to bring Waste Management's (WM) concerns to your attention regarding the interpretation of Title 20 CCR 3103 (3103 Regulation) pertaining to funding restrictions applicable to AB 118 grantees. We understand that the CEC is contemplating addressing problems associated with this rule. The problem is that the rule could be interpreted to impose restrictions on AB 118 grantees such that they may not be able to secure full value of Low Carbon Fuel Standard (LCFS) credits that may be earned due to the production of low carbon biofuels. It is also possible that this rule could be interpreted to similarly restrict the full value of federal Renewable Fuel Standard (RFS2) Renewable Identification Number (RIN) credits as well as other incentive revenues. Past CEC AB 118 solicitations have suggested that grantees would have to forgo the value of credits in proportion to the level of grant assistance provided by AB 118 funds.

We urge you to reconsider the language of Rule 3103 as we believe it is contrary to the intent and specific language of AB 118, as amended. The language of past CEC solicitations have stated that if the grantee:

> ". . . is an obligated party ***or has opted in*** . . . to a credit generating program such as the LCFS or AB 32 initiatives, and plans to claim credits generated by the proposed project, then the *applicant will be required to agree to discount the value of those credits at the point of transfer in proportion to the funding received*". (emphasis added)

According to the CARB LCFS regulations, the only way a voluntary producer of a low carbon fuel can participate in the LCFS is by "opting in" as a "regulated party". This is simply terminology used by CARB, but in no way means an "opt-in" regulated party is required in any way by CARB to produce a low carbon fuel. Such voluntary parties are only "opting in" as a convenient way for CARB to allow for the transaction of LCFS credits under the LCFS program. CARB has specifically clarified in their regulatory amendments to the LCFS that parties that voluntarily opt-in are free to opt-out at any time and still produce low carbon fuel for use in California – provided they are not subject to a compliance obligation under the LCFS. *The CEC also needs to recognize this distinction.*

Imposing such a restriction on voluntary producers of alternative fuels goes far beyond the statutory limitation in AB 118 itself, as modified by AB 109 (Nunez, 2008). H&SC Section 44271 (c) is the statutory basis, authority and reference for Section 3103 of the AB 118 Regulations:

> 44271 (c) For the purposes of both of the programs created by this chapter, eligible projects do not include those required to be undertaken pursuant to state or federal law, district rules or regulations, memoranda of understanding with a governmental entity, or legally binding agreements or documents. For the purposes of the Alternative and Renewable Fuel and Vehicle Technology Program, the state board shall advise the commission to ensure the requirements of this subdivision are met.

It is WM's belief that this statutory restriction was never intended to apply to *voluntary* producers of low carbon fuels – whom are doing so without any obligation or mandate by a government agency. We believe this statutory restriction was intended to apply to only those parties that are required to produce alternative fuels, such as through the Low Carbon Fuel Standard (LCFS), the federal renewable fuel standard (RFS2), or Greenhouse Gas programs, such as California's Cap and Trade Program. In the case of the LCFS, this statutory provision would appear to be only applicable to producers of fuels that have a higher carbon intensity than the target goal of the LCFS – *they are mandatory regulated parties*. These parties, typically petroleum fuel producers, have an obligation to lower the carbon intensity of fuels they produce or purchase credits from other parties that produce low carbon fuels and have credits to sell. AB 118 grantees that voluntarily produce a fuel under no obligation to a government entity to do – -- and can sell credits to mandatory regulated party -- should not be subject to such restrictions.

It is certainly our belief that this restriction was never intended to apply to parties who voluntarily develop alternative fuels. To do so would be counter to the very goals of the program: to stimulate the production of low carbon alternative fuels. Limiting the value of credits available to voluntary producers of such fuels would remove a significant financial incentive to produce alternative fuels. This would play directly into the hands of those who are opposed to programs such as the LCFS and, potentially, the federal Renewable Fuel Standard (RFS2) – and would lead to a diminished capability to produce alternative low carbon fuels.

Unfortunately, the uncertainty over the value of LCFS and RFS2 RIN credits has contributed to WM's curtailed investments in projects that could produce more low carbon fuel for California. You may be aware that a joint venture of WM and Linde of North America (High Mountain Fuels -- HMF) was awarded an $11 million AB 118 grant by the CEC in 2011 for the development of a landfill gas to LNG plant at our Simi Valley Landfill in Southern California. This would have been the 2nd *larger* such facility in California after the successful HMF project at our Altamont landfill in Alameda County that still produces up to 13,000 gallons/day of Renewable low carbon LNG. At the time the 1st Altamont project was initiated, the value of natural gas was about $12/MMBTU. It was felt that we could produce renewable LNG for about this value. The 2nd Simi project, would have produced up to 18,000 gallons per

day of very low cabin Renewable LNG. Unfortunately, the value of natural gas, with which this facility would have to compete, had fallen to a historic low of less than $4/MMBTU and the cost of the Simi Facility had increased by 50%. In order to ensure the financial success of this 2nd Simi project, a least $8/MMBTU would have to produced through the sale of RFS2 RIN and LCFS credits.

Unfortunately, due to uncertainty over the value of LCFS and RFS2 RIN credits High Mountain Fuels had to withdraw from that grant award. Although there were a variety of factors that contributed to that decision, the uncertainty in revenues from the LCFS and RFS2 credits was, by far, the largest consideration. *The uncertainty of how Rule 3103 would be interpreted over the life of the project contributed to that uncertainty*. *Thus, Rule 3103 contributed to significant economic harm and the inability of this project to move forward.*

Waste Management strongly supports a modification of Rule 3103 by the CEC if such a modification will clarify this matter. We strongly request clarification that restrictions on LCFS and RFS2 RIN credit be clarified to ***not*** apply to parties who voluntarily produce low carbon fuels and are not affiliated with parties that may have a LCFS or RFS2 compliance obligation – although we may have to ultimately contract with those obligated parties in order to sell the LCFS and RFS2 RIN credits to them.

WM requests that CEC not impose this funding restriction on parties that are voluntarily opting-in to the LCFS or RFS2 for purposes of generating and transacting LCFS or RFS2 credits. *We further request that the CEC amend Section 3103 such that it does **not** impose such a restriction on voluntary producers of alternative low carbon fuels.*

Please contact me if you have any questions or require further information.

Sincerely,

Charles A. White, P.E.
Consultant to Waste Management
4127 Frontera Drive
Davis, CA 95618
Cell: 916-761-7882
Email: cwhite1@wm.com

cc: Robert Weisenmiller, Chair, CEC, c/o ccross@energy.state.ca.gov
Tim Olson, CEC Advisor, TOlson@energy.state.ca.us
Jim McKinney, Office Manager, CEC jmckinne@energy.state.ca.us
Floyd Vergara, Division Chief, CARB fvergara@arb.ca.gov