



September 19, 2008

James Boyd, Vice Chair; Presiding Member, Transportation Committee
Karen Douglas, Commissioner; Associate Member, Transportation Committee
California Energy Commission
Dockets Office, MS-4
Re: Docket No. 08-ALT-1
1516 Ninth Street
Sacramento, CA 95814-5512

DOCKET	
08-OIR-1	
DATE	SEP 19 2008
RECD.	OCT 03 2008

Re: AB 118 Regulations - 08-ALT-1

Dear Chairman Boyd, Commissioner Douglas and Members of the Commission,

Thank you for the opportunity to comment on the Energy Commission's proposed regulations. We recognize and appreciate the extensive work that both staff and Commission members have put into this process. We also appreciate that staff has recently laid out a clearer path for program development and believe that the structural issues regarding how this program might work have begun to take shape.

Working from the staff's draft regulations, below we have proposed certain language additions and revisions and provided explanations regarding those suggested changes.

Specific Comments on Proposed Regulations

a) Sustainability

As California implements various programs that promote increased alternative fuel use, it is critical that we develop clear sustainability criteria for such programs. The Energy Commission and its staff have recognized the potential risks associated with expanding alternative fuel use in California -- specifically that the volume of alternative fuels needed in California to substantially reduce petroleum use and greenhouse gas emissions carries the risk of encouraging or promoting environmentally and socially destructive production practices in

California, the United States, and globally. We agree. We also agree that California's size and market clout, as well as its recognized environmental leadership, provide an opportunity to drive the alternative fuels market toward production of sustainable fuels. We appreciate the Energy Commission's commitment to leading the way in developing a program focused on promoting alternative fuels and vehicle technologies that are both sustainable and most likely to lead to significant greenhouse gas reductions.

b) Sustainability Goals

We broadly agree with the sustainability goals as set forth in the proposed regulations and, again, appreciate the thought and research that has gone into developing them. We do, however, propose slight modifications as set forth below.

- i. Limiting sustainability requirements to state resources: We believe that section (a) of the proposed Sustainability Goals would inappropriately limit the reach of the goals to "the state's natural resources." We suggest deleting this reference to ensure that, as California expands the use of alternative fuels, it does so in a way that avoids the outsourcing of negative impacts, whether those impacts are occurring in California, the United States, or other countries.
- ii. Include specificity in regulations regarding the process of adopting sustainability thresholds and criteria: In workshops, the Energy Commission has noted its preference to retain flexibility in program implementation by adopting sustainability criteria in processes outside of the regulations, specifically in the solicitation phase. While we agree with the goal of retaining flexibility, we believe that the regulations must give a clear roadmap for development of sustainability criteria and thresholds. We also believe that development of such criteria must be accomplished in a public process *prior to* the solicitation phase. This will provide sufficient time for stakeholders to weigh in on these critically important issues, and allow staff to consider and respond to such input, without interfering with staff's ability to develop solicitations. At the solicitation phase, staff should more appropriately be focusing on developing solicitation criteria that best implements the investment plans' priorities and assures implementation of already-developed sustainability criteria. Proposed language on this issue is set forth in subsections b(i) and (ii) below.
- iii. Minimum Sustainability Requirements: We have identified certain bottom-line, threshold requirements that should be included in the regulations. This will serve to ensure that the Energy Commission's obligations are clear with regard to these issues, apprise project proponents of the minimum sustainability requirements, and provide assurance that funded projects will meet a basic sustainability threshold. We also suggest that the Energy Commission annually review the threshold eligibility criteria and amend as appropriate based on this annual review.

- iv. Proposed Goal 1- Greenhouse Gas Reductions: We agree that the first and primary sustainability goal is identifying and promoting projects that reduce greenhouse gas emissions. As set forth in Health & Safety Code section 44272(a), the purpose of the Alternative and Renewable Fuel and Vehicle Technology program is to fund projects that “develop and deploy innovative technologies that transform California’s fuel and vehicle types to help attain the state’s climate change policies.” Thus, our suggested revision strengthens the proposed goal to identify and support alternative fuels and technologies with the *best potential* to reduce greenhouse gas emissions. With that primary goal in mind, ranking of projects then will take into account the factors set forth in section 44272(b).
- v. Proposed Goal 2 – Protect the Environment: We also agree with the second goal of appropriately protecting the environment, including all natural resources, from the environmental effects of alternative and renewable fuel development and promoting the superior environmental performance of alternative and renewable fuel infrastructure and vehicle technologies. We suggest modifying the phrase “environmental effects” with “negative” to allow funding of projects that might improve the environment. We also propose deleting section (b) of the proposed goal. To be sustainable, all project impacts must remain well within the limits of an ecosystem’s carrying capacity; we believe that section (b) can be read to set carrying capacity as the threshold for impacts.
- vi. Proposed Goal 3 – Support Certified Sustainable Production: We agree that the Energy Commission must support the certified sustainable production of alternative fuels in approving and ranking projects. Rather than being a sustainability goal, however, certification programs are a tool for identifying sustainable alternative fuels and vehicle technologies. We therefore suggest that the elements set forth in this proposed goal not be identified as a “goal,” but be included in the regulations as a means of achieving sustainability goals. See subsection (f) below. We also propose that the Energy Commission undertake, and make available to the public, a yearly review of significant sustainability principles and programs, including those developed at the state, national, and international levels.
- vii. Proposed Goal 4 – Minimize or Avoid Unanticipated Consequences: We also agree that avoiding and minimizing the risk of alternative and renewable fuel production causing unanticipated consequences is an important sustainability goal. We suggest adding the phrase “vehicle technologies” to the goal. We have also suggested adding “internationally recognized sustainability certification programs” as one of the listed tools. We very much agree that the Energy Commission should use adaptive management, continuous research, use of full-fuel-cycle modeling tools, and establishment of a database for post-project environmental and economic monitoring of projects funded under this program to ensure that unanticipated consequences to the environment, food supplies, and

social welfare will not occur. We suggest adding that the Energy Commission provide the public an opportunity to participate in developing such systems.

- viii. Definitions. We note that the proposed regulatory definitions do not include a definition of sustainability. We believe that the Public Resources Code's definition of sustainability provides a floor that should be adopted in the regulations, with a proviso that the definition will continue to be revised as appropriate, within a public process.
- ix. Mitigation – We add a requirement that the Energy Commission adjust the Investment Plan and project eligibility criteria as necessary to avoid funding projects that create, or have a substantial likelihood of creating, negative environmental or social impacts, including negative impacts on species, habitat, ecosystems land use, biodiversity, air quality, water supply and quality, and access to and production of food.
- x. Reporting - We include a provision requiring the Energy Commission, by January 1, 2010, to develop reporting requirements to be imposed upon those persons or entities receiving funding under AB 118. We also provide that, where possible, the Commission develop reporting criteria consistent with international efforts to quantify full fuel-cycle greenhouse gas emissions and environmental impacts. Finally, we provide that all reporting by funding recipients pursuant to this section shall be available for public review.

c. Investment Plan

- i. Purpose of Investment Plan: In subsection (a), we suggest modifying the paragraph to highlight the fact that greenhouse gas reductions are the primary goal of the law. As drafted, the language appears to suggest that the other ranking criteria are of equal importance to greenhouse gas reductions. We believe that the criteria set forth in Section 44271 are to be considered after identifying those projects with the highest greenhouse gas reductions.
- ii. Apportionment of Total Funding Into Subaccounts: The Investment Plan should provide specific recommendations on creating categories of fuels and vehicle technologies subaccounts and the percentage allocation of annual funding into the subaccounts. This will ensure that the ultimate dispensation of the funds is consistent with an objective prioritization of the ability these categories have to substantially contribute to the state's climate change goals, while allowing progress on other state goals, such as air quality, water quality, and sustainability of ecosystems.
- iii. Gap Analysis: We suggest adding to the investment portion of the regulation a requirement that the Energy Commission produce a gap analysis and utilize such gap analysis in ranking projects for funding purposes. This is important in determining where public funding can best be used to encourage and support

identified priorities. It is also important in allowing the Commission to assess the need for public funding based on an understanding of where existing public and private funding dollars are invested; analyzing opportunities to leverage additional public or private funding; and taking into account the riskiness of the technologies being considered for public funding.

Thank you for considering these comments.

Sincerely,



Bonnie Holmes-Gen
American Lung Association of California



John Shears
Center for Energy Efficiency and Renewable Technologies




Tim Carmichael
Coalition for Clean Air



Remy Garderet
Energy Independence Now



Timothy O'Connor
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Danielle Fugere
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Debbie Hammel
Natural Resources Defense Council

Proposed Regulatory Language

Section XXXX Advanced Vehicle Technology

Projects that produce or manufacture vehicles and components as described in Health and Safety Code Section 44272 (c) shall be eligible for funding.

NOTE: Authority cited: Sections 25211, 25213, Public Resources Code. Section 44272 (a), Health and Safety Code. Reference: Public Resources Code; Section 44272 (a), (b), (c), Health and Safety Code.

Section XXXX Sustainability Goals

- a. The sustainability goals described in this section shall guide the Energy Commission in ensuring that funded projects promote sustainable alternative fuels and vehicles and do not adversely affect natural resources.
- b. To achieve these sustainability goals, the Energy Commission shall establish, through a public process, and prior to issuing project solicitations:
 - i. environmental performance measures that will serve as screening thresholds for project eligibility; and
 - ii. project evaluation criteria, in addition to those set forth in Section 44272(b), that will be used to rank each project’s furtherance of the program’s sustainability goals and will incentivize the most innovative and sustainable alternative fuel production practices and vehicle technologies.
- c. These measures and criteria shall be reviewed once a year, and updated as necessary, to take into account best available science, existing certification programs, consistency with other regulatory programs, including the Low Carbon Fuel Standard, and other relevant information.
- d. The first sustainability goal shall be to identify and support alternative fuels and technologies with the best potential to reduce greenhouse gas emissions associated with California’s transportation system to help meet California’s 2020 and 2050 targets as defined in Section 38550 of the Health and Safety code and the Governor’s Executive Order S-03-05. Toward that end, the Energy Commission or its assigned policy committee shall identify and support fuel and technology options with the best potential for meaningful reductions in transportation-related greenhouse gas emissions.
- e. The second sustainability goal shall be to protect the environment, including all natural resources, from the negative environmental effects of alternative and renewable fuel development and promote the superior environmental performance of alternative and renewable fuel infrastructure and vehicle technologies. Toward that end, the Energy Commission shall recognize, support, and encourage production of alternative fuels and vehicle technologies that are more environmentally efficient and less environmentally damaging than current standard practices for the production of petroleum fuels, production of basic agricultural commodities, and extraction of natural resources when measured on a life-cycle basis.

- f. The third sustainability goal shall be to minimize or avoid the risk of alternative and renewable fuel production and vehicle technologies causing unanticipated consequences. The Energy Commission or its assigned policy committee shall use adaptive management, continuous research, and use of full fuel-cycle modeling tools as adopted by the California Air Resources Board, internationally recognized sustainability certification programs approved by the Commission in consultation with the Advisory Committee and the California Air Resources Board and establishment of a database for post-project environmental and economic monitoring of projects funded under this program to ensure that unanticipated consequences to the environment, food supplies, and social welfare will not occur. The Energy Commission shall provide the public an opportunity to participate in developing such systems.
- g. In order to achieve the goals set forth above, the Energy Commission shall identify and promote practices and programs that support certified, sustainable production of alternative and renewable fuels.
 - i. Certification - The Energy Commission shall also consult with the California Air Resources Board and stakeholders through the Advisory Committee to identify internationally recognized sustainability certification programs.
 - ii. Review - The Energy Commission shall undertake, and make available to the public, a yearly review of significant sustainability principles and programs, including those developed at the state, national, and international levels.
 - iii. Mitigation - The Energy Commission shall adjust the Investment Plan and project eligibility criteria on an annual basis, if necessary, to avoid funding projects that create, or have a substantial likelihood of creating, negative environmental or social impacts, including negative impacts on species, habitat, ecosystems land use, biodiversity, air quality, water supply and quality, and access to and production of food.
 - iv. Reporting - By January 1, 2010, the Energy Commission shall develop reporting requirements to be imposed upon those persons or entities receiving funding under AB 118. The reporting requirements shall include, but not be limited to, those factors necessary to quantify Lifecycle Greenhouse Gas Emissions and the environmental impacts of a project, including the full fuel cycle of fuels for fuels-related projects. Where possible, the Commission shall develop reporting criteria consistent with international efforts to quantify full fuel-cycle greenhouse gas emissions and environmental impacts. Reporting criteria shall be updated as necessary to reflect any revisions made to the sustainability principles or criteria. All reporting by funding recipients pursuant to this section shall be available for public review.

Section XXXX Minimum Sustainability Requirements

- a. Notwithstanding subsection b(i) above, to be eligible for funding, at a minimum, a project must meet the following environmental performance criteria:
 - ii. The project must reduce greenhouse gas emissions by at least 10 percent on a lifecycle assessment basis – including direct and indirect land-use changes –from the reformulated gasoline and diesel fuel baseline existing in October 2006. In 2009 and subsequent years, the Energy Commission shall adopt more stringent GHG standards.

Lifecycle greenhouse gas emissions estimates shall be based upon the most accurate and up-to-date data developed by the state, including the California Air Resources Board's Low Carbon Fuel Standard rulemaking.

- iii. The project must reduce, on a life-cycle basis, the discharge of water pollutants or any other substances known to damage human health or the environment, in comparison to the production and use of California Phase 2 Reformulated Gasoline or diesel fuel produced and sold pursuant to California diesel fuel regulations set forth in Article 2 (commencing with Section 2280) of Chapter 5 of Division 3 of Title 13 of the California Code of Regulations.
 - iv. The project must exceed, across the entire life-cycle of the funded project, all applicable laws, regulations, orders, and treaties of the country in which such project or project component occurs.
- b. For biomass related projects, the project shall use renewable biomass. Renewable biomass means each of the following:
- i. Planted crops and crop residue harvested from agricultural land cleared or cultivated at any time prior to the enactment of AB 118 that is either actively managed or fallow, and nonforested.
 - ii. Planted trees and tree residue from actively managed tree plantations on non-federal or non-state land cleared at any time prior to enactment of AB118, including land belonging to an Indian tribe or an Indian individual, that is held in trust by the United States, the State of California, or subject to a restriction against alienation imposed by the United States or the State of California.
 - iii. Animal waste material and animal byproducts.
 - iv. Slash and pre-commercial thinnings that are from non-federal and non-state owned forestlands, including forestlands belonging to an Indian tribe or an Indian individual, or that are held in trust by the United States or the State of California or subject to a restriction against alienation imposed by the United States or the State of California, but not forests or forestlands that are ecological communities with a global, federal, or State ranking of threatened or endangered, or critically imperiled, imperiled, or rare pursuant to a State Natural Heritage Program, old growth forest, or late successional forest.
 - v. Biomass obtained from the immediate vicinity of buildings and other areas regularly occupied by people, or of public infrastructure, at risk from wildfire.
 - vi. Algae.
 - vii. Separated yard waste or food waste, including recycled cooking and trap grease.
 - viii. Biomass feedstocks derived from the following areas shall not be considered "renewable biomass": 1) national forests, 2) national grasslands, 3) national wildlife refuges, 4) national parks, 5) national monuments, 6) federal wilderness study areas, 7) late-successional forests, 8) state parks and reserves, 9) critically imperiled (G1/S1), imperiled (G2/S2) and vulnerable (G3/S3) ecosystems as identified in California's Natural Diversity Database, 10) lands owned or managed by the Department of Fish and Game and, 11) crops and crop residue from land where native forest, riparian areas, or native grasslands were cleared and converted, or wetlands were drained, for agricultural production after the adoption of AB118 regulations.
- c. The CEC shall annually review the minimum eligibility criteria set forth above and amend the criteria as appropriate based on an annual review of developing sustainability programs and

principles; identified impacts of the program on natural resources and people; and available fuels and vehicle technologies.

Section XXXX Investment Plan

- a. The investment plan shall be subject to commission approval and, as approved, shall determine priorities and opportunities for funding under the program for the ultimate purpose of developing and deploying innovative technologies that will transform the state's fuels and vehicles to help attain the state's climate change policies.
- b. The assigned policy committee shall be responsible for the preparation and publication of a draft investment plan or update, taking into consideration recommendations and input from public meetings with the advisory committee.
- c. The draft investment plan or update shall be available for public review and comment no less than 30 days prior to the meeting at which the commission considers approving the proposed investment plan or update. During the period of public review, the assigned policy committee shall hold at least one public workshop on the draft investment plan or update. The assigned policy committee may revise the draft investment plan based on comments received during the public review period. At least 14 days prior to the business meeting at which the investment plan will be considered for approval, the assigned policy committee shall publish a proposed investment plan.
- d. As part of the investment plan, the Energy Commission shall produce a gap analysis and utilize such gap analysis in ranking projects for funding purposes. Such analysis should identify where existing public and private funding dollars are being invested; determine where public funding can be best used to encourage and support identified funding priorities; assess the need for public funding based on where existing public and private funding dollars are already being invested; and analyze opportunities to leverage additional public or private funding, taking into account the riskiness of the technologies being considered for public funding.
- e. All funding decisions made by the commission, and the overall investment portfolio of funded projects on an annual basis, shall be consistent with the investment plan, which shall be updated as needed annually.
- f. The investment plan shall serve to give public notice as to the types of projects that would be eligible to receive funding under the program and to specify the categories of funding allocations.

Section XXXX Apportionment of Total Funding Into Subaccounts

- a. The commission shall, on an annual basis and prior to any funding decision, apportion funds appropriated for this program into subaccounts based upon the Investment Plan recommendations. The fund's apportionment shall be revised on an annual basis, consistent with the Investment Plan.