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<b>08-OIR-1</b>	
DATE	NOV 10 2008
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November 10, 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-OIR-1  
 1516 Ninth Street  
 Sacramento, CA 95814-5512

Re: AB 118 Regulations - 08-OIR-1

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

Thank you for the opportunity to comment on the Energy Commission's October 30, 2008, proposed draft regulatory language for implementation of AB 118. We very much appreciate both the work that staff and Commission members have put into developing this regulation and the sound regulation that has resulted. We believe that the draft regulation tracks the purposes and goals of the statute well and outlines a clear path for implementing the AB 118 funding process.

We particularly appreciate the Energy Commission's demonstrated leadership in ensuring sustainability in the funding of alternative fuels and vehicle projects. The inclusion of clear sustainability goals in this regulation signals to investors, industry, decisionmakers, and the public that the fuels and vehicles we use to transform California's transportation system must be sustainable. This serious attention to sustainability will ensure that we do not simply trade one problem for another in the rush to diversify our fuel base and reduce greenhouse gas emissions from vehicles.

We also appreciate the regulation's inclusion of a public participation process for developing environmental performance measures and screening thresholds for project eligibility. All stakeholders will be well served by working through these issues in the greater depth afforded by such an open process.

However, given that these regulations will guide funding for the production of a new generation of fuels, we are greatly concerned regarding the failure to adopt minimum threshold protections such as those included in the definition of renewable biomass as set forth in the Renewable Fuels Standard (RFS), with similar protections for state resources. (*See* 42.U.S.C. 7545(o), as adopted on December 19, 2007) The sourcing standards of the federal RFS were carefully crafted through a broad stakeholder process to provide a minimum level of protection for wildlife habitat, natural forests, native grasslands, and important public lands. These protections do not prohibit the use of fuels from these areas; rather, they avoid creating inappropriate incentives to develop our most sensitive lands and ecosystems for fuel production.

California has long been a leader in establishing environmental protections that go beyond federal minimums; it would be a great disappointment if the Energy Commission were to do less than the federal government in protecting important habitats and ecosystems from the pressures of new fuels development. We again therefore request that the Energy Commission adopt the minimum sustainability protections as set forth in Exhibit 1 below.

We also have the following specific comments:

- We suggest adding a new section, 3101(g)(3), that requires the Investment Plan and project eligibility criteria to be adjusted on an annual basis, if necessary, based on the results of Section 3101(g)(1) and (2) post-project monitoring and other available information. Specifically, we suggest the following language:

The Energy Commission shall adjust the Investment Plan and project eligibility criteria on an annual basis, if necessary, to avoid funding projects of the type that have been determined to cause significant negative environmental, economic, or social consequences, including significant negative impacts to species, habitat, ecosystems, air quality, water supply and water quality, food availability, or other important systems.

- In section 3108(d), we suggest adding the following highlighted sentence to clarify that the gap analysis serves a broad purpose in determining funding uses:

(d) As part of the investment plan, the commission shall identify where existing public and private funding dollars are being invested; determine where public funding can be strategically used to encourage and support identified funding priorities of the investment plan including, but not limited to, consideration of potential for commercial viability, competitiveness and production expansion of alternative fuels; 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.

Thank you for considering these comments.

Sincerely,



Bonnie Holmes-Gen  
American Lung Association of California



John Shears  
Center for Energy Efficiency and Renewable Technologies



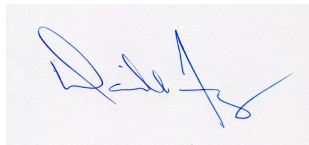
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Coalition for Clean Air



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Timothy O'Connor  
Environmental Defense Fund



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**Attachment A**  
**Proposed Regulatory Language**

**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:

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 non-forested.
- 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.