



February 17, 2008

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

**DOCKET**

**08-OIR-1**

DATE FEB 17 2009

RECD. FEB 18 2009

Re: AB 118 Regulations - 08-OIR-1

Dear Chairman Boyd, CEC Chair Douglas, and Members of the Commission,

Thank you for the opportunity to comment on the Energy Commission's December 2008, Proposed Regulation Language, Alternative and Renewable Fuels and Technologies Program. We applaud the excellent work of the Energy Commission and its staff in developing the draft regulations as part of the implementation of the AB 118 program and in support of the Investment Plan. We would like to offer the following observations and recommendations in hopes of assisting the Commission in making clearer and more complete the proposed set of regulations.

Section 3101 – Criteria for Project Funding

The proposed language of Section 3101(a) states that “*one or more* of the following criteria, shall be used to determine which projects will receive funding.” This language could be interpreted as allowing a project to be funded based on a single listed criterion. As an example, a project could be given preference based solely on whether it had the largest amount of non-state matching funds, whether or not it met the other applicable goals of the statute. We suggest modifying the language slightly as follows:

(a) ~~“One or more of the following criteria, as applicable to the funding application,~~  
The following criteria, as appropriate to project type, shall be used to determine  
which projects will receive funding. Preference will be given to project applications  
that can best:....”

We suggest a similar revision be made to section 3101.5(b) which also contains the “one or more” language.

## Section 3101.5 – Sustainability Goals and Evaluation Criteria

1. Section 3101.5 does not include a preference for projects that reduce criteria air pollutants and air toxics as required by Health and Safety Code 44272(b)(3). We request that this metric be added to the list set forth in section 3101.5(b).

In addition, we propose including in 3101.5 (b)(2) the phrase “and air quality” as shown below:

(2) “Strong preference will be given to projects that demonstrate environmental and air quality protection, natural resource preservation, and superior environmental performance...”

2. We request section 3101.5(b)(1)(A) be modified to require that applicants provide sufficient information to assess not only the greenhouse gas emissions profile of a project, but also its use of, and impact on, natural resources and other sustainability factors as further outlined by the California Energy Commission in solicitation documents.

3. For clarity and consistency in applying greenhouse gas related regulations at both the Energy Commission and the Air Resources Board we also recommend that 3101.5(b)(1)(A) be modified to read:

(A) Applicants must provide sufficient information to determine the greenhouse gas emissions profile of the proposed project on a full fuel-cycle basis, including an estimate for greenhouse gas emissions from indirect land use changes, in accordance with the methodologies described in the Low Carbon Fuel Standard, or an alternative methodology approved by the Commission in consultation with the Air Resources Board.

4. We request that section 3101.5(b)(2)(C) be modified as follows:

(C) For projects using purpose-grown energy crops, furtherance of environmental protection and natural resource preservation goals would be demonstrated by factors, including but not limited to: .....

(ii) Avoiding lands historically used for agricultural purposes that currently provide important habitat or ecosystem values.

(iii). Use of marginal crop lands that are not used for food crops and that do not displace or disrupt cropping patterns for food production and that demonstrate a net carbon benefit when evaluated on a life-cycle basis.

Given the large invasive potential<sup>1</sup> for non-native plants being considered as feedstocks for future biofuel production in the state, we recommend the following modifications:

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<sup>1</sup> Council for Agricultural Science and Technology (CAST), November 2007. Biofuel Feedstocks: The Risk of Future Invasions.

(iv) Use of either native species or species determined to be non-invasive as crops uniquely suited to climate, water and natural resource constraints in California and the Arid West that require less irrigation water than commonly produced agricultural commodities.

5. We request that the language of section 3101.5(b)(2)(F) be clarified. As currently structured, this statement can be read to find that all biomass projects that use certain specified collection and harvesting practices are advancing natural resource protection goals. That is not the case. Even in situations where *collection and harvesting practices* are the best available, the simple act of removing biomass from certain areas can be profoundly detrimental. We suggest the following language be adopted instead.

3101.5 (b)(2)(F) Projects that use waste forest biomass resources ~~as part of their feedstock and,~~ that demonstrate the advancement of natural resource protection goals, ~~re those that use forest biomass collection or harvesting practices that do not diminish the ecological values of forest stands, and that are consistent with forest restoration, fire risk management and ecosystem management goals and that are~~ consistent with sustainable forest practices can be considered for funding.

In addition, to prevent deterioration of remaining intact forest ecosystems by creating incentives for the removal of critical ecosystem components, we request that the following provision be added.

3101.5 (b)(2)(G). Notwithstanding subsection (F), biomass projects: (1) that increase greenhouse gas emissions or reduce net forest carbon sequestration; (2) that diminish the ecological values of any native ecosystem; or (3) whose feedstocks are sourced from native ecosystems cleared after January 1, 2007, from federal forestlands, from forests or forestlands that are ecological communities with a global or State ranking of critically imperiled, imperiled, or rare pursuant to a State Natural Heritage Program, or from old growth forest, or late successional forest, will not be eligible for funding consideration.

6. Finally, we request that the regulations include a provision for a periodic review and update of the sustainability evaluation criteria. Because sustainability criteria and metrics are a new area of study and are currently being developed on many fronts, we anticipate that these concepts will undergo substantial evaluation and revision in the coming years. To ensure full analysis and public input, we strongly encourage the Energy Commission to include the following procedure for revising the sustainability evaluation criteria:

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While several state agencies have authority over the introduction of non-native species (<http://www.invasivespeciesinfo.gov/laws/ca.shtml>) and there are protocols for Weed Risk Assessment (eg.: <http://www.daffa.gov.au/ba/reviews/weeds/system>, <http://www.cal-ipc.org/ip/research/riskassessment.php>.) the execution of WRA is just one step in rigorously determining the potential for non-native species to become invasive species; See: Barney, J.N. and J.M. DiTomaso, 2008. Nonnative Species and Bioenergy: Are We Cultivating the Next Invader? *BioScience* 58(1):64-70.

**3101.5 (c) Sustainability Criteria Review and Update**

The sustainability evaluation criteria set forth above shall be reviewed and updated, in consultation with the Advisory Committee, as needed to take into account:

- (1) any significant environmental, economic, or social consequences of previously funded projects;
- (2) best available science regarding sustainability parameters;
- (3) revisions to full fuel cycle modeling tools;
- (4) new sustainability principles, programs, and metrics, including those developed at the state, national, and international levels.

Section 3108 Purpose of Investment Plan.

We note that Section 44272.5 (c) of the Health and Safety Code requires the Energy Commission to annually update the Investment Plan in consultation with the advisory committee.<sup>2</sup> While technology advancements and market conditions may not change significantly from one year to the next, we recommend that 3108(e) be re-worded to reflect that the Energy Commission will annually make a determination of need for the revision of the Investment Plan, in consultation with the Advisory Committee, during a publicly convened meeting. Such a meeting could also serve as a venue for the Energy Commission to provide the public, stakeholders, and the legislature with a progress report on the AB 118 program.

Thank you for your consideration of these comments.

Sincerely,

Bonnie Holmes-Gen



American Lung Association  
of California

John Shears



Center for Energy Efficiency  
& Renewable Technologies

Danielle Fugere



Friends of the Earth

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<sup>2</sup> 44272.5. (c) The commission shall hold at least three public workshops in different regions of the state and one public hearing prior to approving the investment plan. The commission shall annually update and approve the plan. The commission shall reconvene and consult with the advisory body created pursuant to subdivision (a) prior to annually updating and approving the plan.