Clean Energy (Ryan Kenny)

Thank you for considering the attached comments on the Advanced Clean Fleets 15-day Notice. Those who signed this letter are:

Michael Boccadoro, Agriculture Energy Consumers Association (AECA)
N. Ross Buckenham, California Bioenergy LLC
Todd Campbell, Clean Energy
Evan Edgar, California Compost Coalition
Dan Gage, The Transport Project
Jonathan Harding, American Biogas Council
Julia Levin, Bioenergy Association of California
Veronica Pardo, Resource Recovery Coalition of California
Ashley Remillard, Hexagon Agility
Nicole Rice, California Renewable Transportation Alliance
Sam Wade, Renewable Natural Gas Coalition

Thank you.

April 17, 2026

Dr. Steven Cliff
Executive Officer, California Air Resources Board
1001 I Street
Sacramento, CA 95814

RE: Procedural and Implementation Concerns with Proposed 15-Day Modifications to the State and Local Government Advanced Clean Fleets Regulation

Dear Dr. Cliff:

On behalf of the signatories to this letter representing public and private fleet operators, vehicle and engine manufacturers, dairymen, renewable fuel producers, utilities, and fuel providers, we write to express significant concerns with the 15-day modifications to the Advanced Clean Fleets (ACF) regulation released on April 2, 2026.

These modifications introduce substantial new requirements affecting both contracted service providers and state and local government entities acting as hiring agencies. They also create significant regulatory uncertainty for private fleets that, if implemented, may discourage investment and inadvertently undermine progress toward the state's short-lived climate pollutant (SLCP) goals. While we appreciate CARB's continued work on ACF implementation, the scope, substance, and timing of these changes raise serious procedural and practical concerns.

The proposed revisions and the purported staff interpretation have created material ambiguity regarding how these provisions are intended to operate in practice. It is unclear whether the revised language is intended to substantively extend regulatory obligations to private, contracted fleets, or whether it is limited to specific programmatic contexts (e.g., waste, wastewater, or biomethane-related provisions). As drafted, the regulation does not clearly delineate the scope of applicability, leaving both public agencies and their contractors without clear direction on compliance responsibilities.

Additionally, we believe the proposed amendments run counter to the Board direction from the September Board meeting in which the stated goal was to provide additional flexibility to utilize produced

RNG under California's circular economy policies. These proposed amendments do the opposite by imposing additional restrictions and hurdles to RNG production and use.

1. Substantive Expansion of Regulatory Scope at the Final Stage

The 15-day modifications materially and substantively expand the scope of the ACF regulation by:

- Attempting to assert regulatory authority over private fleets through their contracts with public agencies, including franchised waste and recycling haulers, despite their removal from the ACF due to CARB's current lack of legal authority to regulate these entities, as determined by the U.S. EPA;
- Imposing new obligations on state and local governments as "hiring entities;" and
- Embedding emissions compliance requirements directly into contracting, procurement, and recordkeeping functions, effectively shifting the focus away from vehicles to regulating how municipalities plan, procure, and contract for providing essential services.

This approach represents a substantive policy shift and expansion at the final stage of this rulemaking process. These proposed changes not only significantly broaden the universe of regulated parties but fundamentally alters how compliance is determined, implemented and enforced. Therefore, we are concerned this is an underground regulation effectively expanding the scope of the ACF regulation.

2. Procedural Deficiencies Under the Administrative Procedure Act

California's Administrative Procedure Act (APA) strictly limits the scope of 15-day modifications by requiring changes to be sufficiently related to the originally proposed text and constitute a logical outgrowth of the proposal noticed for public comment. [1]

California courts have consistently held that a regulation is invalid where late-stage modifications introduce new regulated parties, new compliance obligations, or a fundamentally different regulatory approach that interested parties could not have reasonably anticipated from the original proposal. [2]

The 15-day modifications at issue fail this standard. The modifications violate the fundamental requirements of the APA by introducing substantial new requirements affecting parties that were not included in the original rulemaking. Through state and local government entities, the proposed modifications essentially extend ACF compliance obligations to private contractors operating under agreements with public agencies. The proposed modifications attempt to accomplish this by imposing ongoing compliance verification and recordkeeping obligations on local governments as "hiring entities." The modifications introduce new regulated parties and enforcement mechanisms that were neither disclosed nor reasonably foreseeable from the originally noticed rulemaking.

These provisions extend ACF compliance beyond fleet ownership and into third-party contractual relationships—an enforcement structure that was not proposed, evaluated, or described in the original rulemaking materials.

This concern is compounded by CARB's prior repeal of the High Priority Fleet requirements, which had previously applied to many of the same private operators now implicated by the 15-day modifications. The current proposal effectively reintroduces similar compliance obligations through a different regulatory mechanism, without notice or analysis in the originally noticed rulemaking. Courts have made clear that agencies may not use late-stage modifications to introduce new regulatory approaches that circumvent notice and comment.[3]

Stakeholders had no notice that:

- Private contracted service providers would be treated as regulated fleets;
- Local governments would be required to assume ongoing compliance oversight responsibilities for private contractors; and
- Public contracting and procurement would function as a mechanism of regulatory enforcement.

As a result, affected parties were denied a meaningful opportunity to evaluate and comment on these provisions, contrary to the APA's foundational notice-and-comment requirements.[4] *These are not a minor clarification or technical adjustments; t*hey are substantive policy expansions introduced at the final stage of the rulemaking process in a manner that conflicts with the APA.

3. Immediate and Disruptive Impacts on Existing Contracts

Many affected sectors—particularly waste and recycling—operate under long-term, highly structured agreements with local jurisdictions. These agreements typically:

- Span ten years or more;
- Rely on fixed capital investments and long-term fleet deployment strategies; and
- Are governed by negotiated service, rate, and performance terms.

The 15-day modifications introduce new compliance conditions on local government that were not contemplated at contract formation and cannot reasonably be integrated into existing agreements without renegotiation, service disruption, or legal conflict. Agencies may not impose such materially new obligations through late-stage rulemaking without prior notice that regulated entities' existing contractual arrangements would be affected.[5]

4. Improper Transfer of Enforcement Responsibilities to Local Governments

The proposal assigns new responsibilities to state and local governments that go well beyond traditional fleet regulation, including:

- Annual verification of contractor compliance status;
- Mandatory inclusion of regulatory disclosures in contracts; and
- Maintenance of auditable compliance records for third-party fleets.

Key questions remain unresolved. For example, which entity is responsible for ensuring that privately contracted fleets comply with the regulation? If this burden is imposed on state and local government fleets, what legal authority do they possess to compel compliance by private contractors? In addition, will private contract fleets be eligible for the same exemptions, compliance extensions, and flexibilities available to public fleets if they are unable to meet the regulatory requirements? It is also unclear how a private contractor's inability to achieve compliance would affect existing contractual obligations.

For these reasons, we are concerned that this proposal effectively operates as an underground regulation by materially expanding the scope of the ACF regulation without appropriate procedural safeguards. These requirements effectively deputize local governments as compliance intermediaries for state emissions regulations. Courts have cautioned that agencies may not fundamentally alter who must comply with a regulation or how compliance is enforced through 15-day modifications.[6]

5. Absence of Implementation and Feasibility Analysis

Because these provisions were introduced exclusively through 15-day modifications, stakeholders have not had an opportunity to meaningfully assess:

- Feasibility within existing contractual frameworks;
- Availability of compliant fleets across affected service sectors;
- Impacts on procurement timelines and competitive bidding;
- Potential and likely cost increases to municipal collection rates; and
- Legal exposure for public agencies and contractors.

The APA's notice-and-comment framework is intended to ensure these issues are evaluated before regulations are finalized—not after.[7]

6. Federal Preemption and Clean Air Act Concerns

CARB may argue that the State and Local Government Fleets provision does not require a waiver from EPA as it may fall within the "market participant" exception. However, that doctrine is narrowly construed and does not apply where the government uses contracting authority to impose regulatory mandates. To the extent CARB intends to expand the ACF regulation for state and local governments to encompass privately owned contractor fleets in this manner, such an expansion would require explicit authorization under a Clean Air Act waiver. Absent such approval, the interpretation is preempted and unenforceable.

7. Ambiguity in the "Low-NOx ICE Vehicle" Definition Creates Regulatory Uncertainty

The definition of "Low-NOx ICE Vehicle" in the 15-day Notice references a NOx standard that is not clearly specified. It is unclear whether the definition refers to the current federal standard of 200 mg NOx or

California's Heavy-Duty Omnibus standard of 50 mg NOx, which remains subject to ongoing litigation. This ambiguity places both private contract fleets and public agencies at risk of unintended non-compliance.

For example, if the definition refers to the current federal NOx standard, engines certified to the 50 mg standard would clearly qualify as Low-NOx ICE Vehicles. Conversely, if the definition is intended to reference the Heavy-Duty Omnibus rule, engines certified at 50 mg would not qualify. Absent clarity, fleets and agencies cannot make informed compliance or procurement decisions and thus risk enforcement liabilities.

This uncertainty undermines long-term planning and capital investment in clean technologies. Many regulated sectors require long planning horizons and substantial upfront capital. Regulatory ambiguity:

- Discourages investment in compliant technologies;
- Disrupts financing based on assumed regulatory frameworks;
- Invokes uncertainty in municipal collection rates and costs to residents; and
- Forces entities to delay or freeze capital deployment.

Stable rules enable orderly transitions and cost certainty to ratepayers. Regulatory uncertainty delays compliance and innovation rather than accelerating them.

8. Captive Biofuel Use Exemption Conditions Do Not Reflect Real-World Operations

The revised conditions applied to the Captive Biofuel Use Exemptions in the 15-day Notice depart significantly from the exemption's original intent. While the exemption was designed to protect fleets hauling, transferring, or processing in-state organic waste, it was never contemplated that municipal contracts with private fleets not engaged in such activities would be swept into the regulation. And it should not disqualify wastewater treatment plants from accessing low NOx vehicles.

Moreover, not all waste or wastewater treatment facilities may produce renewable biofuel and not all the ones that do have surplus renewable biofuel capable of powering fleet operations due to size, age, or other economic factors. Conditioning exemption eligibility on the ability to produce excess renewable biofuel is a new interpretation that was not vetted through the public process and may not reflect all operational realities. This approach unnecessarily penalizes entities that have heavily invested in the production of renewable biofuel or in the cleanest available internal combustion engine technologies to help advance the state's clean air and climate goals. Creating additional barriers for other state projects, such as dairies, who are capturing biomethane to support the state's SB 1383 goals, for example, is counterproductive.

9. Affordability: Regulatory Uncertainty Disrupts Commercial Relationships, Increases Costs and Slows Progress in Reducing SLCP Emissions

For sectors operating under long-term contracts—such as waste, recycling, and other contracted public services—predictable regulatory conditions are essential. Regulatory uncertainty:

- Creates conflicts between existing contractual obligations and newly imposed requirements;
- Forces renegotiation of lawfully executed contracts;
- Increases collection costs for municipal residents and businesses; and
- Exposes municipalities, public agencies and contractors to legal disputes, performance risks, sole responsibility for increasing collection rates and cost escalation.

These pressures destabilize service delivery systems that depend on continuity and reliability, and impact projected revenue estimates after having already taken this into account before signing long-term contracts

When compliance obligations are unclear or subject to change, municipalities also face higher procurement costs as bidders price in regulatory risk, reduced competition, and increased administrative and legal burdens. Ultimately, these costs are borne by taxpayers and ratepayers, without corresponding environmental benefits. Also, municipalities simply cannot abandon existing assets to comply with a new regulation. This approach does not pass asset management standards to which municipalities are held.

Lack of regulatory certainty is also slowing progress in meeting the requirements of SB 1383 as shifting standards are making it harder for biomethane producers to find buyers. The low NOx truck market in California is already saturated, the state is not incentivizing further adoption of this cleaner alternative to diesel, and regulatory uncertainty is preventing fleets from committing to new purchases of biomethane, which in turn is preventing investment in new organic waste to energy projects that have provided the most significant methane reductions to date.

Conclusion and Request

These 15-Day changes are not technical refinements, and they do not represent the direction provided by the Board at the September 2025 Board meeting. They represent a fundamental restructuring of the ACF regulatory framework, introduced at the final stage of rulemaking in a manner inconsistent with the APA's notice and logical-outgrowth requirements.

Given the scope and significance of these changes, the undersigned organizations respectfully request that **CARB issue a second 15-day amendment package** prior to final approval of the regulation that:

1. Removes the provisions expanding applicability to privately contracted fleets and obligations on hiring entities from the current rulemaking;
2. Redefines "Low NOx ICE Vehicle" to mean a vehicle with a 2010-2026 engine certified to operate on an Alternative Fuel at or below oxides of nitrogen exhaust emission standard or family emission limit of 50mg per brake horsepower-hour or a 2027 or later engine certified to operate on an Alternative Fuel at or below oxides of nitrogen exhaust emission standard or family emission limit of 35mg grams per brake horsepower-hour;
3. Provides clear confirmation that ACF compliance obligations will not be imposed through contractual or procurement-based mechanisms.

We remain committed to working constructively with CARB to ensure ACF implementation is transparent, legally sound, and operationally achievable.

Sincerely,

Michael Boccadoro, Agriculture Energy Consumers Association (AECA)
N. Ross Buckenham, California Bioenergy LLC
Todd Campbell, Clean Energy
Evan Edgar, California Compost Coalition
Dan Gage, The Transport Project
Jonathan Harding, American Biogas Council
Julia Levin, Bioenergy Association of California
Veronica Pardo, Resource Recovery Coalition of California
Ashley Remillard, Hexagon Agility
Nicole Rice, California Renewable Transportation Alliance
Sam Wade, Renewable Natural Gas Coalition

cc: Members, California Air Resources Board
Christopher Grundler, Deputy Executive Officer - Mobile Sources and Incentives
Michelle Buffington, Division Chief, Mobile Source Control Division

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Endnotes

1. Gov. Code §§ 11346.5(a)(4), 11346.8(c).
2. *Morning Star Co. v. State Bd. of Equalization* (2006) 38 Cal.4th 324, 336–337; *Environmental Defense Project of Sierra County v. County of Sierra* (2008) 158 Cal.App.4th 877, 888–889.
3. *California Hotel & Motel Assn. v. Industrial Welfare Com.* (1994) 25 Cal.App.4th 473, 481–482.
4. Gov. Code § 11346.5(a).
5. *Morning Star Co. v. State Bd. of Equalization* (2006) 38 Cal.4th 324, 337.
6. *Environmental Defense Project of Sierra County v. County of Sierra* (2008) 158 Cal.App.4th 877, 889.
7. Gov. Code §§ 11346, 11346.5.