Resource Recovery Coalition of California (Veronica Pardo)

Thank you for the opportunity to submit the attached coalition comment letter regarding CARB's proposed amendments to the State and Local Government Fleet provisions of the Advanced Clean Flets regulation, issued on April 2, 2026 for a 15-day comment period.

The attached letter is submitted on behalf of the undersigned coalition of trade associations whose members are private companies that provide essential services through contracts with state and local governments throughout California. We appreciate CARB's consideration of these comments and would welcome any opportunity for further discussion.

April 17, 2026

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

Re: Waste Industry Comments on 15-Day Notice of Proposed Changes to the Advanced Clean Fleets Regulation - State and Local Government Fleet Provisions

Dear Dr. Cliff:

The undersigned organizations represent a coalition ("Coalition") of trade associations whose members are private companies that provide essential services through contracts with state and local governments. The Coalition appreciates the opportunity to submit comments on the proposed amendments to the State and Local Government ("SLG") Fleet provisions of the Advanced Clean Fleets ("ACF") regulation that CARB issued on April 2, 2026 for a 15-day comment period.

Our members include private companies that perform critical functions such as waste collection, street sweeping, infrastructure maintenance, and other services pursuant to contracts with public agencies throughout California. These services are delivered through long-term agreements that are heavily negotiated, cost-sensitive, and generally subject to competitive procurement requirements.

Our members have long been partners in achieving cleaner air for the California communities we serve and have been deploying sustainable fleet technology, including low NOx, battery electric, and hydrogen fuel cell vehicles. We support implementation strategies that are practical and cost-effective for ratepayers while preserving the reliable delivery of essential public services.

We request the regulatory text be revised to clarify that privately owned fleets performing services under contract with public agencies are not subject to the SLG Fleet compliance obligations.

We also raise significant concerns regarding recent statements from California Air Resources Board ("CARB" or "Board") staff suggesting that CARB interprets the regulation to require private fleet vehicles deployed under a service contract with a public agency to be encompassed in the public agency's fleet in determining its ACF compliance status. **This interpretation is not supported by the text of the regulations and, if implemented by CARB, would be illegal under the federal Clean Air Act ("CAA") and California Administrative Procedure Act ("CalAPA"), among other considerations explained herein**.

These issues raise substantial concerns under both state and federal law and create significant uncertainty for public agencies and the private entities that provide contracted services. We request that CARB eliminate this uncertainty and ensure defensible ACF regulations by clarifying that (1) the SLG Fleet provisions apply only to state and local governments, and not to private fleets, and (2) CARB does not intend to count private fleet vehicles in determining SLG Fleet compliance where a private entity is under agreement to provide services (*e.g.*, waste transportation) for a government entity.

Coalition Comments

1. **CARB Must Clarify that Private Fleets Performing Services Under Contract with a Municipality Are Not Independently Subject to ACF.**

In the Proposed Regulation Order published with the15-Day Notice, CARB proposes to amend the originally-proposed definition of "waste fleet" to include not only waste transport vehicles owned or operated by a municipality, but also such vehicles owned or operated by "a fleet owner that is contracted with a municipality via franchise agreement or long-term contract, with either a minimum length of ten years or more, or with a minimum length of three years but includes a renewal provision when satisfying the contract terms." *See* 13 CCR § 2013(b), 15-Day Proposed Regulation Order (published April 2, 2026).

Without clarification, the inclusion of private waste fleets contracted to a municipality within the "waste fleet" definition, coupled with the provision of a "waste fleet" compliance option under 13 CCR § 2013.6(e) for fleet owners choosing the ZEV Milestones Option, could create the misimpression that contracted private fleets have a ZEV milestones compliance obligation.

Given the clear statement in 13 CCR § 2013(a) that the SLG Fleet provisions apply *only* to a "state or local government agency with jurisdiction in California that owns, leases, or operates" covered vehicles, the ACF regulation does not and cannot obligate private fleets that contract with state and local governments to comply with regulatory requirements for ZEV adoptions. To require or imply otherwise is illegal.

The reference to franchised waste fleets in proposed § 2013(b) thus creates confusion and leaves both private and government entities left to decipher how the definition is intended to operate in practice. We request that CARB clarify in its final regulatory text (by striking subpart (B) of the proposed "waste fleet" definition § 2013(b)) and expressly confirm in its Final Statement of Reasons ("FSOR") that private waste transportation fleets are *not* subject to regulation under ACF.

2. **CARB Must Also Clarify That Contracted Private Fleets Are Not Included In the Contracting Entity's Fleet for Determining SLG Fleet Compliance.**

CARB staff has issued several problematic statements, concurrent with the 15-Day Notice, implying that a contracting SLG agency must account for the composition of franchised waste fleets (separately owned and operated by a private company) when determining the SLG's compliance status under ACF.

First, CARB states in the 15-Day Notice that its rationale for including waste fleets under contract with a municipality within the "waste fleet" definition is to "prevent a [state or local government] fleet owner from circumventing compliance requirements due to the repeal of the High Priority Fleets requirements," implying that CARB intends to extend SLG Fleet compliance requirements to non-governmental, private fleets under contract with a municipality. Notably, CARB provides no factual or evidentiary support for this assertion.

Second, in response to an inquiry submitted on behalf of one of the Coalition's members on this issue, CARB staff stated that:

> "When a city, county or other local agency contracts with a private company to perform public services… the local government remains responsible for ensuring compliance with the rule's requirements for vehicles used to carry out those services… [and] must include vehicles used under contract when determining its compliance…"

The above statements suggest that CARB intends to circumvent the current regulatory framework, which excludes private fleets from ACF regulation, by bringing privately owned fleets within the scope of ACF regulation merely by virtue of their service contracts with local governments. Notably, these service contracts do not confer any ownership interest in the vehicles to the SLG. This would significantly expand the scope of regulated fleet vehicles under ACF and would reflect an attempt by CARB to accomplish indirectly—via government contracts—what it lacks the authority to do directly: regulate the emissions characteristics of private fleet vehicles without a federal preemption waiver.

The Coalition thus requests that CARB expressly state in its FSOR and final regulatory text that vehicles owned or operated by a private entity in fulfillment of its service agreement with a state or local government entity (including a municipality) should not be counted as part of the SLG fleet for ACF compliance purposes.[1]

3. These Requested Clarifications and Changes Are Necessary to Ensure that the SLG Fleet Provisions Comport with Applicable Law.

The Coalition respectfully submits that the requested clarifications and changes are necessary to eliminate any confusion about potential ACF compliance implications for private fleets, and to ensure that the final regulations comport with the following key principles under federal and state law:

a. CARB Regulation of Private Fleet Vehicles Under ACF Is Expressly Preempted Under the CAA.

If CARB were to extend the reach of ACF compliance obligations to private contracted fleets (under the "waste fleet" definition in the 15-Day Proposed Regulation Order and/or staff's interpretation that fleet vehicles operated by a contracted private entity are encompassed within an SLG Fleet's compliance determination), this would constitute adoption and enforcement of a state emission standard that is expressly preempted under the CAA.

CAA Section 209(a) expressly prohibits the adoption or enforcement of state emission standards for new motor vehicles or engines that are subject to federal emission standards. This express preemption may be waived for CARB emission standards where the U.S. Environmental Protection Agency ("EPA") has granted a preemption waiver in accordance with CAA Section 209(b).

The ACF regulations unquestionably constitute state emission standards for new motor vehicles and engines that are subject to preemption under CAA Section 209(a) without an EPA-issued preemption waiver. *See Engine Manufacturers Association v. South Coast Air Quality Management District*, 541 U.S. 246, 255 (2004) ("A command, accompanied by sanctions, that certain purchasers may buy only vehicles with particular emission characteristics is as much an 'attempt to enforce' a 'standard as a command . . . that a certain percentage of a manufacturer's sales volume must consist of such vehicles."). U.S. EPA has not issued a preemption waiver for any portion of the ACF regulations, due

[1]Notably, in the case of hired fleets, the only obligation of an SLG is to either verify the fleet is listed as compliant on the Advanced Clean Fleets webpage or obtain a signed statement from the hired fleet that they are not subject to the ACF regulations (Section 2049(c)). Inclusion of the option to provide a signed statement attesting that the hired entity is not subject to the regulation conclusively demonstrates that governmental agencies do not need to require their contractors to comply with the ACF SLG Fleet requirements.

to CARB's withdrawal of its waiver request last year. *See* CARB Withdrawal of ACF Waiver Request (Jan.13, 2025), EPA Docket EPA-HQ-OAR-2023-0589-0470, available here. The fact that CARB filed a preemption waiver request indicates its acknowledgement that such a waiver is a legal requirement for the ACF regulations.

Thus, CARB may not apply the ACF requirements to any fleets unless it can establish an exemption to preemption. CARB has stated that the SLG Fleet provisions are not preempted by CAA Section 209(a) because they fall within the narrow exemption provided by the market participant doctrine. *See* CARB, CAA § 209(b) Waiver and § 209(e) Authorization Request Support Document (Nov. 15, 2023) at 7 n. 17, available here. However, this doctrine is narrowly construed. It is intended to preserve a government entity's discretion to make procurement and purchasing decisions; it does not provide an avenue for a state to broadly impose otherwise-preempted regulatory mandates on private parties via contract (or to require local government entities to do so).

In other words, any regulatory provisions or interpretations adopted by CARB to extend ACF compliance obligation to contracted private fleets would fall outside of the market participant doctrine and would be preempted. CARB could only avoid preemption by establishing that it is directing the contracting practices and purchasing decisions of SLG entities in furtherance of its interests as a market participant rather than a regulator. CARB would not be able to establish this with respect to the regulations and interpretative statements issued with the 15-Day Notice.

The U.S. Court of Appeals for the Ninth Circuit ("Ninth Circuit") has adopted the two-part test for market participation initially set forth in *Cardinal Towing & Auto Repair v. City of Bedford*, 180 F.3d 686 (5th Cir. 1999). *See Airlines Serv. Providers Ass'n v. L.A. World Airport* (*LAX*), 873 F.3d 1074, 1080 (9th Cir. 2017). Under the *Cardinal Towing* test, for an otherwise preempted state regulation to survive preemption under the market participant doctrine, the state would have to establish both that (1) the challenged regulation is undertaken in pursuit of the "efficient procurement of needed goods and services," as one might expect of a private business in the same situation; and (2) the narrow scope of the challenged regulation defeats an inference that its primary goal was to encourage a general policy rather than to address a specific proprietary problem." *Id*.

The proposed regulation meets neither. CARB has not established that a requirement for SLG fleets to contractually mandate ACF compliance by private fleets furthers any sort of interest in "efficient procurement." Further, this requirement clearly fails under the second prong of the *Cardinal Towing* test—as its purpose is to "encourage a general policy" rather than to address a specific proprietary problem. CARB intends for public agencies to account for and effectively regulate privately-owned fleets across entire service categories, regardless of ownership, and to impose compliance obligations on private fleets through contractual mandates. As stated by CARB in the 15-Day Notice, its

regulatory purpose is to "prevent [SLG] fleet owner[s] from circumventing compliance requirements" due to repeal of the High Priority Fleet requirements that previously applied only to private fleets. If an SLG fleet owner does not implement CARB's directive with respect to contractual mandates for private fleets, it will suffer penalties for ACF non-compliance. *See* 13 CCR § 2013.4(b) (stating that any SLG Fleet failing to comply with the requirements of Article 3.2 will be subject to penalties). The Ninth Circuit has held recently that a government entity's ability to impose civil penalties to enforce its requirements for contracting with private entities indicates a coercive power that renders the government a "regulator rather than a market participant." *Airlines for America v. City and County of San Francisco*, 78 F.4th 1146, 1152 (9th Cir. 2023). The Ninth Circuit reached this conclusion by implementing a principle articulated by the U.S. Supreme Court in *Am. Trucking Ass'ns v. City of Los Angeles*, that "when the government employs such a coercive mechanism, available to no private party, it acts with the force and effect of law," notwithstanding its proffered reasons for doing so. 569 U.S. 641, 651 (2013).

Here, CARB's purpose is clearly regulatory rather than proprietary. Thus, it cannot invoke the market participant doctrine to save the provisions at issue from preemption. To the extent CARB intends to expand the SLG Fleet provisions of the ACF regulations to encompass privately-owned contractor fleets in this manner, such an expansion would require explicit authorization under a CAA Section 209(b) waiver, otherwise it would be preempted and unenforceable.

b. CARB Must Observe CalAPA Requirements in Finalizing Its ACF Amendments.

CARB's final regulation in this proceeding must meet the CalAPA standards to be approved by the California Office of Administrative Law. Without making the changes and clarifications requested here, the proposed regulations will not meet CalAPA requirements—specifically, the CalAPA standards for clarity, prohibition on underground regulation, and required notice-and-comment periods.

i. Clarity

To meet the CalAPA "clarity" standard, a regulation must be written so that its meaning "will be easily understood by those persons directly affected." Cal. Gov. Code § 11349(c). CARB must clarify the text of the Proposed Regulation Order published with the15-Day Notice to meet this standard, specifically by deleting the reference to contracted private fleets in subpart (B) of the proposed "waste fleet" definition § 2013(b).

Without this change, CARB risks creating significant confusion on applicability of the SLG Fleet provisions of the ACF, and the extent of an SLG Fleet's obligation to incorporate private fleet vehicles into its ACF compliance determination. As stated

above, on their face, the ACF regulations are necessarily limited in applicability to a "state or local government agency with jurisdiction in California that owns, leases, or operates" covered vehicles. *See* 13 CCR § 2013(a). Yet, as explained above, the inclusion of private contracted fleets in the proposed "waste fleet" definition in § 2013(b) creates confusion on whether such fleets have compliance obligations under the ZEV Milestone provisions of 13 CCR § 2013.6(e). This confusion must be clarified by making the Coalition's requested change to the regulatory text and publishing an unequivocal statement in the FSOR that contracted private fleets do not have ACF obligations and are not to be included in an SLG Fleet's compliance determination.

Beyond these legal concerns, the interpretation suggested by CARB staff on this latter point creates substantial practical challenges for both public agencies and contractors. Public agencies do not own or control contractor fleets, and existing contracts often do not contemplate the imposition of fleet transition requirements of this magnitude. If CARB were to enforce the SLG Fleet requirements in keeping with its staff's recently communicated and unfounded interpretation, agencies would be required to renegotiate or restructure contracts to achieve compliance which will introduce significant costs to Californians, procurement complexity, and potential service disruptions. The costs of this proposed change must, but have not been, assessed as well.

For contractors, CARB's interpretation creates regulatory exposure without clear designation as regulated entities, complicating capital investment decisions and undermining competitive procurement processes. These impacts are particularly acute for essential services that rely on long-term investments and stable contractual frameworks.

ii. Prohibition on Underground Regulation

Under the APA, a "regulation" includes:

> *"*every rule, regulation, order, or standard of general application… adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it*."* (Cal. Gov. Code § 11342.600)

California courts have repeatedly held that agencies may not impose new substantive requirements through informal guidance or interpretations that have not been adopted through formal rulemaking. Such "underground regulations" are rules of general application that are not adopted in compliance with the CalAPA and are generally invalid. *See Kings Rehabilitation Center, Inc. v. Premo* (1999) 69 Cal.App. 4th 215, 217, 81 Cal.Rptr.2d 406.

If implemented, the CARB staff interpretation noted above (that private contracted fleets are counted as part of the SLG fleet for ACF compliance purposes) constitutes an invalid underground regulation. It would be broadly applicable to public agencies that rely on

contracted services, would interpret and expand the scope of the ACF regulation, and would direct how compliance must be calculated. Most significantly, it would introduce a new costly requirement that public agencies must regulate contractor fleets through contractual mechanisms—an obligation that is not specified in the proposed regulatory text.

Because this interpretation was not adopted through APA-compliant procedures including appropriate review and assessment by CARB, it would constitute an unlawful underground regulation and could not be enforced.

iii. Adequate Comment Period

If CARB declines to make the changes requested herein—and adopts the regulations as proposed—it will have failed to provide adequate notice and meaningful opportunity to comment on the significant change it proposes to the "waste fleet" definition. A 15-day comment period may only be used for changes that are "sufficiently related" to the original 45-day proposal, such that "the public was adequately placed on notice that the change could result from the originally proposed regulatory action." Cal. Gov. Code § 11346.8(c).). The Proposed Regulation Order issued with CARB's 45-day Notice in this proceeding did not include fleet owners contracted with a municipality to provide waste transportation services in the "waste fleet" definition. The inclusion of contracted fleets in the proposed "waste fleet" definition in § 2013(b) is a significant departure from the substance of the regulations issued for 45-day comment. This change would significantly expand the scope of regulated vehicles under the SLG Fleet provisions. CARB has not provided proper notice to the public.

Private contracted fleets were only put on notice of CARB's lengthy, expansive new proposal (and accompanying interpretations) with the April 2026 15-day notice, which purportedly allows comments only until April 17. This is insufficient time for interested parties to review the proposed revisions, assess their impacts, consider their legality and potentially prepare comments on CARB's proposal. To provide 15 days to assess a change of this magnitude violates both the letter and the spirit of California's laws defending the public's right to participate in rulemaking.

Conclusion

Given the significant legal and practical issues described above, the Coalition respectfully requests that CARB:

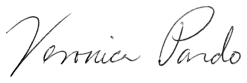
- Strike subsection (B) of the Waste Fleet definition included in Section 2013(b) of the Proposed Regulation Order issued with the 15-Day Notice;
- Expressly confirm that privately owned fleets operating under contract with public agencies are not subject to ACF compliance obligations;

- Withdraw or formally clarify the interpretation set forth in the recent staff communication and 15-Day Notice; and
- If CARB intends to regulate private fleets, commit to seeking any necessary federal authorization under the CAA prior to implementation.

The Coalition appreciates CARB's consideration of these comments and its continued engagement with stakeholders. We look forward to working with CARB to ensure that implementation of the ACF regulation is legally sound, transparent, and workable for public agencies and the contractors that provide essential services across California.

If you have any questions, please contact Veronica Pardo at veronica@resourcecoalition.org.

Sincerely,



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