WM of California (Christine Wolfe)

Please see attached WM's comments on the 2nd 15-Day ACF State and Local Government package.

Via Electronic Submittal

June 16, 2026

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

Re: Second 15-Day Notice of Proposed Changes to the Advanced Clean Fleets Regulation - State and Local Government Fleets (June 1, 2026)

Dear Dr. Cliff:

Waste Management of California, Inc. (WM) appreciates the opportunity to comment on the above-referenced Notice and proposed regulatory changes issued by the California Air Resources Board (CARB) on June 1, 2026. WM is a leading provider of comprehensive environmental services, specializing in the collection, transportation, recycling, and disposal of waste for customers across California. WM has a long history of working with CARB, local air districts, and local government customers to advance vehicle technology, including renewable, natural gas, and zero-emission technology, to promote the shared objectives of enhancing public health, reducing emissions, and protecting the environment.

Given the importance of fleet rules to WM, WM engaged extensively with CARB during the development of the Advanced Clean Fleets (ACF) High Priority Fleets (HPF) Rule, including comments on the original ACF proposal in 2022.[1] WM also submitted comments on the First 15-Day Notice issued in this proceeding.[2]

WM opposes the proposal in CARB's Second 15-Day Notice to include private fleets operating under public service contracts within the ACF State and Local Government (SLG) Fleet requirements (hereinafter, the "Proposal"). In addition to increasing compliance burdens and costs for SLG agencies subject to ACF,[3] the Proposal would also impose exorbitant costs and burdens on service industries contracted to California state and local agencies, which would ultimately be passed down to the California communities they serve. For the waste industry specifically, the Proposal will increase the cost of solid waste collection services at a time when Californians are already struggling with our State's high cost of living, and local governments grapple with budget issues.

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[1] *See* WM, "Comments on Proposed Advanced Clean Fleets (ACF) Regulation (Oct. 14, 2022), available here.

[2] *See* WM, "Proposed 15-day Amendments to the Advanced Clean Fleets and Low Carbon Fuel Standard Regulations" (April 17, 2026) (included as **Attachment 1**), available here.

[3] Such burdens and costs were well-documented in comment letters submitted to CARB by various cities in response to the First 15-Day Notice. *See, e.g.*, City of San Bernardino, "Advanced Clean Fleets 15-Day Comment Period Response" (April 16, 2026), available here; City of Los Angeles, "Advanced Clean Fleets – 15-Day Comment Period Response City of Los Angeles" (April 17, 2026), available here.

Further, WM is concerned about the haste with which CARB issued and is taking comment on the Proposal, given the magnitude of the changes proposed. CARB's proffered justification for the Proposal—that it is merely issued to "make explicit" an "existing requirement"[4] for private contracted fleets to be included in the SLG agency fleet for ACF compliance purposes—is pretextual and belies the significant change in regulatory scope that CARB proposes. The Proposal is clearly intended to reach private fleets that are no longer within the scope of ACF regulation due to the imminent repeal of the high priority and federal fleet provisions for lack of a federal preemption waiver.[5] By newly encompassing contracted fleets within SLG requirements, CARB would significantly increase the number of fleets subject to the ACF SLG provisions and would create unworkable implementation problems for fleets performing contracted services.

Further, the Proposal presents significant legal concerns, including among other things, that it:

- Constitutes a state emission standard that is preempted under the federal Clean Air Act (CAA);
- Violates California Administrative Procedure Act (CalAPA) standards, procedures, and requirements for agency rulemaking;
- Violates California Health & Safety Code requirements for adoption of vehicle emission standards and prohibitions against forced retirement of commercial motor vehicles; and
- Violates environmental review requirements under the California Environmental Quality Act (CEQA).

WM strongly urges CARB not to move forward with the Proposal, as it creates legal risk for CARB and uncertainty for California public agencies and the private fleets who perform essential services under longstanding government contracts. Specifically, WM requests that CARB not adopt the regulatory changes set forth in the Proposal and that it expressly confirm in its Final Statement of Reasons (FSOR) that SLG agencies need not account for privately owned fleet vehicles operating under a service contract with the agency in fulfilling their ACF compliance obligations.[6]

WM offers the following rationales as the basis for its request:

[4] *See* Second Notice of Public Availability of Modified Text and Availability of Additional Documents (June 1, 2026) at 1 - 2, available here (hereinafter, "Second 15-Day Notice").

[5] *See* "High Priority Fleets Regulation Order" (posted July 29, 2025), available here.

[6] As related clarifications, WM also requests that CARB (1) strike subsection (B) of the "Waste Fleet" definition included in Section 2013(b) of the Proposed Regulation Order issued with the First 15-Day Notice, (2) withdraw and revise its "Advanced Clean Fleets" Guidance (June 1, 2026) to remove references to ACF coverage of vehicles operated under contract with SLG agencies, and (3) if CARB intends to regulate private fleets, commit to seeking any required federal authorization under the CAA prior to adopting such regulations.

1. The Proposal is not a mere "clarification" of existing SLG requirements, as it newly and significantly expands their scope.

It is disingenuous for CARB to state that the incorporation of third-party vehicles operated under service contracts with SLG agencies was part of the "intent and necessarily implicit meaning of the original regulation."[7] This is belied by the structure of the SLG regulation itself—which applies, as originally adopted, solely to vehicles "own[ed], lease[d], or operate[d]" by an SLG agency.[8] Nowhere in the original regulatory text and related rulemaking documents did CARB ever state that fleets operated by a third party under a service contract with a SLG agency were subject to ACF requirements applicable to such agencies.[9] And WM is not aware of any SLG agency that has, since initial reporting requirements took effect in 2024, included vehicles operated by a third-party service provider in its ACF compliance reporting. Rather, CARB is attempting to expand regulatory applicability to achieve emission reductions from private vehicles that it cannot regulate directly under ACF. To state otherwise is to mislead the regulated community as to the purpose and impact of the Proposal.

2. Application of ACF compliance obligations to vehicles owned and operated by private entities under contract with a public agency would be illogical and impracticable.

It is clear that the ACF SLG provisions in their current form (as originally adopted by CARB) are intended to apply only to vehicles owned or leased by a government agency.[10] This makes logical sense because the ACF requirements amount to a mandate that, practically speaking, must be implemented through the purchasing or leasing decisions of the entity best able to control the composition of its fleet. For instance, where an SLG agency meets its ACF obligations through compliance with the "ZEV Purchase Schedule" in Section 2013(d)(1) (current), the key requirement is met through the purchase or lease of ZEVs and NZEVs.[11] Similarly, under the current ACF regulations, the ZEV Milestones Option is met by calculating the composition of a "fleet," which is comprised only of owned or leased vehicles.[12]

[7] Second 15-Day Notice at 3.

[8] *See* 13 CCR § 2013(a)(1) (emphasis added).

[9] In fact, when CARB first introduced the SLG fleet requirements, it stated unequivocally that the "regulated parties" under these provisions of the ACF regulation are "any State or local government agency that owns, leases, or operates a vehicle with manufacturer's GVWR greater than 8,500 lbs . . ." *See* CARB, Initial Statement of Reasons, Appendix H-1 ("Purpose and Rationale for State and Local Government Fleet Requirements") (Aug. 30, 2022) (emphasis added) at p. H-1-1, available here.

[10] *See* 13 CCR § 2013(b) (current) (defining "fleet" to include the vehicles "owned by a fleet owner," including "rental or leased vehicles" considered owned by the "fleet owner" in accordance with 2013(b)).

[11] *See* 13 CCR §§ 2013(d)(1) (stating that, to comply with the ZEV Purchase Schedule, SLG "fleet owners must purchase ZEVs or NZEVs for their California fleet" in accordance with the specified schedule); 2013(b) (defining "purchase" to include either acquisition of title to a vehicle or the entry of a lease agreement with a contract term of one year or more).

[12] *See* 13 CCR § 2013(b) (defining "fleet" as "vehicles owned by a fleet owner," plus rental or leased vehicles that are considered owned by the "fleet owner" under the definition of that term in Section 2013(b)).

If the Proposal were adopted, an SLG agency planning compliance under either of these options would have to mandate that its third-party service providers take on the agency's ACF ZEV Purchase or Milestone obligations through their vehicle purchasing and/or leasing practices and agree to specified fleet composition criteria in their contracts. If the Proposal were adopted, a contracted fleet could find itself subject to multiple conflicting contractual requirements intended to facilitate ACF compliance by different SLG agencies. This would be highly impracticable for fleet planning, fleet deployment, and fuel/power infrastructure planning. Further, is unclear how fleet vehicles that provide contracted service to multiple SLG agencies at the same time would be counted, *i.e.*, whether they potentially could be considered part of more than one agency's "fleet" and subject to conflicting phase-out and operational restrictions under ACF.[13]

3. **CARB's adoption of the Proposal would violate applicable laws**.

   a. **CARB regulation of private fleets vehicles under ACF is expressly preempted under the CAA**.

As noted in our comments on CARB's First 15-Day Notice (see **Attachment 1**), WM fully endorses and incorporates by reference the comments of the Resource Recovery Coalition of California, California Waste and Recycling Association, Solid Waste Association of Orange County, Inland Empire Disposal Association, and Los Angeles County Waste Management Association (Waste Industry Coalition) on the First 15-Day Notice (see **Attachment 2**). The Waste Industry Coalition comments, submitted to CARB on April 17, 2026, explain the reasons why CARB regulation of private fleet vehicles under ACF, as contemplated in the Proposal, is preempted under the federal CAA.[14] Specifically, as set forth in the Waste Industry Coalition comments:

- Extending the reach of ACF compliance obligations to private contracted fleets would constitute adoption and enforcement of a state emission standard that is expressly preempted under CAA Section 209(a).[15]

- While express preemption under CAA Section 209(a) may be waived for CARB emission standards subject to a preemption waiver granted by the U.S. Environmental Protection Agency (U.S. EPA), no such waiver has been granted here, as CARB withdrew its ACF waiver request from U.S. EPA consideration in January 2025.

- Thus, CARB may not apply the ACF requirements to any fleets unless it can establish an exemption to preemption.

[13] In addition, compliance with ACF ZEV Purchase or Milestone obligations by contracted fleets would likely be infeasible given the significant market constraints in ZEV or NZEV availability for most applications needed by SLG agencies.

[14] *See* Waste Industry Coalition, "Comments on 15-Day Notice of Proposed Changes to the Advanced Clean Fleets Regulation - State and Local Government Fleet Provisions" (April 17, 2026), available here (included as **Attachment 2**).

[15] *See* 42 U.S.C. § 7543(a)

- CARB has stated that the SLG fleet provisions are not preempted by CAA Section 209(b) because they fall within the narrow exception provided by the market participant doctrine. However, this doctrine is narrowly construed and does not apply to save the Proposal from preemption, in particular because the Proposal furthers CARB's interests as a regulator rather than a market participant.[16]

- To the extent that CARB intends to expand the SLG fleet provisions of the ACF regulation to encompass privately-owned contractor fleets in the manner set forth in the Proposal, it must have explicit authorization under a CAA Section 209(b), otherwise the Proposal is preempted, unenforceable, and legally vulnerable.

b. The Proposal—and CARB's process for adopting it—contravenes CalAPA standards, procedures, and requirements for agency rulemaking.

The CalAPA establishes minimum procedural requirements for the adoption of regulations.[17] To ensure compliance with these requirements, CARB (and the Office of Administrative Law (OAL)) must ensure, among other things, that the regulation is necessary, that CARB has the requisite authority, and that the regulation meets standards for clarity. As discussed immediately above, CARB lacks authority to adopt the ACF as proposed since it is preempted. Below we explain why the Proposal could not withstand scrutiny under other CalAPA standards and requirements for agency rulemaking.

i. Clarity.

To meet the CalAPA "clarity" standard, regulations must be written so that their meaning "will be easily understood by those persons directly affected by them."[18] The Proposal falls far short of this standard due to the lack of clarity on:

- **How SLG fleets are to ensure that compliance obligations are met for contracted fleet vehicles**. It is not at all clear how an SLG fleet would ensure that the ZEV Purchase Schedule or ZEV Milestone Schedule is met for contracted fleet vehicles. This is the case even where the SLG agency attempts to dictate the contractor's fleet purchase and leasing decisions via contract—a practice that would, notably, contradict CARB's statement in its ACF guidance to SLG agencies that "Private fleets are not subject to the ACF [SLG] regulations."[19] The ZEV Purchase and Milestone Schedules do not make sense as applied to vehicles operated by a third party under contract. An SLG agency fleet owner cannot "purchase" a vehicle for a fleet it does not own. Similarly, an SLG agency fleet owner would be unable to manage its own compliance without 100% control over its contracted service provider's fleet procurement decisions, given that many exemptions and extensions in the regulations are tied to "purchase" of new vehicles (*see, e.g.*, Section 2013.1(f)(4) ("ZEV Purchase Exemptions").

[16] *See* Attachment 2 at pp. 5-6.
[17] *See* Cal. Gov. Code §§ 11346 *et seq*.
[18] Cal. Gov. Code § 11349(c).
[19] *See* CARB, "Advanced Clean Fleets Guidance, State and Local Government Agencies, 2025 Amendments Update (June 1, 2026), available here (hereinafter, the "ACF SLG Guidance").

- **How SLG agency compliance will be determined for contracted fleet vehicles that are potentially included in more than one "fleet**." CARB proposes to amend the regulatory "fleet" definition to include "contracted vehicles that are considered owned by the 'fleet owner' as defined in Section 2013(b)."[20] The referenced "fleet owner" definition encompasses the entity that "contracts for operation" of a vehicle, and is presumed to be the person or entity registered with the California Department of Motor Vehicles (DMV) (or its equivalent in another state) as the owner or lessee of the vehicle.[21] These definitions lack clarity and create substantial uncertainty with respect to contracted vehicles, namely:
  - How SLG agencies (and their service providers) are to manage ACF compliance where a vehicle is operating as part of more than one "fleet" because it is used to provide services under multiple contracts; and
  - The inherent contradiction in Section 2013(b) with the SLG agency being identified as the "fleet owner" for contracted vehicles (as the "person or entity who . . . contracts for the operation" of these vehicles) and the presumption that the "owner" is the person or entity identified on the vehicle's DMV registration document (which, for contracted vehicles, would not be the SLG agency).

ii. **Prohibition on Underground Rulemaking**.

Under the CalAPA, 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."[22] State agencies are prohibited from issuing guidance that falls within the "regulation" definition as a standard of general application unless it goes through CalAPA rulemaking procedures, is adopted as a regulation, reviewed by OAL, and is filed with the Secretary of State pursuant to the CalAPA.

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.

The ACF SLG Guidance published by CARB on June 1, 2026 in conjunction with the Proposal contains a standard of general application and was not issued in accordance with CalAPA requirements. Thus, it constitutes an invalid underground regulation.

The ACF SLG Guidance broadly applies to public agencies subject to the SLG requirements. It memorializes CARB's interpretation—not yet adopted through CalAPA rulemaking procedures—that "Public agencies must report vehicles under contract in their fleets when

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[20] *See* Second 15-Day Notice, Attachment A-3, available here, at 6.
[21] *Id.*
[22] Cal. Gov. Code § 11342.600.

determining compliance with the ACF regulation" and that "[t]he regulation applies to public services performed by a State and local government agency, including functions carried out through contractual arrangements."[23] CARB's intent in using this Guidance to impose requirements that have not been adopted through CalAPA procedures (and do not have the force of law) is evidenced by its characterization of proposed regulatory requirements as mandatory. For example, the ACF SLG Guidance states that "A public agency fleet must report vehicles it . . . contracts to operate on its behalf, per section 2013.3 of the regulation."[24] Because the currently effective Section 2013.3 of the regulation pertains to SLG fleet recordkeeping requirements, presumably CARB intends to refer to the *revised* Section 2013.3 that was ***proposed*** with the 45-Day Notice but has not yet been adopted. The use of the ACF SLG Guidance in this manner, to impose obligations not adopted through CalAPA procedures, constitutes prohibited underground regulation.

iii. Inadequate Comment Period.

The Proposal was issued as a 15-Day Notice, in violation of CalAPA requirements to provide a longer comment period for agency rulemaking proposals. The default requirement in the CalAPA is that agencies must provide 45 days' notice of a proposed action prior to a hearing and close of public comment period.[25] A 15-day comment period may only be used for proposed 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."[26]

Regulatory language to include contracted fleets within SLG agency fleet compliance obligations was newly proposed by CARB with the issuance of the Second 15-Day Notice and the Proposal. This proposal differs significantly from the proposed regulations issued with the original 45-Day Notice, which concerned only amendments to the SLG fleet provisions to implement AB 1594. Because the scope of regulated vehicles under the SLG fleet provisions would be significantly expanded under the Proposal, it is not "sufficiently related" to the original proposal, thus a 15-day comment period is inappropriate. CARB must provide a longer comment period on the Proposal to provide sufficient notice to the public under the CalAPA so the public has meaningful notice and the opportunity to fully understand and comment on the Proposal.

iv. Failure to consider less burdensome alternatives.

CalAPA Section 11346.2(b)(4) requires that CARB publish an ISOR for regulatory amendments that includes "a description of reasonable alternatives and the agency's reasons for rejecting those alternatives."[27] "Reasonable alternatives" to be considered include "alternatives that are proposed as less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing statute or other law being

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[23] *See* ACF SLG Guidance (June 1, 2026), available here.
[24] *Id*. (emphasis added).
[25] Cal. Gov. Code § 11346.4(a).
[26] Cal. Gov. Code § 11346.8(c).
[27] *Id*. at § 11346.2(b)(4)(A).

implemented or made specific by the proposed regulation."[28] In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific actions or procedures, the imposition of performance standards shall be considered as an alternative.[29]

The 45-Day ISOR does not contain an analysis of the contracted fleet requirements set forth in the Proposal. CARB's Section 11346.2(b)(4) alternatives analysis in the 45-Day ISOR pertains exclusively to CARB's proposal to amend the SLG provisions to provide additional flexibility for "traditional utility-specialized vehicles," as required by AB 1594. To fully discharge its obligations under Section 11346.2(b)(4), CARB must prepare an addendum to the 45-Day ISOR to address alternatives to the contracted fleet requirements in the Proposal, and—because the Proposal amounts to a mandate for the use of specific technologies or equipment (e.g., ZEVs)—CARB must include analysis of whether the imposition of performance standards that could be met by a wider range of technologies, including low-NOx engines fueled by renewable natural gas, could be used as a regulatory alternative.

v. Assessment of economic and cost impacts.

CARB has failed to fully discharge its duty under CalAPA Section 11346.5(a)(8) to provide record support for its initial determination and declaration that the Proposal will not have a significant, adverse impact on businesses, including the ability of California businesses to compete with businesses in other states.[30]

The 45-Day Notice and 45-Day ISOR memorialize CARB's initial determination that the proposed regulatory amendments would not have a significant statewide adverse economic impact within the meaning of CalAPA Section 11346.5(a)(8). But the 45-Day analyses in no way addressed the cost impacts associated with extending ACF SLG compliance obligations to contracted fleets, as CARB now proposes. Thus CARB did not and could not have marshaled the requisite record support (to include "facts, evidence, documents, testimony, or other evidence upon which the agency relies to support its initial determination") under Section 11346.5(a)(8).

Similarly, CARB has failed to describe "all cost impacts" known to the agency that a "representative private person or business would necessarily incur" in reasonable compliance with the Proposal,[31] as its Section 11346.5(a)(9) analysis in the 45-Day Notice did not account for the cost impacts associated with contracted fleet compliance with the SLG provisions.

[28] *Id*.

[29] *Id*.

[30] *Id*. at § 11346.5(a)(8) (providing that if a state agency, in adopting, amending, or repealing any administrative regulation, makes an initial determination that the action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, it shall make a declaration to that effect in the notice of proposed action. In making this declaration, the agency shall provide in the record facts, evidence, documents, testimony, or other evidence upon which the agency relies to support its initial determination").

[31] *Id*. at § 11346.5(a)(9).

c. CARB has not fully evaluated the impacts of the Proposal, as required by the California Health and Safety Code.

Because, as noted above, CARB has not analyzed the cost impacts nor feasibility of the Proposal to encompass contracted fleets within SLG agencies' ACF compliance obligations, it has failed to discharge various statutory obligations set forth in the California Health & Safety Code, including the requirements to consider the cost-effectiveness, necessity, and feasibility of its emission standards, and the impact of those standards on the State's economy.[32]

d. The Proposal violates statutory prohibitions on forced retirement of commercial vehicles during their useful life.

Where a fleet is contracted to an SLG agency that chooses the ZEV Milestones Option for compliance, the Proposal would effectively require the contracted fleet to retire vehicles before the end of useful life, in violation of Cal. Health & Safety Code § 43021(a) (enacted as SB-1, "Road Repair and Accountability Act of 2017"). Under that provision, CARB may not require the retirement, replacement, retrofit, or repower of a self-propelled commercial motor vehicle (as defined in CVC Section 34601) until the vehicle has reached the later of the useful life time periods and mileages set forth in Section 43021(a).[33]

CARB has tried to skirt this statutory prohibition by proposing to provide that "[b]y using [the ZEV Milestones Option], fleet owners shall acknowledge that they are knowingly and voluntarily waiving the provisions of [Cal. Health & Safety Code § 43021(a)] that would otherwise apply to commercial motor vehicles in CVC section 34601 in their California fleet."[34]

Where commercial vehicles are operating under a service contract to an SLG agency, it would be non-sensical for the regulated SLG fleet owner to acknowledge "knowing and voluntary" waiver of the Section 43021(a) prohibition. The SLG agency, as the regulated party under ACF, has complete discretion to determine how it will comply, passing down the obligations of its chosen compliance pathway to service providers via contract. Under these circumstances, the waiver would force retirement of third-party vehicles without the "knowing and voluntary" participation of the actual vehicle owner/operator. In other words, because the regulated party (the SLG agency) would be waiving statutory provisions that apply to vehicles belonging to a third party (the contracted fleet owner/operator), there would be no "knowing and voluntary" waiver by that third party.

[32] *See, e.g.*, Cal. Health & Safety Code §§ 38562(b)(5); 39602.5(a); 43013(a); 43101(a).

[33] Under CVC Section 43021, a commercial vehicle's useful life is the later of either: (1) thirteen (13) years from the model year the engine and emission control system are first certified for use in self-propelled commercial motor vehicles by CARB or other applicable state and federal agencies; or (2) when the vehicle reaches the earlier of either 800,000 vehicle miles traveled or eighteen (18) years from the model year the engine and emission control system are first certified for use in self-propelled commercial motor vehicles by CARB or other applicable state and federal agencies. Cal. Health & Safety Code § 43021(a).

[34] *See* 13 CCR § 2013.6(a) (proposed).

e. If enacted, the Proposal would constitute unlawful interference with pre-existing contracts between SLG agencies and private fleets.

Both the United States and California Constitutions prohibit the enactment of laws and regulations effecting a "substantial impairment" of contracts.[35] This constraint applies to public contracts, as well as those between private parties.[36] The Proposal would unreasonably impair existing contracts between service providers (*e.g*., waste haulers) and their SLG contracting partners by requiring SLG agencies to revise pre-existing contractual obligations to mandate ACF compliance for third-party owned fleet vehicles. The Proposal thus threatens to undermine the benefit of the bargain in negotiated contracts between these parties. It would also interfere with service providers' reasonable expectations under their SLG agency agreements, by potentially making their compliance obligations so costly that their contracts are no longer profitable. This could result in fleet operators refraining from entering public contracts with California agencies altogether, leading to a dearth of contracted fleets to carry out essential services such as paving, waste hauling, and others.

f. CARB erroneously concluded that the Proposal does not require additional CEQA review.

CARB has erroneously concluded (starting with the July 2026 45-day Notice) that the proposed amendments to the SLG provisions of ACF are exempt or otherwise not subject to CEQA environmental review. It is clear, however, from the breadth of changes and significantly expanded applicability of SLG fleet requirements under the Proposal that it constitutes a substantial change and/or new information resulting in new significant effects that CARB must analyze under CEQA.

Specifically, for the following reasons, CARB erred in concluding that the currently-proposed SLG fleet amendments to the ACF regulations are not subject to CEQA review:

- **The Proposal goes well beyond the SLG amendments that CARB considered in its original CEQA applicability analysis**. In the Initial Statement of Reasons (ISOR) issued in support of the July 29, 2025 45-Day Notice, CARB analyzed CEQA applicability only with respect to the limited SLG regulatory changes proposed to implement AB 1594.[37] As a result, CARB concluded that:

> "[t]he proposed modifications [to the SLG provisions] do not change the type of facilities or projects that may be developed in response to the existing ACF regulation, nor do staff anticipate that

[35] *Securus Techs., LLC v. Pub. Utilities Com*., 88 Cal. App. 5th 787, 814, n. 16 (2023) (citing Article I, section 10, clause 1 of the United States Constitution, which states that "No State shall . . . pass any . . . Law impairing the Obligation of Contracts" and Article I, section 9 of the California Constitution, which provides that "A . . . law impairing the obligation of contracts may not be passed"); *see also Energy Rsrvs. Grp., Inc. v. Kansas Power & Light Co*., 459 U.S. 400, 103 S. Ct. 697 (1983).

[36] *Id*.

[37] *See* CARB, Staff Report: Initial Statement of Reasons (Aug. 1, 2025), available here, at 96-97 (describing the Proposed SLG amendments as changes intended to authorize public agency utilities to purchase replacements for traditional utility-specialized vehicles, as required under AB 1594) (45-Day ISOR).

> they will alter the compliance responses by regulated entities covered by the program. As such, these proposed amendments are not expected to introduce any new environmental impacts that were not already evaluated under the Final ACF EA."[38]

CARB's current Proposal to expand ACF applicability to private contracted fleets operating under a service agreement with an SLG agency clearly go beyond the original 45-Day amendments proposed to implement AB 1594 and involve environmental effects not considered in CARB's 2023 EA. Yet CARB continues to claim that the proposed amendments do not trigger CEQA review nor a need to re-visit the 2023 Environmental Analysis (EA).[39] CARB's characterization of the current Proposal as involving "primarily . . . standardization of terms to maintain [the SLG provisions]" is inaccurate, not supported by substantial evidence, and intended to skirt required CEQA review for the significant changes proposed here.[40] It is also symptomatic of a piecemealed rule amendment process that has precluded effective environmental review of the whole of the action CARB proposes here.

- **The Proposal constitutes a substantial change that would bring about new significant environmental effects, requiring additional CEQA analysis**. CARB's adoption of the Proposal would result in a significant expansion in terms of the scope of vehicles subject to the SLG provisions. It is thus a "substantial change"[41] proposed to the ACF regulations that will require major revisions of the Final EA that the CARB Board certified in 2023.[42] CARB is incorrect that the currently proposed SLG amendments "do not alter the compliance responses analyzed under the [2023 Final EA],"[43] given the fact that contracted fleets would be newly subject to SLG fleet requirements under the Proposal. Similarly, CARB's statement in the 45-Day ISOR that the proposed SLG amendments would result in "no substantive changes to the way in which regulated SLG entities operate" is now inapposite, with the new proposal to incorporate contracted fleets

[38] *Id.* at 97.

[39] *See* First 15-Day Notice (April 2, 2026), available here, at 42 ("The proposed modifications do not change implementation of the regulation in any way that affects the conclusions that affects the conclusions of the environmental analysis included in the Staff Report because the proposed modifications primarily consist of structural changes to approve readability and organization of the requirements and standardization of terms to ensure clarity of the proposed amendments . . . Therefore, no additional environmental analysis is required."); Second 15-Day Notice (June 1, 2026), available here, at 5 ("The proposed modifications do not change implementation of the regulation in any way that affects the conclusions of the environmental analysis included in the Staff Report because the proposed modifications primarily consist of standardization of terms to maintain the provisions of the regulation as applied to State and local governments. Therefore, no additional environmental analysis is required.").

[40] Further, since CARB's 2023 Final EA predated the current Proposal, that EA obviously could not assess any environmental impacts related to the Proposal.

[41] *See* 14 CCR § 15162(a)(1) (CEQA guidelines provision specifying that additional CEQA analysis is required where an agency proposes "substantial changes" that will require "major revisions" of the previous analysis "due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects").

[42] *See* CARB, Final Environmental Analysis (April 14, 2023) (hereinafter, the "2023 Final EA"), available here; CARB Board Resolution 23-13 (April 27, 2023), available here.

[43] *See* 45-Day ISOR at 107.

into SLG fleet compliance determinations.[44] So is CARB's observation that, under the SLG provisions, a "dramatically lower number of affected vehicles [would be] required to be replaced with ZEVs"[45] as compared to the now-defunct high priority and federal fleet provisions. These statements provided in the 45-Day ISOR as the basis for CARB's determination that no additional CEQA review is required for the SLG amendments have been superseded by the breadth and depth of changes in the Proposal. Therefore, CARB must re-visit and update its original CEQA analysis, including the baseline assumptions,[46] alternatives analysis, scope of impacts (e.g., electricity, battery, and water demands).

- **Changed circumstances necessitate major revisions to the 2023 Final EA**. CARB's piecemeal approach to amending ACF (and conducting environmental review) is a product of the significantly changed circumstances that have occurred in the years that have elapsed since ACF was originally adopted and the CARB Board certified the 2023 Final EA. Since that time, AB 1594 was enacted, requiring CARB to amend ACF to provide vehicle replacement flexibility for traditional utility-specialized vehicles.[47] The Congressional disapproval of the U.S. EPA preemption waiver for CARB's Advanced Clean Trucks (ACT),[48] the manufacturer ZEV sales mandate intended as a companion regulation to ACF, and CARB's withdrawal of its request for a preemption waiver for ACF[49] also occurred. These developments constitute substantial changes in circumstances that necessitate additional environmental review to ensure that CARB has accurately analyzed the environmental and regulatory settings, compliance responses, and relevant impacts associated with ACF implementation.[50]

[44] *Id*. (outlining CARB's justification for its finding that no substantial changes were proposed with the 45-Day Notice that require additional CEQA review).

[45] *Id*.

[46] This includes the baseline analysis in Attachment B to the First 15-Day Notice ("Updated Emissions Charts for the Proposed Amendments to the Advanced Clean Fleets (ACF) and Low Carbon Fuel Standard Regulations released on August 1, 2025, and approved by the Board on September 25, 2025"), available here. In that analysis, CARB characterized the 15-day amendments under review as "delay[ing] the 100% ZEV purchase requirement from 2027 to 2030, improv[ing] access to several exemptions, and mak[ing] other streamlining and clarifying changes." *Id*. at p.1. Based upon this description of the scope of regulatory changes under review, it is clear that CARB did not contemplate potential environmental effects related to including contracted fleets within SLG agencies' compliance obligations. Thus CARB failed to prepare an updated emissions assessment covering the changes set forth in the Proposal.

[47] *See* CA AB 1594 (chaptered on October 8, 2023), available here.

[48] *See* Public Law No: 119-15 *(*codifying the disapproval of the ACT waiver effected by the enactment of H.J.Res.87 on June 12, 2025).

[49] *See* CARB, Withdrawal of ACF Waiver Request (Jan.13, 2025), EPA Docket EPA-HQ-OAR-2023-0589-0470, available here.

[50] *See* 14 CCR § 15162(a)(2) (CEQA guidelines provision specifying that additional CEQA analysis is required where "[s]ubstantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR . . . due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects").

- **CARB cannot discharge its current CEQA obligation by relying on its previous flawed analysis.** Further, it is necessary for CARB to conduct additional CEQA review because the 2023 Final EA, now completed more than three (3) years ago, was insufficient to begin with, as it failed to account for environmental impacts that are reasonably foreseeable effects of the large-scale ZEV transition mandated under the original ACF regulations, and that would be carried through to contracted fleets under the current Proposal. For example, the 2023 Final EA failed to adequately analyze impacts associated with large scale retirement of traditional (internal combustion engine (ICE)) vehicles, the construction of new facilities and modification of existing facilities to increase ZEV supply, increased electricity demand, construction of new alternative fueling infrastructure, and the extraction of raw materials (*e.g*., lithium and other elements) necessary for ZEV components such as batteries. It also failed to analyze other reasonably foreseeable environmental impacts from increased ZEV usage such as criteria pollutant emissions related to tire wear, stress on the electrical grid, and water quality and supply impacts related to hydrogen fuel and ZEV battery production.

  Yet CARB now relies on the deficient analysis in the 2023 Final EA in seeking to discharge its current CEQA obligations for the Proposal and the proposed amendments that preceded it. This reliance compounds the deficiencies in CARB's approach to CEQA throughout the ACF rulemaking process.

- **The Proposal is not exempt from CEQA.** In the 45-Day ISOR, CARB claimed that the then-proposed SLG amendments were exempt under Cal. Pub. Res. Code (PRC) § 21080(b)(4) as a "specific action[] necessary to prevent or mitigate an emergency," on the basis that the amendments were being made pursuant to AB 1594, which requires CARB to allow public agency utilities to purchase replacements for traditional utility-specialized vehicles that are at the end of life when needed to respond to "major foreseeable events" (e.g., wildfires, natural disasters, and physical attacks).[51] Setting aside the question of whether the AB 1594-required amendments to the SLG provisions are in fact exempt under Section 21080(b)(4), that exemption does not apply to the current Proposal to encompass contracted fleets within SLG agencies' ACF compliance obligations, as there is no "emergency" sought to be mitigated by this proposed expansion of the regulations. Further, none of the other CEQA exemptions cited in the 45-Day ISOR apply to the Proposal.[52]

[51] *Id*. at 101.
[52] *Id*. at 101-105 (describing other CEQA exemptions that are inapplicable to the Proposal).

WM appreciates CARB's consideration of these comments and would welcome the opportunity to discuss them with CARB. Please feel free to contact me at cwolfe@wm.com or via phone at 415-940-0501.

Sincerely,

Christine Wolfe
Director of Government Affairs, California, Hawaii, Nevada
WM

Attachment 1: WM comments on CARB's First 15-Day Notice

Attachment 2: Resource Recovery Coalition of California, California Waste and Recycling Association, Solid Waste Association of Orange County, Inland Empire Disposal Association, and Los Angeles County Waste Management Association (Waste Industry Coalition) comments on CARB's First 15-Day Notice

Attachment 1

April 17, 2026

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

RE: Proposed 15-day Amendments to the Advanced Clean Fleets and Low Carbon Fuel Standard Regulations

Dear Dr. Cliff,

Waste Management of California, Inc., (WM) is a leading provider of comprehensive environmental services, specializing in the collection, transportation, recycling, and disposal of waste. WM serves customers across California, from Alturas to San Diego. WM is also a major operator of recycling centers, compost facilities, landfills, and landfill-based renewable energy projects, helping convert waste into usable resources such as recycled materials and renewable energy. Through these services, WM plays a critical role in supporting public health, environmental protection, and sustainable materials management. WM is committed to sustainability across our operations.

WM operates the largest trucking fleet in the solid waste collection industry, including a significant number of vehicles operating on low-NOx engines. WM has a long history of working with the California Air Resources Board (CARB), local air districts, and our local government customers to advance vehicle technology, including renewable natural gas and zero-emission technology. For example, WM has spent the last several years trying to get electric vehicle charging infrastructure permitted, built, and commissioned at our hauling locations in Los Angeles and San Diego counties. Given the importance of fleet rules to WM, WM engaged extensively with CARB during the development of the Advanced Clean Fleets (ACF) High Priority Fleets (HPF) Rule.[1]

It is with this context that we would like to express our extreme disappointment with the process by which CARB brought forth the 15-day amendments, including the proposed change to the definition of "waste fleet," as well as recent interpretations of the State and Local Government (SLG) Fleet Rule by CARB staff. Several communications from CARB suggest the scope of the rule could be expanded to require state and local governments to account for the emissions from private fleets performing services under contract to them.[2] A scope expansion of this magnitude is a clear violation of the Administrative Procedures Act (APA).

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[1] One example of WM's comments on the ACF HPF rule are located here: https://ww2.arb.ca.gov/sites/default/files/BARCU/barcu-attach/192-acf2022-UGJTZVxvUDEBKgMy.pdf

[2] The email contained in Attachment 1 is just one venue through which CARB has communicated its interpretation, which is supported by neither the rulemaking history nor existing law.

WM cannot find any evidence in the record that CARB had previously intended to expand the scope of the SLG to require state and local governments to account for private waste fleets in their compliance obligations, including in the September 25, 2025 Board hearing transcript, adopted Resolution 25-9, or the 45-day rulemaking package. At no time since the September hearing was WM, despite operating one of the largest solid waste collection fleets in California, engaged by CARB about its intent to expand application of the SLG Fleet requirements. CARB's proposed amendment will more than likely impact a vast majority of the State's long-term franchise agreements and potentially require significant expenditures on vehicles and infrastructure, increasing costs for consumers and the public.

In addition to process concerns, CARB's proposal creates unworkable implementation problems for fleets performing contracted services. Contracted service providers, like WM, will have no real visibility into the fleet makeup of municipal customers or their compliance plans. Nor will contracted service providers like WM be able to reasonably plan for the transition to zero-emission vehicles and infrastructure to keep in sync with each individual customers' own SLG compliance strategies.

Further, the proposed changes will increase the cost of solid waste collection services at a time Californians are already struggling with our State's high cost of living and local governments grapple with budget issues. We do not believe a policy shift of this magnitude was properly communicated to the regulated public, least of all private fleets providing public services like WM who have historically engaged with CARB in good faith on the ACF HPF provisions.

Lastly, in addition to these points, WM wholeheartedly endorses the comment letter on the 15-Day Notice and Regulatory Amendments submitted by the Resource Recovery Coalition of California, California Waste and Recycling Association, Solid Waste Association of Orange County, Inland Empire Disposal Association, and Los Angeles County Waste Management Association (Waste Industry Coalition Letter) and incorporates the points made therein by reference.

Thank you,

CWolfe

Christine Wolfe
Director of Government Affairs, California, Hawaii, Nevada
WM

Attachment 1 – Email from CARB staff (ARB ZEV Fleet) to Jon Costantino

Attachment 1 – Email from CARB staff (ARB ZEV Fleet) to Jon Costantino

1:30 1:40

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1 Message Summarize

AF **ARB ZEV Fleet** 9:36 AM
To: Jon Costantino >

Re: SLG ACF Question

Hi Jon,

Sorry for the delayed response.

When a city, county, or other local agency contracts with a private company to perform public services (e.g., waste collection, street sweeping, or maintenance), the local government remains responsible for ensuring compliance with the SLG requirements for vehicles used to carry out those services. The government agency must include vehicles used under contract when determining its compliance with the ACF regulation, including required ZEV purchases or phase-ins. In such cases, while the private fleet is not itself the regulated entity, the government agency must account for the emissions and vehicle types used under contract and may impose contractual requirements to ensure regulatory compliance.

Please let us know if you have any question.

Thanks.

Balbir
ACF Staff

From: Jon Costantino <jon@tradesmanadvisors.com>
Sent: Tuesday, March 17, 2026 5:18 PM
To @arb.ca.gov>
tion

Attachment 2

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.

<u>Coalition Comments</u>

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 <u>*only*</u> 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.

<u>Conclusion</u>

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,

Veronica Pardo

Veronica Pardo
Executive Director
Resource Recovery
Coalition of California

David Fahrion
President
California Waste and
Recycling Association

John Kelly Astor
General Counsel
Solid Waste Association
of Orange County,
Inland Empire Disposal
Association, and Los
Angeles County Waste
Management
Association