April 7, 2023

Mr. Paul Arneja

Air Resources Engineer

California Air Resources Board

Submitted electronically via <https://www.arb.ca.gov/lispub/comm/bclist.php>

RE: Comments on March 23, 2023 Draft of Advanced Clean Fleets Regulation

Dear Paul,

Thank you for the opportunity to comment on the Proposed 15-day Changes to the Proposed Regulation Order – Advanced Clean Fleets Regulation, issued on March 23, 2023. I am writing on behalf of Recology, one of the leading recycling, composting and waste collection companies in the state.

Recology and its over 25 California operating subsidiaries operate a fleet of over 2,000 vehicles in the state that will be covered by the regulation. We service over 80 communities throughout Northern California, ranging from major cities and suburban communities to remote rural areas. We trace our roots back more than 100 years.

Recology is proud to have been at the forefront of the state’s push towards diversion of solid waste from landfill. In partnership with the City of San Francisco, we pioneered the first 3-bin system in any major U.S. city, and helped the City achieve the highest diversion rate of any major U.S. city. We have actively supported the cities and counties we work with in meeting the state’s recycling mandates, including AB 939, AB 1826, AB 341, and SB 1383. Through our 5 California compost facilities, we are also one of the state’s largest commercial composters.

Consistent with our mission, Recology fully supports CARB’s goal of transitioning all heavy duty vehicles to ZEVs as a means to aggressively reduce greenhouse gases. We have been piloting this technology since 2019 and are working with manufacturers in testing and developing ZEVs that meet the needs of our industry. Our fleet is powered by 90% renewable or alternative fuel.

We believe the goal of fleet electrification is best served through fair, workable regulation that thoughtfully engages with the challenges industries face in transforming their fleets and businesses and making the necessary investments. We want to see a successful Advanced Clean Fleets Regulation that drives the state towards a zero-emission future. We offer the following comments in that spirit.

# Waste and Wastewater Fleet Option

1. The “waste fleet” definition only applies to fleet owners whose activities support “processing of diverted in-state organic waste to produce biomethane.” For consistency with SB 1383, the definition should be broadened to include any type of organics processing that CalRecycle recognizes as diversion. SB 1383 does not express a preference for biomethane, and approves several other methods of diverting organics, including composting. Composting is also the preferred method for most jurisdictions we work with. Compost produced by Recology is procured by jurisdictions as part of their strategy to comply with SB 1383’s procurement mandates and by California farmers seeking to incorporate sustainable and less water-intensive practices into their operations. Limiting the definition of “waste fleet” to include only those supporting biomethane production effectively penalizes companies and jurisdictions that invested in composting, and is therefore inconsistent with the state’s policies related to organics recovery.
2. The “waste fleet” definition only applies if the fleet owner “contracts” with a “municipality.” However, many jurisdictions including San Francisco do not have contracts with their solid waste collectors, instead authorizing them through a license or permit system. Moreover, many solid waste collection contracts are not entered into by municipalities, but rather by counties and solid waste agencies (JPAs). The “waste fleet” definition should be modified to better reflect the many ways that jurisdictions choose to engage their solid waste collectors.
3. The “waste fleet” definition only applies if the organic waste is collected pursuant to a contract with a minimum 10-year term, or 3 years with automatic renewal. We suggest deleting this requirement since it appears arbitrary and unnecessary to fulfill the purpose of the exemption. For example, it is unclear why a franchise agreement with a 7-year term, or a 1-year evergreen provision, should not receive the exemption, on the understanding that the exemption would only apply as long as the contract is in effect.
4. In light of the above comments, we suggest revising the “waste fleet” definition to read as follows:

“’Waste fleet’ means the vehicles owned and operated by a fleet owner that is contracted, licensed or permitted by a city, county, joint powers authority, or other local governmental agency that is mandated to support the hauling, transfer, and processing of diverted in-state organic waste via franchise agreement, other contract, license or permit.”

1. In 2015.2(e)(2), “garbage vehicle configurations” should be changed to “waste fleet vehicle configurations,” for consistency with the “waste fleet” definition.

# Daily Usage Exemption

1. This exemption is only available if the fleet owner demonstrates that “no new BEV is available to purchase that can meet the demonstrated daily usage needs of any existing vehicles of the same configuration in the fleet.” However, “fleet” means vehicles “operated under [] common ownership or control.” For many companies, their “fleet” will consist of all the vehicles they operate throughout the state. This regulatory structure creates severe issues for companies that operate in varying operating environments.

* First, the regulation requires a comparison of apples to oranges. A refuse collection vehicle that operates in a sparse, hilly rural area requires more battery power than the same vehicle operated in a dense, flat urban area. There may be a BEV that meets the daily usage needs of the urban vehicle but not the rural vehicle. Yet the exemption counts these vehicles the same if they have the same configuration. The exemption should be modified so that only configurations in similar operating environments are compared.
* Second, the regulation penalizes fleet owners that operate vehicles in diverse environments. Continuing the above example, suppose a fleet owner needs to replace a rural vehicle, but it also operates an urban vehicle hundreds of miles away. If there is a BEV that meets the daily usage needs of the urban vehicle but not the rural vehicle, the fleet owner would be unable to obtain the exemption for the rural vehicle, whereas a different fleet owner that only operates in rural areas would be able to obtain the exemption. The fact that the fleet owner could conceivably replace the urban vehicle instead is no answer, because the fleet owner might not need to replace that vehicle. The exemption should be modified so that the comparison is done for vehicles operating out of the same yard or the same limited geographic area.
* Third, the regulation requires fleet owners to submit an unnecessary amount of documentation. The exemption requires submission of data “for all ICE vehicles of the same weight class and configuration of the vehicle to be replaced.” If the fleet owner has hundreds of vehicles of the same configuration throughout the state, the fleet owner would have to gather and submit data on all these vehicles in order to get an exemption for one vehicle. And as stated above, much of the data would be irrelevant because it would apply to vehicles in different operating environments. A representative sample of vehicles from a similar operating environment should suffice.

1. The daily usage exemption is only available to fleet owners whose fleets already have at least 10% ZEVs. This seems inconsistent with the milestone approach in §2015.2(a), which does not require 10% ZEVs until a later date. The premise of the daily usage exemption is that there is no available BEV that meets the fleet owner’s daily usage requirements. A fleet owner should not be required to purchase BEVs that do not meet its daily usage requirements just to meet the 10% threshold for this exemption.
2. The daily usage exemption is unavailable for non-tractor Class 8 vehicles if a BEV exists in the same configuration with an energy capacity of 450 kilowatt-hours or more. This may not be enough for refuse collection vehicles, with their powerful lifting systems, frequent stops, and heavy payloads. Whether a BEV is equivalent should be based on its actual performance for its intended use, not on an arbitrary energy capacity metric.
3. If the fleet owner wishes to demonstrate that no BEV can handle the daily assignments of the equivalent ICE vehicle, the fleet owner must submit data “from BEVs of the same configuration already operated on similar daily assignments.” But if there is no equivalent BEV, it’s unclear how the fleet owner could obtain such information. It would be illogical to require the fleet owner to purchase an unsatisfactory BEV in order to prove that it’s unsatisfactory. The fleet owner should be allowed to submit other kinds of data (e.g. manufacturer specifications) to substantiate the lack of equivalency.
4. 2015.3(b)(4) states that the daily usage exemption is categorically unavailable and will not be granted if certain mileage or energy use criteria are met. This bright-line test seems overly narrow. For a refuse collection vehicle, the hours it can operate between charges, and the payload it can carry while remaining within legal weight limits, are at least if not more significant than mileage or energy use. Equivalency should be based on the BEV’s actual performance for its intended use in the specific operating environment in which it will be used, and not reduced to an oversimplified numerical comparison.

# Purchase Exemption

1. The standard for applying the Purchase Exemption is that there is no available ZEV “configuration” that serves the same “primary intended function” as an ICE vehicle. This standard is too broad. A ZEV refuse collection vehicle that can only operate 5 hours between charges and carry a 7-ton payload is in no meaningful way “equivalent” to an ICE vehicle that can operate 10 hours without refueling and carry a 10-ton payload. If these vehicles were deemed equivalent, it would necessitate seismic shifts throughout our industry, including increasing the number of vehicles and drivers, increasing yard space, etc. These in turn would increase waste collection rates throughout the state. As stated above, equivalency should be based on a vehicle’s actual performance for its intended use in the same operating environment as a comparable ICE vehicle.
2. The regulation should state that the Purchase Exemption lasts for the useful life of the vehicle, so that it’s clear that the exemption does not expire when the vehicle configuration is removed from the Purchase Exemption List. A fleet owner that relies on the Purchase Exemption should not be penalized for subsequent improvements in technology over which the fleet owner had no control.
3. 2015.3(e)(2)(G) allows fleet owners to continue to rely on the Purchase Exemption for 180 days after a vehicle is removed from the Purchase Exemption List. In our business, funding for the transition to ZEVs will need to be negotiated into the franchise agreements and other arrangements with jurisdictions pursuant to which we provide services. These negotiations can often take years. If we presented a cost proposal to a jurisdiction based on the expected availability of the Purchase Exemption, and then were forced to revise the cost proposal to due to the announced expiration of the Purchase Exemption, the additional expense would trigger substantial renegotiation that could take more than 6 months to complete. We suggest changing the time period to 1 year.
4. We suggest clarifying that the specific configurations listed in 2015.3(e)(1)(A) cannot be removed from the Purchase Exemption List before January 1, 2025, and therefore fleet owners can continue to rely on the Purchase Exemption for at least 180 days (or 1 year, as suggested above) beyond that date. Consistent with earlier comments, when CARB decides to remove a vehicle from the list, it should do so only if the ZEV vehicle can perform to the same standards as a comparable ICE vehicle in the same operating environment.
5. In the definition of “configuration,” we suggest clarifying that each of the specific vehicle types listed in 2015.3(e)(1)(A) is a “configuration,” so that it’s clear (for example) that “front-loader refuse compactor truck” is a “configuration,” not an umbrella category under which many different “configurations” may exist.

# Other Provisions

1. The regulation generally treats FCEVs and BEVs as interchangeable (both are ZEVs). It also states that certain exemptions are unavailable if an equivalent ZEV exists. This could create unintended outcomes for fleet owners. In reality, fleet owners need to decide whether to install electrical charging equipment or hydrogen fueling equipment at their yards. Suppose a fleet owner plans to adopt a BEV fleet at a particular site and install the necessary charging equipment, but needs to temporarily rely on the Purchase Exemption for a particular configuration. Suppose further that, under the Purchase Exemption, CARB determines there is an equivalent FCEV available for that configuration, but not an equivalent BEV. In that scenario, the fleet owner would be required to purchase the FCEV, even though it lacks the necessary infrastructure and has no long-term intention to use FCEVs. The regulation should be revised to eliminate this problem.
2. Several exemptions including the Daily Usage Exemption, Purchase Exemption, and Infrastructure Delay Extension appear to apply only to “replacement” vehicles. This fails to take into account that fleet owners may need to expand their fleets as demand for their services increases, or to meet new regulatory mandates such as SB 1383. For example, Recology is continuing to expand the number of collection vehicles in its fleets as it works with jurisdictions to add routes for the collection of source separated organic waste. The exemptions should be modified so that they apply to additional or replacement vehicles.
3. The Infrastructure Construction Delay Extension only applies to delays occurring after a construction permit is obtained and a construction contract is signed. This does not take into account the substantial delays that can result from the permitting process, which for complicated projects may take years, especially if the project involves environmental impacts. The permitting process is a function of regulatory and local government requirements and processes that are beyond fleet owners’ control, and it cannot be assumed that a construction permit will be the only type of permit required. The extension should be modified to include permitting delays.
4. In 2015.2(a), the example is incorrect because it states that a fleet owner complying with the Milestone Option must have 10% ZEVs within Class 1. We suggest the following rewording: “for example, the Milestone Group 1 percentage is ~~vehicles must comprise at least~~ ten percent of the California fleet each year beginning January 1, 2025 until December 31, 2027.”
5. The Vehicle Delivery Delay Extension and the definition of “vehicle purchase” require “immediate delivery or installation” of the vehicle or body. In our industry, most vehicles are made to order and take a year or longer to manufacture. There is no such thing as “immediate delivery.” We suggest revising these provisions to say, “immediate delivery upon completion.”
6. The Vehicle Delivery Delay Extension does not apply if the purchase agreement is modified for any reason within 1 year of the compliance deadline. This seems like an unnecessary restriction. There are many reasons purchase agreements may need to be modified, including change orders or other business terms. We suggest eliminating this requirement.

\* \* \*

Thank you for considering these comments. If you have any questions, please do not hesitate to contact me at [gkazanjian@recology.com](mailto:gkazanjian@recology.com).

Respectfully,

Garen Kazanjian

Public Policy & Regulatory Affairs Manager

Recology