WASTE MANAGEMENT

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Clerk of the Board
California Air Resources Board
1001 "I" Street
P.O. Box 2815
Sacramento, California 95812

Subject: PROPOSED RULEMAKING TO CONSIDER THE ADOPTION OF A PROPOSED CALIFORNIA CAP ON GREENHOUSE GAS EMISSIONS AND MARKET- BASED COMPLIANCE MECHANISMS REGULATION, INCLUDING COMPLIANCE OFFSET PROTOCOLS – 2ND 15-DAY NOTICE

Dear California Air Resources Board:

On behalf of Waste Management (WM), I am submitting comments on the CARB 15-Day Modifications to the Proposed Cap and Trade (C&T) Regulation issued September 12, 2011 for public comment. We appreciate the opportunity to submit these comments on the proposed regulations. The C&T Regulation will have a significant impact on solid waste management, including the generation of renewable energy from waste and the advancement of technologies that will result in a cleaner environment and fewer emissions of greenhouse gases into our atmosphere.

Waste Management is the leading provider of comprehensive waste management and environmental services in North America. The company serves approximately 20 million municipal, commercial, industrial and residential customers through a network of 390 collection operations, 294 transfer stations, 266 active municipal solid waste (MSW) landfill disposal sites, 17 waste-to-energy (WTE) power plants, 121 recycling facilities, 34 organic processing facilities and 131 beneficial-use landfill gas projects. Many of these facilities operate in California.

We understand that the C&T draft issued September 12 will be our final opportunity to comment on these rules prior to their approval and implementation. Unfortunately, there remain several issues requiring resolution that if not addressed will result in

inequitable treatment of facilities that offer valuable independent and clean electricity generation and advanced waste management. Our comments focus on such issues that must be addressed appropriately if there is to be a fair, equitable and workable C&T program.

Fugitive Emissions from Landfills and Wastewater Treatment Plants

WM is concerned that the exemption from a compliance obligation for landfill fugitive emissions and waste water treatment plants has been removed in revised Section 95852.2 (b) paragraphs (4) and (5) on page A-105 of the 2nd 15-day notice proposal. This omission is contrary to our previous understanding and discussions. The explanation given in the reasons for the modifications in the 2nd 15-day notice is found in an explanatory document:

> "Section 95852.2(b) was modified to delete redundant source categories and source type emissions not reported under the MRR (which should not count toward applicable reporting thresholds per section 95852.2)."

While we are pleased that the CARB recognizes in its notation that there cannot be a compliance obligation for a source that is not required to report emissions, that recognition in a non-binding explanatory note to the regulation is insufficient to ensure that there is no compliance obligations for fugitive emissions from landfills and wastewater treatment plants. Failure to restore the deleted language will result in a lack of clarity in the regulations that is contrary to the California Administrative Procedures Act.

With respect to landfill fugitive emissions, we specifically request that "Methane from Landfills" be added back into the listing of fugitive emissions that are excluded from a compliance obligation in subdivision (b) of Section 95852.2 for the following reasons:

- It is widely acknowledged that there is no accurate method to measure fugitive landfill methane emissions and therefore it is against good public policy to impose a compliance obligation on a source whose emissions cannot be accurately measured.
- Inclusion of landfill fugitive emissions in the C&T regulation is duplicative and punitive. CARB has acted to regulate fugitive methane emissions from landfills in one of the Agency's first early action measures:

  (http://www.arb.ca.gov/cc/landfills/landfills.htm)

  Through this regulation, the CARB has taken direct action to limit fugitive methane emissions to the lowest achievable level. These regulations represent the most stringent landfill methane control regulations in the world. CARB

  achieves nothing by leaving the regulatory door open for a C&T compliance

obligation for fugitive landfill emissions for a source category that is already subject to a stringent command and control regulation under the same underlying statute (AB 32).

- Strong incentives are in place to maximize the capture and beneficial use of biomethane as a replacement for fossil fuel. WM currently operates the largest renewable landfill gas (LFG) to liquefied natural gas (LNG) facility in North American at our Altamont Landfill in Alameda County, producing up to 13,000 gallons of renewable LNG every day. WM and other landfill operators recognize the success of the LNG facility and are expanding the program to maximize the capture and beneficial use of biomethane to displace the use of fossil fuels. CARB should recognize that there is strong economic and technological reason to capture fugitives as a fuel source and virtually no incentive to produce fugitive methane emissions and waste valuable renewable energy.

Similar arguments can be made for fugitive methane from wastewater treatment plants. We ask that you restore the specific exemptions from a compliance obligation in Section 95852(b) for:

- Methane (CH4) from Landfills, and
- CH_4 and nitrous oxides (N_20) from municipal wastewater treatment plants.

Waste-to-Energy

WM requests confirmation of the proper interpretation of § 95852.2 (a)(7), Emissions without a Compliance Obligation, with respect municipal solid waste that is directly combusted or converted to a cleaner burning fuel. The revised language states that

> "[t]he biogenic fraction of municipal solid waste as reported under MRR, *including MSW directly combusted or converted to a cleaner-burning fuel*" [emphasis added] (shall not have a compliance obligation).

First, this newly added underlined phrase is not clear. What is the definition of "cleaner burning fuel"? Cleaner than what? Further clarification is needed here to comply with the clarity standard of the California Administrative Procedures Act.

Secondly, Attorneys with whom we have consulted interpret the language to exempt from compliance MSW that is directly combusted or converted to cleaner-burning fuel *regardless of its biogenic origin*. The phrase, "including MSW directly combusted or converted to a cleaner-burning fuel" appears to be inclusive of all solid waste, regardless of biogenic or anthropogenic origin. If this is CARB's intent, we concur. As we have repeatedly stated, a life-cycle assessment of WTE facilities clearly demonstrates an overall reduction in greenhouse gas (GHG) emissions. The language

you have modified in the 2nd 15-day comment period appears to embrace this concept, and WM certainly supports that there should be an exemption for the entire municipal solid waste stream that is beneficially converted to renewable energy.

In the July draft of the regulations, CARB had reversed its recognition of WTE's ability to lower GHGs. The discussion draft regulations initially proposed that the three existing WTE facilities operating in California would be excluded from a C&T compliance obligation. As we stated in our comments on the July draft, CARB's reversal threatened these facilities' operations and could significantly increase municipal costs of waste management, environmental impacts from truck traffic and distance to disposal, and GHG emissions.

We strongly support exclusion from compliance obligations for all municipal waste that is converted into cleaner burning energy. This exclusion should be applied to all technologies, including conversion technologies that can demonstrate their ability to lessen the amount of greenhouse gas emissions into our atmosphere.

Compliance Cost Recovery for Independent Power Generators

We are disappointed that CARB refuses to address the need for a mechanism to allow compliance cost recovery for small generators such as WM's Norwalk combined heat and power (CHP) facility. Failure to provide for equitable resolution of contract provisions will result in small generators shouldering the burden of compliance costs to meet the requirements of C&T. The regulation incorrectly assumes contract renegotiation will resolve this cost issue, thus assuming both parties are equal in their contract position. Nothing could be further from the truth.

We understand that CARB has deferred the effectiveness of covered entities' compliance obligation under C&T regulations until January 1, 2013, perhaps believing there is time to resolve this important issue in future rulemaking. However, time is of the essence. The auctions of GHG emission allowances will begin in the second half of 2012. Thus, by no later than the second quarter of 2012, the Norwalk facility must decide whether and to what extent we must obtain GHG emissions allowances in the auctions. Our compliance decisions must be made based on a clear understanding of whether and how we are able to comply with the CARB regulations.

Merely "punting" this issue to the California Public Utilities Commission (CPUC) in hopes that agency will address cost recovery for certain independent power producers like Norwalk will not resolve the issue, as there is no legal proceeding available at this time that has accepted the issue for proper hearing and resolution to make right the current inequity. We urge CARB to reconsider its position to remain silent in the current rulemaking, or move in an expedited fashion as part of another rulemaking to address this issue.

Invalidation of CARB Offset Credits – Offset Buyer/Seller Liability.

As we stated clearly in prior comments, market certainty and stability are essential elements to the success of the new C&T program. We continue to believe that the risk that an offset can be invalidated eight years after its certification will undermine market stability and increase program costs. Furthermore, placing that risk of invalidation on the purchaser will lead to unnecessary but substantial increased costs. The State of California must stand behind its offset validation system and, absent fraud or intentional misrepresentation, stand behind a certified offset. This approach will provide the security essential for a strong and cost-effective C&T program.

Thank you for consideration of our comments.

Sincerely,

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