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April 21, 2011

Hon. Darrell Steinberg  
President Pro Tem  
California State Senate  
State Capitol, Room 205  
Sacramento, CA 95814

Dear Darrell:

The state of California has virtually lost a major opportunity to take a leadership position, indeed to even be a player, in the worldwide initiative to produce renewable energy—both advanced biofuels and electricity—from organic wastes.

Legislation to correct definitions in statute that are universally acknowledged to be scientifically inaccurate has been blocked by a small minority of legislators in our party for the past six years.

Already, as a result of the legislature's unwillingness to act, California's biobased technology companies have either located or moved out of the state, something approaching \$1 billion in plant construction, setting the state's program of advanced biofuels production back by at least a decade.

Now, in addition to that small minority, I find that the President Pro Tem's office has launched a frontal attack on this industry, an industry that, for the last six years, I have served as President of the BioEnergy Producers Association.

On your behalf, Kip Lipper has sent a communication to the Governor's office, the Natural Resources Agency and the Energy Commission challenging a finding that the Plasco Energy waste-to-clean energy technology meets the definition of gasification.

It is clear that CalRecycle's ruling on this issue, reached after long discussion, was the correct opinion. Legally, there could be no other interpretation, because it would never be the intent of the legislature to pass a law with which no one can comply.

When operating a refinery of any type or size, whether it is producing fuels from petroleum or biomass, it is a physical impossibility for that facility to create zero emissions. It is a standard required of no other manufacturing facility in the state of California—one that has discouraged, indeed has prevented, this industry from attempting to operate in this state.

If interpreted as asserted by Kip, it would mean that our party and its legislative staffs had intentionally crafted legislation that does just that.

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Kip's communication was a damaging signal to this multi-billion dollar industry that the State is not interested in what it can contribute to California's economy, nor does it want this industry's help in meeting California's goals as set forth in AB 32, the LCFS, your 33% RPS or its mandate for 10% ethanol blending.

I wish I would have had a call from you, or at least that someone involved in the industry would have received a call from you, before this action was taken, apparently in your name. Frankly, however, no one anticipated that the President Pro Tem would directly involve himself in a legal opinion issued by an Executive Agency.

On the legal point involved, the legislature does not engage in an idle act. The gasification definition was intended to be a departure from the original AB 939, which code sections they amend, and for which, I parenthetically would like to point out, I was the chief Senate negotiator. What is significant here is what the legislature intended, and not what an individual Senator, Assembly member or highly placed staff person wanted, no matter what his relationship was with the original legislation or subsequent amendments to it.

When Section 40117 of the PRC was placed in statute, the legislature obviously intended to ease the permitting process for gasification technologies. It provided for an entirely new and separate methodology whereby gasification could be permitted over and above the obtaining of a solid waste permit, and through which its feedstocks would qualify for landfill reduction credit and the RPS.

Without this section, gasification would have been treated exactly the same way as every other conversion technology. It would have been stuck in "transformation," equating these non-combustion technologies with incineration, where statewide policy makes it virtually impossible for any conversion technology to obtain a permit, and where they do not qualify as landfill reduction or for the RPS.

What other reason could there have been for this separate section in statute? The legal office at CalRecycle understands this. That is why we were so disappointed that your letter was written without so much as a call to the industry.

Just in the past 18 months, the Obama administration, which I believe is the most environmentally sensitive administration in our country's history, has awarded more than \$1 billion in direct grants and loan guarantees for the commercialization of organic waste conversion facilities, the very same projects, which some officials in California still stubbornly refuse to allow. As a result, almost none of this money will be spent in California.

For example, Fulcrum BioEnergy, a California company, is now completing a \$120 million US DOE loan guarantee, with which they will construct a thermal conversion facility that will co-produce ethanol and electricity from solid waste, just across the border in Nevada. The feedstock for this plant will come, in part, from El Dorado County, which, by shipping their wastes through the Lake Tahoe region for processing

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in Nevada, will qualify for landfill diversion in California, and the power that is produced, if sold back into California, will qualify as renewable under California's RPS. Is this in our state's best interest? Of course not.

These technologies have been rapidly permitted, have begun construction or are already operating across Canada and in at least ten states, including our neighbors, Oregon and Nevada. Would this be happening if they represented a threat to the environment? Of course not.

It has long been established, and confirmed by a study by the University of California-Riverside, that these emerging technologies can meet the highest standards of emissions anywhere in the world, let alone California.

Does it make sense for this state to continue to place 35 million tons of post-recycled waste in landfills every year, when they could potentially support the in-state production of 1.6 billion gallons of ethanol and 1250 MW of power? Of course not.

The logic of utilizing our post-recycled waste streams as a feedstock for renewable energy production is so clear and universally recognized, everywhere but in California, that the short-sighted view of a minority of members of our party is already becoming the subject of ridicule.

The Plasco Energy Group intends to comply with all applicable state and local laws and legitimate environmental standards in permitting their Salinas project, for which they were selected after more than two years of competitive bidding and due diligence by the Salinas Valley Solid Waste Authority.

In a free market economy, the waste-to-clean-energy industry has just as much right to be permitted and operate under California's stringent environmental laws as any other. National security, the economy, energy independence and an improved environment demand this.

Sincerely,



cc: John Laird, Secretary, Natural Resources Agency  
Mary D. Nichols, Chair, Air Resources Board  
James D. Boyd, Vice-Chair, Energy Commission  
Elliot Block, Chief Counsel, CalRecycle  
Cliff Rechtschaffen, Senior Advisor, Office of the Governor  
Ken Alex, Senior Advisor, Office of the Governor  
Kathy Dressler, Chief of Staff  
Kip Lipper, Chief Policy Advisor

**ORGANIZATIONS THAT ENDORSED AB 222,  
AS SPONSORED BY THE BIOENERGY PRODUCERS ASSOCIATION  
(2009-2010)**

**Major Statewide Associations**

Agricultural Council of California  
BioEnergy Producers Association  
California Chamber of Commerce  
(Job Creator)  
California Farm Bureau Federation  
California Manufacturers & Technology Association  
California Refuse Recycling Council  
California State Association of Counties  
League of California Cities  
Regional Council of Rural Counties  
San Gabriel Valley Council of Governments  
San Gabriel Valley Economic Partnership  
Solid Waste Association of North America  
Solid Waste Association of Orange County  
Valley Industry & Commerce Association

**State & Federal Agencies**

California Air Resources Board  
California Energy Commission  
CalRecycle  
Department of the Navy  
(Commander Navy Region Southwest)

**Electric Utilities**

Pacific Gas & Electric  
Sempra Energy  
Southern California Edison  
Sacramento Municipal Utility District (SMUD)

**Cities and Counties and their Agencies**

City of Azusa  
City of Bell  
City of Glendale, Public Works Department  
City of Hawthorne  
City of Huntington Park  
City of La Puente  
City of Long Beach  
City of Los Angeles  
City of Pico Rivera  
City of San Diego  
City of San Jose  
City of San Marino  
City of Vernon  
County Sanitation Districts of Los Angeles County  
Inland Empire Disposal Association (IEDA)  
Los Angeles County Solid Waste Management  
Committee / Integrated Waste Management  
Task Force  
Los Angeles County Board of Supervisors  
Orange County Board of Supervisors  
Redwood City Planning Commission  
Sacramento County Board of Supervisors  
Salinas Valley Solid Waste Authority  
San Bernardino County Board of Supervisors  
San Luis Obispo County Integrated Waste  
Management Authority  
Ventura Regional Sanitation District  
Yolo County Board of Supervisors

**Labor Organizations**

California Association of Professional Employees  
(CAPE, AFL-CIO)  
California State Association of Electrical Workers  
California State Pipe Trades Council  
International Union of Operating Engineers  
Western States Council of Sheet Metal Workers

**Renewable Energy Industry**

American Council on Renewable Energy /  
Biomass Coordinating Council (ACORE)  
The BioEnergy Alliance  
adaptiveARC  
Alternative Resources, Inc. (ARI)  
Balboa Pacific Corporation  
Bluefire Ethanol  
Coskata  
Enerkem  
Frontline BioEnergy, LLC  
Fulcrum Bioenergy  
Global Energy, Inc.  
ICM, Inc.  
INEOS Bio  
Innovative Logistics Solutions, Inc. (ILS)  
International Environmental Solutions  
Interstate Waste Technologies, Inc.  
New Planet Energy, LLC  
Plasco Energy Group  
Phoenix Biomass Energy  
Remediation Earth, Inc.  
Technikon, Inc.  
Ternion Bio Industries  
ThermoChem Recovery International, Inc. (TRI)  
Theroux Environmental  
Waste To Energy, LLC  
Ze-Gen

**Waste Management Firms**

Athens Services  
Blue Line Transfer, Inc.  
Burrtec Waste Industries, Inc.  
Clements Environmental  
Commercial Industrial Waste Applications, Inc.  
Consolidated Disposal Service  
Desert Valley Disposal Service  
Marin Resource Recovery  
Marin Sanitary Service  
Mid State Solid Waste & Recycling  
Moulton Patterson Associates  
Palm Springs Disposal Services  
Pena's Disposal, Inc.  
Rainbow Disposal Co., Inc.  
Republic Services, Inc.

**Environmental Organizations**

Clean Fuels Development Council  
Long Beach Coalition for a Safe Environment  
North Valley Coalition of Concerned Citizens, Inc.  
Sustainable Conservation  
UCLA MSW Management Training Program  
U.S. Department of Energy / Clean Cities