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**UPLOADED TO CLIMATE ACTION RESERVE WEBSITE
VIA PUBLIC COMMENTS**

To: Climate Action Reserve
523 W. Sixth Street, Suite 428
Los Angeles, CA 90014

**RE: Comments Regarding Landfill Project Protocol
Collecting and Destroying Methane from Landfills, Version 4.0**

Dear Ladies and Gentlemen:

We represent the Black Warrior Solid Waste Authority (CAR Project Number 403) and Coffee County, Alabama (CAR Project Number 467). On behalf of both The Black Warrior Solid Waste Disposal Authority and Coffee County, Alabama, we appreciate the opportunity to comment on your proposed Version 4.0 of the Landfill Project Protocol.

For background, both of our landfills are governmentally owned, one located in West Central Alabama, the other in Southeast Alabama. Each is a Subtitle-D landfill, developed in the mid-1990s. Neither landfill is required by EPA rules to install a gas collection and destruction system, and there is no state or local regulation making such a system mandatory. For a number of years both organizations investigated the possibility of funding a collection and destruction system through development of electricity or installation of a direct use system. Both organizations were active in LMOP, seeking an industry partner who would in whole or in part assist with funding a collection and destruction system. Our efforts were unsuccessful, because, as we were told by potential developers, the sales price for electricity in our area of the county was too low to pay for the required system.

The picture changed in 2008 with the development of CAR Landfill Gas Protocol and the response of the voluntary market to GHG credits, allowing Black Warrior, and later Coffee County,

to register these projects with CAR, sell the credits and build collection and destruction systems employing flares. Black Warrior was one of the first, if not the first, landfill gas projects to be registered with CAR. Both Black Warrior and Coffee County have operated the systems continuously, and in fact the revenues from the sale of GHG credits have created an incentive to add wells, expanding the systems. The intent of the program has been achieved: methane from each of these landfills has been collected and destroyed, reducing greenhouse gas emissions.

CAR's Landfill Gas Protocol was created as an incentive to encourage installation of landfill gas collection and destruction systems that were not required under state, federal and local law. CAR was successful - the fact of the matter is that this incentive made it economically feasible to build and operate a number of projects including those at Black Warrior and Coffee County. While those of us who relied on CAR and installed a system no doubt anticipated periodic adjustments to the protocol, it is not appropriate for CAR to reverse course, adopting a new set of rules which will destroy the very systems originally encouraged.

Simply put, the likely result of adoption of Version 4.0 including Criteria B (Size Threshold) or Criteria C (Renewable Energy Certificate/Green Power) will be the eventual dismantling of many collection and destruction systems. The fundamental economics have not changed. In large areas of the United States the sale of electricity will not generate sufficient revenue to pay for the required systems. As events arise causing existing collection and destruction projects to adopt proposed Version 4.0, projects which were additional when built, and which in fact remain additional, will be excluded merely by this protocol change. Income from the sale of GHG credits will be cut off. So long as the landfills which host the projects remain not mandatory, it is very likely that the systems will then be shut down due to operating costs or ongoing capital costs.

The systems will be shut down by one of two changes to the protocol: the artificial Waste in Place standard for landfills with LFGE projects and the automatic exclusion of GHG reductions where the use of methane to generate electricity results in the issuance of a REC. Rather than asking an owner to show that its project is additional, i.e. that it would not be built or continue to be operated save the income stream from sale of GHG Credits, the authors of Version 4.0 appear to have relied on statistics collected by LMOP for a purpose entirely unrelated to the issues considered in Version 4.0. LMOP's focus has always been aimed at the public/private partnership, encouraging installation of landfill gas collection and destruction systems through economic incentives from the sale of gas and power as well as from the sale of greenhouse gas credits. LMOP simply did not gather the kind of data as would be required for the analysis of CAR to be valid. Relying on statistics collected for a different purpose has led CAR to make incorrect assumptions as it moves through the analysis, an example being in Appendix A, at discussion point A.4, the size threshold (page 62), the exclusion of any landfill selling greenhouse gas offsets from the statistical pool used to pick the maximum volume. CAR's statistical analysis also makes assumptions that are flawed. For example at Appendix A, discussion point A.4, first paragraph, the assumption is made that because

more than 13% of unregulated landfills include landfill gas to energy projects that receive no environmental incentives, these would be incorrectly classified as additional. It is quite possible that these projects may have been installed prior to the adoption of the CAR Protocols, may have had other pre-existing facilities that would have disqualified them or that the owners simply chose to not to attempt to sell greenhouse gas credits and thus made no filings. The 13% number is a statistic, but it may or may not be related to whether the project would have passed the additionality test.

In significant parts of the United States, comparatively low electric rates mean the market for renewable energy (for the energy product itself) is not sufficient to cover the cost of building, maintaining and operating a collection and destruction system, much less the additional facilities needed to generate electricity. In the case of both Black Warrior and Coffee County, the sale of GHG credits has (thus far) partially funded installation and operation of the collection and destruction systems employing flares, but is not sufficient to fund the equipment for generation of electricity. As in many other areas of the country, the sale of electricity may not support the installation of the electric generation facilities, and the possibility of future sale of RECs would be the additional incentive that might make an electric project feasible. However, it needs to be emphasized that even if an electricity project becomes feasible, and even if an electricity project causes the issuance of RECs, this does not automatically mean that any significant amount of money would be directed to the owner and or operator of the landfill gas collection and destruction system. In our area of the country, the high capital costs involved in the installation of an electricity generation project demands that almost all of the power sales revenue go to the electricity developer, leaving only a small royalty to the landfill owner. Therefore, the conclusion that if a project generates RECs it does not need greenhouse gas revenues is just totally wrong. In fact, GHG revenues are needed to support the collection and destruction system, the system which will make the gas available for electric generation. With no legal requirement to install or operate the collection and destruction system, the loss of GHG revenues could very well lead to shut-down of the system, negating the environmental benefit from destruction of methane.

We respectfully urge that CAR not include Criteria B or Criteria C in Version 4.0.

We also ask for clarification and/or suggest modification to the provisions of Section 3.4.1 regarding the practice threshold for the second crediting period. We note that proposed rule 3.4.1(A), parts 1 through 4, now require an examination of the practice threshold as of the project state date. One example would be part 1, installation of a landfill gas collection system and new qualifying destruction device where landfill gas was not collected and destroyed prior to the *project start date*. As an example, assume this rule was met through installation of new equipment and that the project start date was 2010. What test would apply in 2020, under the proposed sentence “[T]he practice threshold is applied only at the time the project is registered or when it is submitted for a second crediting period.” Would equipment qualifying at the time of the project start date be sufficient, or would installation of a new collection and destruction system be required?

If it is the intent of the rule that installation of a new collection and destruction system would be required to enter a second ten-year crediting period, we urge that this provision be revised. For landfills which remain non-mandatory (and thus satisfy Section 3.4.2, the Legal Requirement Test), loss of revenue from the sale of GHG credits may cause the collection and destruction systems to be shut in and abandoned. These systems are expensive to operate, requiring personnel, electric power and routine maintenance, plus verification costs if credit sales are available. Further, the pumps, motors, blowers and control systems all have a manufacturer's life-cycle, and will require replacement or major rebuilds during the second crediting period. Without GHG credit income the source of funding these operational and capital costs will be cut off, and the likely result is abandonment of the system and loss of the environmental benefits achieved thus far. We thus urge CAR to revise the above-quoted sentence to read: "[T]he practice threshold is applied only at the time the project is registered or when it is submitted for a second crediting period; provided that satisfaction of the practice threshold at the time the project is registered is sufficient when the project is submitted for a second crediting period."

Thank you for the opportunity to present comments. If CAR intends to accept oral comments at a public hearing, we would ask that an opportunity be afforded for making comments through a conference call or web-based arrangement.

Sincerely,

Rosen Harwood, P.A., attorneys for
The Black Warrior Solid Waste Disposal Authority
and Coffee County, Alabama



James J. Sledge



W. Bradford Roane, Jr.

JJS:mhf

cc: Ken Thrasher, Black Warrior Solid Waste Disposal Authority
Randy Tindell, Coffee County Engineer