



December 10, 2010

Via Electronic Transmission: <https://ftcpublic.commentworks.com/ftc/revisedgreenguides>

Federal Trade Commission

Mr. Donald S. Clark, Secretary

Office of the Secretary, Room H-135 (Annex J)

600 Pennsylvania Avenue, NW

Washington, DC 20580

Re: "Proposed, Revised Green Guides, 16 CFR Part 260, Project No. P954501"

Dear Mr. Clark:

Waste Management (WM) is pleased to submit comments in response to the Federal Trade Commission's (FTC's) "Proposed, Revised Green Guides" released October 6, 2010 (hereinafter referred to as "the Green Guides").

Waste Management is North America's leading provider of integrated environmental solutions. We partner with our customers and communities to manage and reduce waste from collection to disposal while recovering valuable resources and creating clean, renewable energy. WM uses waste to create enough energy to power more than a million homes every year through our more than 120 landfill-gas-to-energy projects in existence by the end of 2009 and our 17 waste-to-energy plants. As North America's largest residential recycler, Waste Management recycled or reused more than 8.5 million tons of recyclable commodities in 2009. In its expanding role as a materials management company, WM is working to extract the highest value from the resources we manage including food and green wastes in municipal solid waste (MSW). WM manages 1.25 million tons of organic material streams for beneficial reuse through our 34 permitted organics processing facilities, and is making significant investments in high-solids anaerobic digestion to produce renewable energy and soil amendments, and in technologies to produce transportation fuels and chemicals from organic wastes.

Waste Management appreciates FTC's leadership in providing much needed guidance to marketers to help ensure that environmental claims are true, understandable, and based on competent and accurate scientific information. Our comments address several topics including: enforcement of the Green Guides; recyclable claims; renewable energy claims; and carbon offsets.

Enforcement of Green Guides Could Create Inconsistencies with Other Federal and State Laws

Waste Management supports the purpose of the Green Guides to help marketers avoid making environmental marketing claims that are unfair or deceptive under Section 5 of the FTC Act, 15 U.S.C. § 45. We note with some trepidation that § 260.1 of the proposed Green Guides states that while the guides do not preempt federal, state or local laws, compliance with those laws does not necessarily preclude Commission law enforcement action under the FTC Act. The Green Guides do not address how the FTC plans to handle enforcement matters where inconsistencies exist between the guides and federal, state or local laws. Without such guidance, marketers will be faced with significant uncertainty.

For example, WM markets renewable electricity and renewable energy certificates (RECs) under states' Renewable Portfolio Standards, and we are contemplating registering renewable fuels to receive and market renewable identification numbers (RINs) under the Federal Renewable Fuel Standard (RFS2). We strongly believe that if we are marketing these commodities in full compliance with federal or state definitions and requirements, such compliance should serve as a shield against FTC enforcement action. We urge the FTC to better address potential inconsistencies among the Green Guides and existing state and federal statutes and clarify that full compliance with federal and state definitions and requirements related to subjects covered by the Green Guides will shield companies from FTC enforcement action.

The “Substantial Majority” Qualifier for Recyclable Claims Should be More Stringent

Waste Management supports the Green Guides directive that marketers should not advertise a product or package as “recyclable” unless it can be collected, or otherwise recovered from the solid waste stream for reuse or in the manufacture of another product through an established recycling program including organics processing. WM also supports the need to qualify recyclable claims based upon the availability of recycling programs for consumers where the item is sold. Further, WM supports the three tiers of recycling program availability outlined in the proposed Green Guides including: “substantial majority;” “significant percentage;” and “less than a significant percentage.” The proposed Green Guides include a footnote indicating that Commission staff has informally interpreted substantial majority to mean at least 60 percent. WM recommends that the FTC incorporate a higher threshold to meet “substantial majority.”

The availability of recycling programs is highly localized and subject to community-specific factors. Use of a higher threshold than 60 percent will ensure that the environmental claim of recyclability is far more likely to be true than not. This is particularly true since the claim is based on a measure of accessibility to a recycling program. Most Americans live in urban areas where a significant portion of the housing stock may be multi-family dwellings. However,

recycling programs tend to be much more readily available to single-family dwellings. Often the statistics on recycling program availability do not distinguish what types of housing units are being served. While 60 percent or more single-family units may be served by a recycling program, it is often the case that significantly fewer multi-family dwelling units will have access to recycling. Thus, on a community-wide basis, far less than 60 percent of the households in a given community will be served by a recycling program. To rectify this issue, we recommend a substantial majority threshold of at least 75 percent. This higher threshold will help ensure that claims of recyclability are much more likely to be true. Similarly, the “significant percentage” qualifier should have a threshold range of 50 to 74 percent, and the “less than significant percentage” qualifier should have a threshold of zero to 49 percent.

With regard to recycled content claims, we recommend that the FTC require manufacturers to identify when annual weighted averages are being used to calculate the recycled content of a package or product.

Use of the SPI Code should be Clarified and Qualified

The preamble to the Green Guides discussed the development of the Society of Plastics Industry (SPI) code that denotes the plastic resin from which a product or package is made. The code uses the chasing arrows (similar to the universal recycling symbol) with the resin identification number in the center. Several organizations commenting on the Green Guide development observed that even inconspicuous use of the SPI code may cause consumer confusion about the recyclability of the product or package. As North America’s largest residential recycler of post-consumer waste, we agree that the SPI code causes confusion for consumers.

Most consumers see the chasing arrows on the bottom of the plastic container and assume that it is recyclable. In fact, not all types of plastic resins are recyclable in all communities. Some municipalities accept all types of plastic. Others accept only containers with certain code numbers stamped on them. Still others accept only products with specific resin codes that also are bottles (having a neck that's narrower than the body). Products labeled Code 1 and Code 2 are widely accepted at recycling facilities. These typically include soft drink and soda bottles; plastics from cereal boxes; containers for salad dressing, vegetable oil, and peanut butter; oven-ready meal trays; butter and margarine tubs; and containers for laundry detergent and some household cleaners.

Municipalities differ on whether to accept products labeled with Code 4 and Code 5. These typically include squeezable bottles, bread wrappers, frozen food bags, dry cleaning bags, yogurt containers, syrup bottles, ketchup bottles, some straws, and prescription bottles. Plastic grocery and produce sacks are commonly, but not always, made from plastic types 2 or 4. These bags are often collected in barrels at grocery stores, but not included in curbside recycling programs. Products labeled with Code 3, 6, or 7 are less-often accepted for recycling. These typically include window cleaner and dishwashing detergent bottles, some shampoo

bottles, cooking oil bottles, clear food packaging, plastics used in most blister packs, disposable coffee cups, polystyrene, plastic egg cartons, aspirin bottles, and compact disc cases.

While not intentional, use of the SPI code with no qualifiers to educate consumers, causes a great deal of confusion. Recycling facilities are forced to manually sort non-recyclables from the waste stream, which can greatly slow the processing of material and can lead to increased contamination in the recycling stream. We recommend the FTC employ the Green Guides to require manufacturers to qualify the use of the code so that consumers can readily understand that the presence of an SPI code on a container does not guarantee that the container can be recycled in their community.

Renewable Energy Claims Should be Clarified

Waste Management produces enough energy from waste to power more than a million homes each year through our 127 landfill gas-to-energy projects and seventeen waste-to-energy plants that combust solid waste to produce electricity. Of importance to WM, the Green Guides discuss claims related to the production and sale of renewable energy and renewable energy certificates (RECs), as well as claims about the production and use of renewable energy. The proposed Green Guides advise that facilities that generate (and use) renewable energy and sell the associated REC cannot claim to use or host a renewable energy project. The FTC appears to have determined that the REC, which is usually a component of state laws that require electricity generating sources to supply a minimum percentage of electricity from defined renewable sources, includes all the marketing rights. This interpretation is inconsistent with many state policies or regulations.

Waste Management believes that for RECs sold for compliance with a state Renewable Portfolio Standard, if we comply with all the requirements of state law with regard to renewable energy production and sale of RECs, we should be shielded from any enforcement under the FTC Act. Further, we believe that renewable energy marketers can avoid deceptive or confusing marketing claims by qualifying their marketing statements with descriptions of their production of renewable energy and their sale of electricity and/or sale of RECs. Certainly the sale of RECs or the electricity itself should not preclude a renewable energy producer from describing itself as a renewable energy producer. There is no danger of double-counting as one cannot have consumers using renewable energy if no one is producing it.

WM Supports the Green Guides Treatment of Carbon Offsets

WM fully supports the Green Guides recommendation that offset sellers employ competent and reliable scientific and accounting methods to quantify GHG reductions. We further support the FTC's determination that it is deceptive to market a carbon offset as representing a GHG reduction if the reduction or activity causing the reduction was required by law. Both of these principles are fundamental to the integrity and reliability of a carbon offset system.

We appreciate the opportunity to comment on the proposed Green Guides. If you have any questions about our comments, please feel free to contact me at (202) 639-1218 or kkelly5@wm.com.

Sincerely,

Kerry Kelly, Director
Federal Public Affairs

