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The Honorable Jennifer M. Granholm
Secretary
Department of Energy
1000 Independence Ave. SW
Washington DC 20585

October 18, 2024

Re: Glenrock Energy Section 40209 Grant Application

Dear Secretary Granholm

It has recently come to my attention that a developer who sought to apply for a grant under Section 40209 of the “Advanced Energy Manufacturing and Grant Recycling Program” in the Infrastructure Investment and Jobs Act was not eligible because it planned to use coal as the primary feedstock of the project. The purpose of this letter is to request you to provide the specific statutory reference that excludes coal as the primary feedstock or which allows the Department of Energy (DOE) to deny a grant application based on the use of coal in this manner and for this purpose.

Following enactment of the Act, the Department of Energy’s Office of Manufacturing and Supply Chains published an Area of Interest (AOI) notification. AOI 2b states: “Establish new, or re-equip or expand, an existing manufacturing or recycling facility that produces materials that result in substantially lower carbon intensity compared to an appropriate industry benchmark and are not derived from a primary feedstock of palm fatty acid distillates or fossil fuels including coal, natural gas, and petroleum.” There is no language in the statute, however, that supports the above-quoted language in AOI 2b to exclude these types of feedstocks. In fact, the bill’s language includes no such exclusion and was specifically intended to direct funding to the very type of projects as proposed by my constituent.

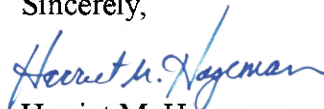
The authorities granted to the Secretary are specific in nature and the language is unambiguous as to the DOE’s authority. The first authority, found under (a)(6)(A)(ii) says that a “Qualifying Advanced Energy Project” means a project that—“re-equips, expands, or establishes a manufacturing or recycling facility for the production or recycling, as applicable, of advanced energy property; (ii) re-equips an industrial or manufacturing facility with equipment designed to reduce the greenhouse gas emissions of that facility substantially below the greenhouse gas emissions under current best practices, as determined by the Secretary, through the installation of— (I) low- or zero-carbon process heat systems; (II) carbon capture, transport, utilization, and storage systems; (III) technology relating to energy efficiency and reduction in waste from industrial processes; or (IV) any other industrial technology that significantly reduces greenhouse gas emissions, as determined by the Secretary.”

There is no ban on hydrocarbon feedstock sources in the Qualifying Advanced Energy Project section. Nor does the Secretary have the authority to impose such a ban. The only authority granted to the Secretary is to evaluate projects to determine whether they reduce greenhouse gases and, if so, the grant should be awarded. Regardless of its feedstock source, a project of this nature would presumably meet the standard in (a)(6)(A) and the DOE's rejection of the project at hand is inappropriate and contrary to law.

Finally, the application process and the establishment of the selection criteria for those making an application includes language that is crystal clear, with absolutely no ban on coal or any other hydrocarbon feedstock. Congress simply did not grant the Secretary the authority to impose such a ban. As a result of your misinterpretation of the Act, applicants who may have otherwise been eligible for this program have been wrongfully disqualified.

Please let me know immediately how you intend to rectify this situation and ensure that your agency remains in compliance with the Act as passed by Congress. I am also requesting that you identify the specific statutory text that you believe would allow you to exclude coal as the primary feedstock.

Sincerely,



Harriet M. Hageman
Member of Congress