



VIA E-MAIL

April 13, 2012

California Air Resources Board
1001 I Street, Sacramento
California 95814

Electronic submittal: <http://www.arb.ca.gov/cc/capandtrade/comments.htm>

Re: Comments, Draft Amendments for Linking Cap and Trade Programs

Dear Sir/Madam:

Valero Refining Company – California and Ultramar Inc, (collectively “Valero”) appreciate this opportunity to provide comments regarding the California Air Resources Board (“ARB”) draft amendments for linking California’s and Quebec’s Cap-and Trade Programs, as discussed in the Cap-and Trade workshop held April 9, 2012. Valero owns and operates two refineries in the state of California, with a combined throughput capacity of over 305,000 barrels per day. Valero also refines and markets products on a retail and wholesale basis through an extensive bulk storage and pipeline distribution system, and thus will be impacted by this proposal.

Valero, on behalf of itself and its affiliates, is providing comments specific to the ARB proposal as it relates to:

- 1) The interplay between CEQA and the Cap-and-Trade regulation. Valero has significant concerns regarding the lack of harmonization between CEQA requirements for mitigating GHGs emission, and the use of offsets and/or excess allowances to meet CEQA mitigation requirements. We strongly urge ARB to reconcile the application of CEQA to industries working within the AB32 Cap-and-Trade market-based mechanism.
- 2) Linkage of Cap-and Trade Programs. The lack of a defining set of linking design elements, coupled with the lack of transparency in the WCI process, makes the linking process between jurisdictions a “below the radar” activity in which stakeholders have neither knowledge in, nor input to, the process. Valero requests that ARB allow much greater transparency in this process in order to protect the integrity of the participating programs and allow avenues for stakeholder input.

We elaborate on these points in the discussion below.

1. CEQA and the AB32 Cap-and-Trade Regulation

Valero continues to have significant concerns regarding the interplay between the requirements of CEQA and the AB32 Cap-and-Trade program. The ARB staff presentation from April 9, 2012 discusses, at a very high level, the Environmental Analysis required under CEQA (pages 25-28). While Valero appreciates the acknowledgement from ARB staff that a discussion of CEQA is necessary in light of the goals of Cap-and-Trade, we find the presentation lacking the details necessary to address the fundamental difference in execution between the two programs: namely addressing Environmental Impacts from GHGs. In point of fact, ARB staff stated during the presentation that actions under the Cap-and-Trade are not intended to address CEQA requirements. We find this unwillingness to reconcile these programs in a constructive manner untenable.

We foresee the simultaneously application of Cap-and-Trade and CEQA to specific projects to have the following shortcoming:

- **The use of offsets obviates the need for mitigation under CEQA:** While offsets under AB32 can theoretically be used as a way to satisfy emission increases from a project to the extent that there is no net increase of emission within the trading jurisdictions, GHG offsets are not allowed under CEQA as a mitigation measure. CEQA does not recognize the mitigation of emission on anything but a local scale. This approach will prohibit the use of the vast majority of offsets as they will originate from other areas of the state, or even internationally. Industry will not invest in offsets when a conflicting regulation requires mitigation on a local level. ARB must resolve this conflicting approach to addressing GHG emissions to the extent that offsets purchased under Cap-and-Trade will be a satisfactory mitigation measure under CEQA.
- **Staff's proposal does not allow for Cap and Trade allowances to be used to mitigate GHG emissions under CEQA:** Similar to offsets, the purchasing of allowances beyond what is necessary to cover a project's emissions should be a satisfactory mitigation measure under CEQA. This approach is an indirect way to reduce GHG emission, in that more allowances are purchased than necessary to cover a project's emissions. These extra allowances are essentially unused (they are not used against an actual emission) and thus represent a reduction in emissions from within the cap. As with offsets, ARB must provide for this type of mitigation action to satisfy CEQA.
- **Adequacy of CEQA to address GHGs:** Valero would like to make clear that CEQA is a poorly designed tool to assess and mitigate GHG emissions. CEQA pre-dates the regulation of GHGs and is not designed to address global issues. CEQA's purpose is to allow for review, comment, and potential mitigation on the potential effect projects may have within the State of California. GHGs are globally-distributed substances that require broadly designed programs encompassing whole regions, or in this instance, separate countries. Cap-and-Trade is possible because GHG emissions and/or reduction have the same "impacts" regardless of where they occur.

By contrast, CEQA approaches emission impacts with a very narrow source- and site-specific mind-set. The CEQA approach is in direct conflict with the geographically-broad approach of Cap-and-Trade. The lack of a clear path to resolve this issue casts significant uncertainty on industry's ability to fully participate in the cap and trade

program without simultaneously being penalized under CEQA. The result is a failed market-based approach, supplanted by command-and-control regulations. We strongly urge ARB to reconcile the application of CEQA to industries working within the AB32 Cap-and-Trade market-based mechanism.

2. Program Linkage and WCI, Inc. WCI is a pivotal point in the linkage discussion and we have multiple concerns, including:

- **Linkage Approval:** ARB must identify the specific elements that will be used to harmonize different programs with an understanding that the list of linkage criteria must be small or the process will be unworkable. Lacking these defining elements, ARB appears to be working directly with other jurisdictions to “harmonize” programs. We believe this represents an undue influence of ARB on the rulemaking process of other participating entities, and goes beyond the approval process ARB has outlined. Until the defining elements are determined there is no foundation on which to base our discussions on the linkage approval process. We request that ARB provide such a list so that affected entities will understand the criteria by which ARB is considering linkage to other programs and may provide comments accordingly.
- Valero continues to have serious concerns with the role, and subsequent legal foundations, of WCI Inc., including potential conflicts of interest and potential breach(es) of fiduciary duty. Directors and/or Board members from WCI, Inc. should not have such direct ties to the agency responsible for the regulatory program over which WCI has so much influence, and vice versa for ARB to WCI. The ARB position that “we don’t negotiate the program with other jurisdictions, we negotiate with WCI” is highly questionable when the presiding directors in WCI Inc. have direct control over both the regulatory programs and WCI operation.
- Valero restates its concerns regarding CEQA compliance as it applies to WCI’s role in the trading process and trading program.

Valero strongly urges ARB to consider the issues outlined above and modify the draft amendments accordingly. We hope that ARB can work with us in a manner that is reasonable, technically feasible, cost effective, and considers the practical impact of AB32 on jobs, the economy, and the consumer. Please contact me at (210) 345-4620 should you have any questions or need clarifications concerning our comments.

Sincerely,



Matthew H. Hodges
Director, Regional Environmental and Regulatory Affairs
Corporate Environmental
Valero Companies