



December 15, 2010

California Air Resources Board
Clerk of the Board, Air Resources Board
1001 I Street, Sacramento, California 95814
Submitted electronically to: <http://www.arb.ca.gov/lispub/comm/bclist.php>

RE: California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms

To Whom It May Concern:

The Air Issues and Regulations (AIR) Committee is a coalition of San Francisco Bay Area Publicly Owned Treatment Works (POTWs) working cooperatively to address air quality issues, under the guidance of the Bay Area Clean Water Agencies (BACWA). Many of our member agencies also manage potable water treatment, distribution systems, wastewater treatment, and biosolids residual programs. The AIR Committee has 18 member agencies, including large metropolitan facilities such as East Bay Municipal Utility District, Union Sanitary District, Central Contra Costa Sanitary District, and the City of San Jose. Together, AIR Committee member agencies treat over ninety percent of the municipal wastewater in the Bay Area and BACWA's overall membership includes agencies that provide sanitary sewer services to the more than seven million people living in the nine county San Francisco Bay Area.

The BACWA AIR Committee's primary comments are as follows:

- We support modifications to the language in § 95852.2 that clarify staff's intent with respect to biomass sources without a compliance obligation.
- We support ARB's intent to develop its own offset protocols through a public process and discourage reliance on Climate Action Reserve protocols.
- We encourage use of allowance value to incentivize efficient combined heat and power (CHP).
- We suggest that following adoption of this regulation, the ARB direct staff to continue to work with local government stakeholders including the wastewater treatment community regarding full exemption from the regulation.

Additional detail on these comments is provided below.

We support modifications to the language in § 95852.2 that clarify staff's intent with respect to biomass sources without a compliance obligation.

Following the release of the draft regulation for adoption, we would like to address the language on emissions without a compliance obligation. We are greatly concerned that the language proposed in the draft is confusing and not consistent with staff's intent to exclude emissions of biogas, including digester gas from wastewater treatment, from compliance obligations. We strongly support the following changes to that section:

- (a) Combustion emissions from biomass-derived fuels (~~except biogas from digesters~~) from the following sources:

- ...
- (e) Biomethane *and biogas* from the following sources:
- (1) All animal and other organic waste; or
 - (2) Landfills ~~gas~~ and wastewater treatment.
- (f) Fugitive and process emissions from:
- (1) CO₂ emissions from geothermal generating units;
 - (2) CO₂ and CH₄ emissions from geothermal facilities;
 - (3) CO₂ emissions from hydrogen fuel cells;
 - (4) At petroleum refineries: asphalt blowing operations, equipment leaks, storage tanks, and loading operations;
 - (5) At the facility types listed in section 95101(e) of the Mandatory Reporting Regulation, Petroleum and Natural Gas Systems: leak detection and leaker emission factors, and stationary fugitive and "stationary vented" sources on offshore oil platforms; or
 - (6) Methane from landfills.
 - (7) Methane and N₂O from municipal wastewater treatment plants.

We support ARB's intent to develop its own offset protocols through a public process and discourage reliance on Climate Action Reserve protocols.

We support ARB's intent to develop new offset protocols through a public process involving stakeholder engagement. Because the Climate Action Reserve (CAR) has the ability to select members for its protocol development working groups, we do not believe that their process is equivalent to a stakeholder process that would be undertaken by ARB. In several instances, we have been excluded from these working groups and our stakeholder input has therefore not been considered. In light of these concerns, we strongly caution ARB against adopting CAR protocols without opening them up to a full new stakeholder process, and we encourage development of new ARB protocols instead.

We encourage use of allowance value to incentivize efficient CHP.

The AB 32 Scoping Plan calls for the state to increase CHP energy generation by 30,000 GWh, yet the cap and trade regulation provides no incentives for development or expansion of CHP. In fact, the threat of creating a cap and trade compliance obligation is likely to discourage facilities including wastewater treatment plants from installing or expanding efficient CHP systems. We therefore encourage ARB to direct some portion of allowance value to development of a program that incentivizes CHP.

We suggest that following adoption of this regulation, the ARB direct staff to continue to work with local government stakeholders including the wastewater treatment community regarding full exemption from the regulation.

We believe that local government agencies such as wastewater treatment facilities should be exempted from compliance obligations under the cap and trade program. While wastewater facilities currently fall under the compliance threshold due to the exclusion of biomass emissions (assuming the changes recommended above are made), we are concerned that changes to plant operations, calculation methodologies, covered sectors under EPA's mandatory reporting rule (which ARB is aligning with in its mandatory reporting rule), thresholds, or other unforeseen conditions have the potential to bring wastewater treatment agencies into the cap in the future. Rather than waiting for these changes to occur, we request that staff continue to consider solutions including an exemption.

Wastewater treatment is a necessary service, and emissions associated with wastewater would happen whether or not our facilities are present. We cannot control the quantity or quality of our inflow nor the water quality requirements placed on our effluent, which drive the treatment methods selected. Therefore, we cannot control our emissions, and because we cannot move, we do not present any leakage

risk. As public agencies, we have very specific procurement rules and lengthy budgeting processes, and we cannot adapt to market conditions sufficiently to ensure compliance at a reasonable cost in a market-based system. Finally, we cannot pass compliance costs on to customers due to the public processes associated with our rate-setting. For these reasons, we believe an exemption from compliance obligations is appropriate and we would like to work with staff toward this end.

Thank you for your consideration. Please contact me if you have any questions at (925) 229-7333 or rschmidt@centralsan.dst.ca.us or Jim Sandoval at (510) 610-9301 or jim.sandoval@ch2m.com.

Sincerely,

A handwritten signature in cursive script that reads "James Sandoval".

James Sandoval on behalf of Randy Schmidt
BACWA AIR Committee Co-Chair
Central Contra Costa Sanitary District

Cc:

Amy Chastain, Executive Director of BACWA

Stephanie Cheng, BACWA AIR Chair