



VIA E-MAIL

August 11, 2011

Clerk of the Board
California Air Resources Board
1001 I Street, Sacramento
California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Re: Comments, Proposed Changes to the Greenhouse Gas Cap-and-Trade Regulations, 15-Day Rulemaking Package

Dear Sir/Madam:

Valero Refining Company – California and Ultramar Inc. (collectively “Valero”) appreciate this opportunity to provide comments regarding the California Air Resources Board (“CARB”) proposed changes to the Greenhouse Gas Cap-and-Trade Regulations, as posted for public comment on July 25, 2011. Valero owns and operates two refineries in the State of California, with a combined throughput capacity of over 305,000 barrels per day. Valero refines and markets products on a retail and wholesale basis through an extensive bulk storage and pipeline distribution system. Additionally, Valero’s affiliates own and operate one of the nation’s largest retail operations, which have a significant presence in California, as well as 37 other states. Valero, on behalf of itself and its affiliates, is providing the following comments and concerns regarding the above referenced revisions. Additionally, to the extent that CARB pursues a Cap-and-Trade program under AB32, Valero herein adopts by reference the comments on the Cap-and-Trade regulation submitted by the AB32 Implementation Group and the California Manufacturers and Technology Association (CMTA).

1. Transportation fuels should not be subject to the Cap-and-Trade Program

The inclusion of transportation fuels under the Cap-and-Trade program will have profound financial impact on the State of California. As one of the single largest forms of energy subject to Cap-and-Trade, the refining industry will purchase billions of dollars of allowances to cover fuel emissions. The consumer will bear this steep financial penalty while the State will recover these funds and reap the benefits. The goal of reducing GHG emissions will only manifest itself through reduced fuel consumption brought about by price increases – a result no different than applying carbon taxes. We strongly urge CARB to abandon this approach of regulating transportation fuel GHG emissions. To the extent that CARB continues to treat transportation fuels as part of the carbon management portfolio, we request that CARB more fully consider a carbon tax on fuels as this market mechanism will eliminate much of the complexity, variability, and bureaucracy that accompany a Cap-and-Trade program.

2. **The proposed regulation does not provide sufficient detail regarding how elements of the program would be managed, documented or achieved.**

CARB is taking a piecemeal approach to regulation. The draft revisions assume that elements of the program will be developed at some point in the future to support the requirements of the regulation. For example:

- CARB states in the Section H of the Summary of Proposed Modifications, “Modifications to section 95820”, that Section 95820(a)(3) was modified to remove the requirement for the Executive Officer to place allowances into a holding account within 15 days of the effective date of the regulation as it is unlikely there will be a system with a holding account available within 15 days to meet this requirement. This highlights the fact that CARB is intent on promulgating a regulation that doesn’t have all the necessary support elements in place to effectively support what CARB is hoping to achieve.
- New section 95858, “Compliance Obligation for Under-Reporting in a Previous Compliance Period”, was added to address cases when the Executive Officer finds there has been under-reporting by an entity after it has submitted compliance instruments to meet its compliance obligation. CARB states that these provisions are necessary so entities with a compliance obligation know what action the Executive Officer will take in the event they are found to have under-reported their emissions. However, the language included in Section 95856 states that the Executive Officer can determine through an audit or other information that an entity has under-reported its emissions. This lacks sufficient definition to ensure a regulated entity understands what information the Executive Officer will be basing their determination on to be able to conduct effective self audits for the purpose of compliance demonstration.
- Section 95892(a) was added to explicitly state CARB’s intent that allowances allocated to electrical distribution utilities are to be used for ratepayer benefit, and any proceeds from the sale of allowances be similarly used for ultimate ratepayer benefit. The regulation does not provide detail for how this would be managed to ensure there is a ratepayer benefit.
- In general, the proposed regulation assumes a system exists that would enable allowances to be auctioned, banked and traded, yet no system has been identified by CARB that would ensure the program is administered efficiently and accurately to protect the assets of the seller or buyer of credits. CARB staff suggests throughout the proposed standard that buyers can be protected from bad credits through due diligence, the use of trained verifiers, or through the use of conveyance contracts. Although these measures may help protect the parties, they cannot be relied upon to protect the interests of the buyer and the needs of the market.

3. **CARB appears to be operating under the assumption that a cap-and-trade program is a foregone conclusion.**

It is presumptuous of CARB to continue development of a cap-and-trade regulation when the alternatives discussed in the Supplement to the AB32 Scoping Plan Functional Equivalent Document (FED) have not been fully vetted. With the FED public comment period closing on July 28, 2011, CARB has not had sufficient time to consider all comments and respond appropriately. From a general perspective, the FED was a hastily prepared document lacking in critical details that draws upon a foregone conclusion that California must have a cap-and-trade regulation to meet the goals of AB32. Resolution 10-42 (approved at a December 16,

2010 Board Hearing to consider adoption of the proposed cap-and-trade program), requires the Executive Officer to report on the progress being made on implementing the cap-and-trade program, *provided the cap-and-trade program is approved*. In the absence of a complete review of comments submitted in response to the FED and making a formal determination that other alternatives are not feasible or appropriate, it appears premature to continue the cap-and-trade rulemaking process.

4. **The Aviation Gasoline definition in Section 95802(a)(22) references the incorrect ASTM specification.**

Section 95802(a)(22) references ASTM D910-07a. The current ASTM Standard Specification for Aviation Gasolines is ASTM D910-11.

5. **The basis for the \$10 California GHG allowance auction reserve price in Section 95911 is not defined.**

The \$10 California GHG auction reserve price has no basis. ARB should provide the rationale for how the \$10 price was determined. If ARB is interested in a true market-driven system, the open market should determine the allowance price.

6. **Registration with ARB should remain at 45 calendar days.**

Section 95830 proposes to reduce the registration period with ARB from 45 calendar days to 30 calendar days because ARB believes this provides enough time to submit all the information needed to register. The registration time frame should remain at 45 calendar days since the program is new and unproven, and internal company reviews could take longer than the proposed 30 calendar days to ensure the accuracy and completeness of submittals.

7. **Certifications required under Sections 95832 and 95981 should be consistent with certifications made under Federal Clean Air Act (CAA) programs.**

Certifications currently state, "I certify under penalty of perjury under the laws of the State of California... is true, accurate, and complete." To be consistent with certifications made under the CAA for other programs, the language should be modified to state, "I certify under penalty of perjury under the laws of the State of California... is, *to the best of my knowledge*, true, accurate, and complete."

8. **The first year compliance budget should be adjusted to reflect the exclusion of 2012 from the first compliance period.**

The 2013 first year compliance budget should be 165.8 million allowances. By reducing the year one compliance budget to 162.8 million allowances, ARB is essentially requiring reductions of 3.0 million allowances prior to the new compliance obligation start date. Under the summary of proposed modifications, ARB is requesting comment on which program elements should begin in 2012 and what advantages there are to phasing in various components during 2012. Since Section 95840 proposes the extension of the first compliance period start date, the associated compliance budget should be adjusted to accurately reflect this delay.

9. **The WSPA proposed EII benchmarking method should be chosen by ARB as it reflects energy efficiency and is fair and equal to all refiners.**

The simple barrel method should not be chosen as the benchmark methodology as it penalizes complex refineries. For instance, simple bbls favors refineries without hydrogen plants that purchase merchant hydrogen and penalizes refineries that have their own hydrogen plant. Refineries with cogeneration units that produce excess electricity are also penalized over refineries that do not have cogeneration units. The simple barrel method does not reflect the energy efficiency of a refinery - just the amount of energy it uses, and allocating allowances in this manner can have unintended consequences. If ARB does not select the WSPA proposed EII method then it should adopt grandfathering as it will treat refiners more equitably by not picking winners and losers. We highly recommend that CARB reexamine the basis for refinery allocation.

10. CARB must encourage the offset market to ensure adequate availability and reduce program costs.

The offset market will be a key component of the State's carbon management strategy. However, the lack of approved protocols, coupled with the new stringent liability restrictions that CARB has proposed, will stifle this market to the extent that its function as a "cost containment measure" will be meaningless. We urge CARB to reduce the self-imposed barriers to this environmentally-beneficial mechanism by approving more protocols, eliminating the buyer-liability component, and allowing greater than 8% of a sources' allowance obligation to be met through the use of offsets.

Valero strongly urges ARB to complete the regulatory development process prior to adoption, including full consideration of comments and alternatives presented in the FED, so that all impacts can be thoroughly reviewed as an entire package by the impacted parties. Valero believes that, if ARB presents a complete regulatory package, the impact to the economy, industry and consumers would be minimized. We also urge ARB to ensure that the infrastructure and programs necessary to support the objectives and requirements of a cap-and-trade program are fully developed before adopting a final rule. On behalf of Valero and its affiliates, please contact me at (210) 345-2120 should you have any questions or need clarifications concerning our comments.

Sincerely,



For;

Patrick Covert

Executive Director, Regional Environmental and Regulatory Affairs

Corporate Environmental

Valero Companies