



AB 32 Implementation Group

Working Toward Greenhouse Gas Emission Reductions
And Enhancing California's Competitiveness

To: Mary Nichols, Chairman, California Air Resources Board
Board Members, California Air Resources Board

Fr: AB 32 Implementation Group

Date: December 9, 2010

Re: AB 32 Implementation Group: Comments on Cap-and-Trade Regulation

The AB 32 Implementation Group is a coalition of business and taxpayer groups working for effective implementation of AB 32. Our goal, has been, and continues to be to serve as a constructive voice in the implementation of AB 32 and ensure that the greenhouse gas emission reductions required by the statute are achieved while maintaining the competitiveness of California businesses and protecting the interests of consumers and workers.

As we have commented before, we agree that market mechanisms such as cap-and-trade can be employed to reduce the costs of achieving greenhouse gas emissions reductions under AB 32. Providing flexible options for compliance is crucial for companies that have limited ability to make onsite reductions, desire to expand their operations in California, or have a capital investment cycle that would not necessarily be synchronized with demands of a command-and-control type regulation.

However, we are very concerned about the proposed regulation because of the limited participation by other jurisdictions including those in the Western Climate Initiative and the dim prospect of a federal cap-and-trade program anytime on the horizon. This poses huge risks of harm to jobs and the California economy due to economic leakage, and the associated greenhouse gas emissions leakage would undermine integrity of the program. As noted in our comments below, we believe that many proposed elements of the program would unnecessarily exacerbate this risk and CARB should be taking a different approach given the limited linkage to competing jurisdictions.

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Auctions vs. Allowances

CARB staff proposes that free allowances in the first compliance period be followed by auctions in the second and third, with specific recommendations on percentage allowance allocations based on assigned leakage risks.

An auction scheme for allowances will impose very high costs on the public agencies and companies subject to the program. For this and other reasons we have vigorously opposed any immediate auction for the first compliance period, and we have the same objection about later compliance periods if California has not by then transitioned to a comprehensive national program with similar costs imposed on competitor states and nations.

Therefore, unless and until California is part of a broad national program with similar allowance allocation requirements, we support only free allowance distribution for all sectors for each compliance period up to 2020.

AB 32 Revenue

We believe CARB has no current authority, under AB 32 or otherwise, to raise revenue for purposes unrelated to administration of the AB 32 program. CARB has not shown in the statement of reasons that an auction to raise revenue is necessary for, or limited to, administration of the program. In fact, CARB staff suggests that the legislature appropriate auction revenues for very broad purposes related to other purposes including technology development, community benefit, and workforce training, for example. In our view this exaction is not only unauthorized by AB 32, but it is also a tax that will require 2/3 vote of the legislature.

Impose no limits on use of qualified offsets

Because California has embraced energy efficiency for many decades, many, if not most, industrial facilities are much more energy-efficient than their national counterparts.

As a result, for most companies in California that may be covered by the cap-and-trade program, the “low-hanging energy-efficiency fruit” has already been picked. As you can readily conclude, this history of energy-efficiency makes opportunities for on-site reductions very rare.

Hence, we are very disappointed that the cap-and-trade program will proceed with so few approved protocols for offsets. We are glad that CARB has recognized the value of offsets as both a cost-control mechanism and a way to advance the goals of emission reductions. And, we appreciate that CARB staff has increased the ability to use offsets from 4% up to 8% of the compliance obligation. However, this expansion is likely still too small to accommodate the needs of a growing California economy.

We recommend that ARB set no limit on the use of qualified offsets. We offer this recommendation because the stringent offset qualification rules and the need for CARB approval of any offset protocol will ensure only the best projects are approved, and the process could constrain the availability of offsets in any event. Further, since CARB has assured quality offsets through stringent offset qualification rules and third party verification, it is redundant, and unreasonably onerous for the entity holding the offset credit to be responsible for it being real, permanent, etc. It seems clear that we shouldn't impose artificial constraints on the offset market that could provide such great benefits to the state and the environment.

Complete technical details in a timely manner

We are concerned that CARB has not yet been able to confidently propose the myriad of details required to understand and implement the cap-and-trade program. Many of the tools, provisions, and methods still being developed by CARB will provide crucial information for companies planning for future operations, capital projects, supply and distribution, etc. There is no indication that the information will be forthcoming in advance of the last quarter of 2011, mere months before start of the market in 2012.

The 15-day update process to fill-in these blanks will be developed with staff and the full implications of all the decisions will not be knowable until very late in the year. We are concerned that the public will not have a meaningful opportunity to comment on the total impact of all allocation decisions prior to market opening in 2012.

For this reason, we recommend that CARB resolve to require staff to provide the Board and the public a report on the progress toward establishing benchmarks by April 30, for review by the CARB Board at the May meeting, with a target to have final determination on benchmark methodologies, procedures needed and documentation requirements no later than June 30, 2011.

Require CARB staff to develop program-monitoring tools by July 1, 2011

CARB staff has committed to monitoring emissions, the economy, and leakage, and to make necessary adjustments to program elements. Yet up to this time, staff, provides too little detail about how this important function will be accomplished and incorporated into the program. Public confidence that cap-and-trade will maximize cost-effectiveness and minimize leakage, as required by AB 32, will not be promoted by a function that comes into play only after damage has occurred. We should be able to anticipate problems with sensitive tools that will track and measure important indicators. These need to be in place and well-understood prior to the start of the program. We recommend that CARB develop these processes by July 1, 2011.

Coordinate with federal climate policies

California companies are faced with state, local and federal requirements for air emissions that threaten to conflict, duplicate, or otherwise increase costs above that necessary to achieve our individual and collective policy goals. The current political and legal situation is confusing and entities are struggling to predict and plan for what may be coming down in the next years. A policy statement from CARB that recognizes the situation and puts a high priority on addressing these questions to protect the California economy would be welcome and provide some confidence that CARB will not proceed in a manner that puts California at risk. CARB should resolve to modify the timeline, content, and implementation strategy of the state cap-and-trade program to avoid these excess costs and burdens.

Thank you for considering these comments