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January 16, 2009

*By E-Mail*

The Honorable Mary D. Nichols  
Chairman, California Air Resources Board  
1001 I Street  
Sacramento California 95812

Re: *Comments on Recommended Approaches for Setting Interim  
Significance Thresholds for Greenhouse Gases Under CEQA*

Dear Madam Chair:

As the California Air Resources Board (CARB) considers adoption of interim significance criteria for greenhouse gas emissions (GHGs) under the California Environmental Quality Act (CEQA), please consider making clear that:

- (1) the proposal is both advisory and interim in nature;
- (2) state and local lead agencies may use alternate significance criteria for GHGs, provided the criteria is based, to the extent possible, on scientific and factual data and supported by substantial evidence (Cal.Code Regs., tit. 14, §15064, subd. (b));
- (3) alternate significance criteria for GHGs are particularly appropriate, if supported by substantial evidence, for projects already in the planning and environmental review process (*i.e.*, pipeline projects);
- (4) nothing in CARB's interim significance criteria for GHGs is intended to constitute "significant new information," as that term is defined under CEQA for an EIR prior to certification (see Cal.Code Regs., tit. 14, §15088.5); and
- (5) CARB's interim significance criteria for GHGs are not intended to trigger any recirculation requirements of an EIR or negative declaration under CEQA, provided that the project EIR or negative declaration analyzes GHGs and utilizes significance criteria supported by substantial evidence.

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It is important that CARB be explicit with respect to each of the above issues in adopting any interim GHG significance criteria to ensure that it does not compromise the discretion of lead agencies, granted under CEQA, to craft their own significance criteria if supported by substantial evidence. The import of preserving this discretion recently was acknowledged by the Office of Planning and Research in the introductory materials to the proposed amendments to the CEQA Guidelines.

Furthermore, for CARB to issue GHG significance criteria under CEQA without explicitly acknowledging its advisory nature and the discretion of lead agencies to rely on alternative significance criteria for pipeline projects will create significant hardships. At the present time, there are numerous projects currently undergoing planning and environmental review, and those projects are attempting to comply with the emerging regulatory setting associated with global climate change issues. The environmental analysis for pipeline projects must be allowed to go forward based on alternative GHG significance criteria, provided they are supported by substantial evidence; otherwise, such projects may well be forced to reevaluate and perhaps repeat the planning and environmental review process already undertaken for the project. Given the current condition of California's economy, we cannot needlessly open up pipeline projects that have already complied with valid CEQA significance criteria to unnecessary litigation risk, just because CARB has issued guidance in this area.

In addition, we ask that CARB clarify whether it is intending to adopt GHG "thresholds of significance," consistent with the procedure mandated by section 15064.7, subd. (b), of the CEQA Guidelines.

Thank you for your consideration of the above comments. Please add this firm to your mailing list with respect to CARB's ongoing GHG process. The appropriate contacts are Mark J. Dillon ([mdillon@gdandb.com](mailto:mdillon@gdandb.com)) and Danielle K. Morone ([dmorone@gdandb.com](mailto:dmorone@gdandb.com)).

Very truly yours,

*/s/ Mark J. Dillon*

Mark J. Dillon  
of  
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MJD/tek