BP America, Inc.

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Via Email
Rajinder Sahota
California Air Resources Board
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Subject: CARB Cap and Trade Proposed Regulatory Amendments

Dear Rajinder:

BP America, Inc. submits these comments on the "Discussion Draft - Potential Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms", dated January 31, 2014. We appreciate staff's efforts to reach out to stakeholders in advance of the formal rulemaking and have benefited from discussions with staff. We do believe that important issues remain to be resolved that would allow the cap and trade to function efficiently and without unnecessary burden to regulated entities - while minimizing the potential for fraud.

Disclosure of Corporate Associations – Sections 95830, 95833 and 95912
BP understands the need for CARB to be aware of and track corporate associations for those participating in the state's cap-and-trade program. However, under the currently proposed rule, the requirement that a company lists all of its corporate associations, regardless of whether those corporate associations have ever participated in the cap-and-trade program, is onerous and unnecessary to the proper functioning of the program. We are disappointed that the potential regulatory amendments have not addressed the legitimate concerns raised by BP and other stakeholders.

BP, as one of the largest and most diverse corporations in the world, has thousands of ever-changing corporate associations across the globe that would fall under the overly broad reach of the proposed regulation. The vast majority of these corporate associations – whether they are a wind farm in Texas, a refinery in Ohio or Australia, or a pipeline in Azerbaijan - are not even remotely related to or impacted by BP's transactions in CARB's cap and trade program. The amendments in the ISOR, and unchanged in these potential amendments, significantly broaden reasonable reporting requirements by removing the language in 95830 (c)(1)(H) which limited reporting to associations with entities *registered*

pursuant to this article and by adding language in 95833 (a)(1) which requires reporting of these associations regardless of whether second entity is subject to the requirements of this article.

Our understanding of staff's concerns that prompted these changes is that apparently some regulated entities were not reporting these associations even under the previous, more limited language. Staff are apparently also concerned about associations that may involve entities operating outside of California in linked programs. With regard to the former concern, if entities are not complying because they are uncertain of the requirements, then staff should focus and clarify the requirements – not significantly broaden them. If some entities are willfully not complying, it is appropriate enforcement - and not overly broad regulatory language that unreasonably impacts all regulated entities - that staff should pursue.

The broader requirement (which also relies upon entities to properly report) would put a significant burden on both regulated entities and on CARB staff. Instead of being alerted to associations between entities who are involved in the California cap and trade program, staff would be inundated with tens of thousands of (mostly inconsequential) associations with the burden of then attempting to cross reference these associations in search of a potential violation.

On the issue of linked programs, we suggest that the regulation simply include a requirement to list corporate associations with entities registered in a linked program.

Furthermore, the regulation includes a requirement that registrants update registration information within 30 working days of any change. This would mean that BP would be required to notify CARB within 30 days of a change within any one of thousands of corporate association around the globe. We are simply not set up as a corporation to provide internal let alone external notification of such changes within this sort of timeframe. Thirty days notification is a reasonable requirement when the reporting of associations is limited to entities registered in the California program – or within linked programs. It is a wholly unreasonable requirement when it applies to thousands of associations around the globe with no relationship to the California program.

Moreover, additional, significant and unreasonable impact could occur when these changes are coupled with additions to subsection 95912(d)(5) which now reads: *An entity with any changes to the auction application information listed in subsection 95912(d)(4) within 30 days prior to an auction, or an entity whose auction application information or account application information listed in section 95830 will change within 15 days after an auction, may be denied participation in the auction.* BP routinely buys and sells business lines in response to changes in the prospects of particular products or markets around the world. When combined, these new changes mean that if BP buys or sells an entity, changes a corporate association anywhere in the world, or has a personnel change within 30 days prior to or 15 days after an auction, regardless of whether that associated entity has any involvement in the California cap and trade program – BP, a regulated entity with a large compliance obligation, may be denied participation in the auction. This is simply unreasonable by any standard.

BP strongly recommends that the proposed language removed from 95830 (c)(1)(H) (*registered pursuant to this article)* be restored and that the added language in section 95833 (a)(1) which requires reporting of these associations *regardless of whether second entity is subject to the requirements of this article* – be removed - with the result being that reporting of associations is only required when those associated entities are participating in the California cap and trade program and/or a program linked with the California program. If necessary, the regulation should seek to clarify these requirements rather than broaden them. Making these recommended changes will make the requirement manageable for the large corporate entities who would be most affected by this change. With these recommended changes, the required 30 day notification of changes in corporate associations, as well as the potential denial of auction participation for changes in these associations in proximity to an auction, also become more manageable. As previously stated, we suggest that the regulation include a requirement to report associations with entities registered in linked programs. These changes will also make clearer where and when a potential willful violation has occurred – and proper enforcement actions that deter future violations can occur. Without these suggested changes, it is virtually certain that there will be hundreds or thousands of instances of inadvertent and inconsequential violations – with staff having to sift through these violations to determine which had an impact on the program and/or warrant enforcement. We believe it is clear that without these recommended changes, the regulation will be needlessly burdensome and problematic for both staff and regulated entities and will cause unintended consequences for regulated entities who are attempting to act in good faith.

Reporting of Individuals – Section 95830(c)1(I)

It is our understanding that staff desires to capture only those individuals who are familiar with the entity's market position. We suggest the following language which would provide that information while minimizing the reporting burden on regulated entities:

> (*I) Names and contact information for all persons employed by the entity ~~in a capacity giving them access to information on compliance instrument transactions or holdings, or involving them in decisions on compliance instrument transactions or holdings~~ who have clearance from the entity to approve~~,~~ <u>or</u> initiate~~, or review~~ transaction agreements, transfer requests, or account balances involving compliance instruments in the Cap-and-Trade Program or any External GHG ETS linked pursuant to subarticle 12.*

Auction Administration and Participation Application – Section 95912

Language in Section 95912(4)(E), added in a previous regulatory amendment but unchanged despite the concerns raised by BP and others, includes a requirement that entities who desire to participate in an auction provide *An attestation disclosing the existence and status of any ongoing investigation or an investigation that has occurred within the last ten years with respect to any alleged violation of any rule, regulation, or law associated with any commodity, securities, or financial market for the entity participating in the auction, and all other entities with whom the entity has a corporate association, direct corporate association, or indirect corporate association pursuant to section 95833. The attestation must be updated to reflect any change in the status of an investigation that has occurred since the most recent auction application attestation was submitted;*

When considered in light of the previously addressed issues on what may be thousands of corporate associations for large corporations such as BP, this requirement is wholly unworkable and would preclude many, if not most, large regulated entities from participating in auctions.

Virtually all large entities that have participated in commodities, securities or financial markets with millions of transactions across the globe are likely to have been subject to investigation for alleged violations. When combined with the regulation's requirement that the attestation also applies to what may be thousands of corporate associations, there will be virtually no way to track or report investigations that may have occurred in the distant past, perhaps before the entities were associated - with associations that may take place with entities all over the world.

BP strongly suggests that this section of the regulation apply only to ongoing investigations involving the entity participating in the auction, and not to a broad range of unrelated corporate associations, (i.e. removing the language in 95912(d)(4)(E) which reads *and all other entities with whom the entity has a corporate association, direct corporate association, or indirect corporate association pursuant to section 95833*).

Prohibitions on Trading – Section 95921(f)

We share staff's desire to avoid market manipulation that could result from one entity inappropriately holding allowances for another entity. However, in discussions with staff, it is our understanding that this prohibition is not intended to apply to associated entities who properly report their association and who are therefore subject to a single holding limit. The current language could be amended to more clearly identify what is prohibited and what is allowed. More specifically, the language which allows for holding of allowances by/for associated entities in (f)1(C) currently resides under "restrictions" on holding allowances. The language should be amended to make clear that (f)1(A) does not supersede or override (f)1(C). An example of such an amendment is below:

(1) The ability for one entity to acquire allowances and hold them in its own holding account on behalf of another entity are limited as following:
   (A) An entity may not hold allowances in which a second entity has any ownership or financial interest unless the second entity is disclosed as a corporate association under section 95833 or unless that second entity is an affiliated entity which is not a covered entity and/or not qualified to be an opt-in covered entity or voluntarily associated entity.
   (B) An entity may not hold allowances pursuant to an agreement that gives a second entity control over the holding or planned disposition of allowances while the ~~instruments~~ allowances reside in the first entity's accounts, or control over the acquisition of allowances by the first entity. These prohibitions do not apply to agreements that only specify a date to deliver a specified quantity of allowances and that include no terms applying to allowances residing in another entity's account or to holding of allowances by or for corporate associations disclosed in section 95833 or to an affiliated entity which is not a covered entity and/or qualified to be an opt-in covered entity or voluntarily associated entity.

Application of Offset Quantitative Usage Limits – Section 95856(h)
BP appreciates staff's efforts to allow for needed flexibility in the use of offsets by applying offset quantitative limits only at the time of triennial surrender, and not at annual surrender. BP strongly supports this approach and believes that it allows for the most cost effective compliance by allowing the full cost control potential of the limited use of offsets to be realized, while also acknowledging the nascent state of the offset market.

As staff is well aware, offsets play a vital role in cost containment for the cap and trade program – while maintaining the environmental integrity of the environmental goal. The use of offsets also serves to create a class of carbon-reduction entrepreneurs who would otherwise not be engaged in helping to address climate change. While staff is no doubt aware that BP we would like to see the offset limit raised, until that time it is important that the limited quantity of offsets able to be used are capable of providing their full impact and benefit. Flexibility as to when the total allowed offsets for the compliance period can be surrendered is key to achieving the full benefits of the limited use of offsets.

While the offset market continues to develop, we can foresee situations where a transient lack of offset availability makes it difficult for regulated entities to use up their full quota of offsets at particular surrender dates. The rule's current flexibility would allow regulated entities to make up for an inability to use sufficient offset volumes in past compliance years (within a full compliance period). Flexibility in the application of the quantitative limit maintains integrity of the cap while allowing for greater use of offsets in situations where there may be temporary allowance spikes or liquidity problems – so long as the 8% offset limit is maintained at the triennial surrender.

All these outcomes will allow for smoother, lower compliance costs, help businesses and consumers, contribute to the longer term sustainability of the program, and allow deeper emission reductions to be sought. BP, therefore, fully supports the application of the 8% quantitative limit on the use of offsets only at the triennial compliance surrender.

Please don't hesitate to contact me should you have questions regarding this correspondence.

Sincerely,

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Sr. Director, Governmenta & Public Affairs
BP America, Inc.

cc (via email): Richard Corey
Edie Chang
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