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 Proposed Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms as contained in the Initial Statement of Reasons (ISOR) released September 4, 2013.

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 proposed changes to the 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.

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 significantly broaden current and reasonable reporting requirements by removing the language in 95830 (c) (H) which limited reporting to associations with entities *registered pursuant to this article* and by adding language in 95833 (a) 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 are not reporting these associations even under the current, 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.

To make matters worse, the regulation includes a requirement that registrants update registration information within 10 working days of any change. This would mean that BP would be required to notify CARB within 10 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. Ten 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) or account information listed in Section 95830 within 30 days prior to an auction, or an entity whose auction application information will change 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, or changes a corporate association anywhere in the world 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) (H) (*registered pursuant to this article)* be restored and that the added language in section 95833 (a) 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 10 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.

Disclosure of Individuals – Section 95830

BP is concerned with new language in Section 95830(c)(I) requiring reporting of names and contract 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*. This requirement is overly broad, without thresholds or limitations, onerous, unworkable, many times unknowable, and unnecessary in order to address concerns that staff may have.

Our understanding of staff's concerns prompting this new language is that individuals, or family members of individuals, who may be employed by a registered entity are registering as individuals in order to trade for personal gain. We share staff's concern here. That is why BP has a policy that prohibits its employees and their family members from trading products in personal accounts that the company trades or originates as part of its business lines.

As currently drafted this requirement would create significant administrative burden and compliance risk - especially for large corporations where literally hundreds of people could have knowledge of, access to, or input to information or decisions regarding these issues. A hallway conversation, access to a briefing memo, or participation in an unrelated meeting where these issues were nonetheless discussed are just a few of the ways where the number of employees that fall under this overly broad language would spiral – and knowing or tracking the reporting requirements would be unmanageable by a large corporation. This unmanageability creates compliance risks for large entities.

BP therefore recommends that the Regulation narrow the proposed language to identify employees who have delegated authority to commit the company to purchases and sales of compliance instruments and who have access to the entity's CITSS account. Further, the regulation should require an attestation by individuals who seek to register, that they or their family members are not employees of a registered entity. We believe this, along with the requirement for a letter from the employer for individuals who are employed by a regulated entity should be sufficient.

Auction Administration and Participation Application – Section 95912
New language in Section 95912(4)(E) adds a requirement that entities who desire to participate in an auction provide *an attestation that 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, has not been subject to any previous or ongoing investigation with respect to any alleged violation of any rule, regulation, or law associated with any commodity, securities or financial market, including a change in the status of an ongoing investigation.* 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. The current language contains no threshold or time limit on investigations. 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 at <u>any</u> time in the past with associations that may take place with entities all over the world – let alone allow attestation that no investigation has occurred - ever.

It is our understanding that it is not staff's intention that an inability to provide the attestation would result in a prohibition from participation in an auction. However, the regulation clearly does not reflect this intention.

BP strongly suggests that 1) 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*) and 2) the regulation requires simply that the entity planning to participate in the auction disclose all ongoing investigations, and not provide an attestation that no investigation has ever occurred.

Prohibitions on Trading – Section 95921(f)
We share staff's desire to avoid market manipulation but believe the language in this section addressing acquiring or holding of allowances is too broad and can result in unnecessary restrictions for very valid cases of an entity holding allowances for an affiliated entity.

To address these concerns, we suggest the following language changes:

(1) <u>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</u>:
   (A) An entity may not hold allowances in which a second entity has any ownership or financial interest <u>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</u>

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.

Cost Containment

We believe the current proposed regulatory amendments on cost containment do not go far enough in that they do not bring additional compliance instruments into the market. The proposed method for cost containment may be able to address limited, temporary price spikes, but will not address the more concerning and damaging structural or persistent high allowance costs in the cap and trade program. Moreover, to the extent the proposal for cost containment *can* address short term price spikes, it does so in a way that creates greater scarcity of allowances in future compliance years – increasing the potential for future price spikes – without addressing fundamental flaws in the cap and trade program design.

We believe that staff's consideration of adequate cost containment design measures presents an opportunity to improve the program for the long haul, make it more sustainable, and provide leadership in tackling climate change around the globe. We believe strongly that the right cost containment measures can and should avoid having problems occur in the first place – rather than simply attempting to address a problem once it has occurred. The Allowance Price Containment Reserve (APCR) was designed as a price cap. Cost *containment* design measures are very different than a price cap – and these two very different design elements should not be conflated. There is no reason or need to allow allowances prices to spike to the highest APCR tier when there are actions that staff can take now to avoid or greatly minimize the potential for this outcome and that also improve the sustainability of the program.

Cost containment measures that suggest re-filling the APCR, without addressing fundamental design flaws in the program are short sighted and fundamentally flawed because they allow prices to run up before any additional cost containment measures are able to take effect. This will allow needless and avoidable impact to be felt by consumers, industry and the state's economy. It is very likely that if the program gets to the point where the APCR is exhausted – or nearly exhausted – turmoil in the allowance and energy markets, and a consumer backlash, will result in swift action by the Governor or the Legislature with CARB losing control of the solution. Moreover, affected businesses dislocated by both the direct and indirect costs of high allowance and energy costs may be forced to make decisions to reduce, curtail or relocate production before prices reach the level of the highest APCR tier.

So while potential action taken by the Governor or the Legislature in reaction to allowance price spikes may be viewed as a necessary short-term response given the potential impacts

on the economy from a swift and/or sustained run up in allowances prices, this sort of abrupt action can also have lasting negative and unintended consequences, can't undo decisions that have already been made by businesses – and can be avoided with proper planning and design.

To avoid these abrupt actions, to avoid CARB losing control of the solution, to stay within the requirements of both AB32 and the Board Resolution, and to increase the potential that problems are avoided in the first place rather than fixed after they happen – there are numerous, relatively simple design measures that CARB can put in place. We believe it is possible to design additional cost containment into the system by working with the current design of the system – without the need to add on additional, complex and controversial design elements. These fixes include:

- Increase the offset quantitative limit and allow use of international offsets
- Increase liquidity in offset markets by establishing a registry that links CCO serial numbers to an invalidation guarantee
- Allow covered entities that do not use their entire eight percent offset limit to redistribute that unused portion into the market or to other covered entities. This concept has been discussed in several forums between market participants and staff. BP would be happy to share with staff our specific thinking on this topic.
- Remove or greatly increase holding limits for regulated parties
- Allow use of allowance vintages from within the year in which the compliance obligation is due – not in which it is calculated

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

Sincerely,

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