



Western States Petroleum Association
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Catherine H. Reheis-Boyd
President

June 7, 2010

Mr. Kevin Kennedy
Assistant Executive Officer
Office of Climate Change
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Subject: WSPA Comments on May 17, 2010 Cap-and-Trade Regulation Public Workshop

Dear Mr. Kennedy,

The Western States Petroleum Association (WSPA) is a non-profit trade association representing twenty-eight companies that explore for, produce, refine, transport and market petroleum, petroleum products, natural gas and other energy supplies in California and five other western states.

All our members will be greatly impacted by implementation of AB 32 and as such, are vitally interested in the development and implementation of the proposed Cap-and-Trade program.

WSPA attended the May 17 Air Resources Board (ARB) workshop on the Greenhouse Gas Cap-and-Trade program. We note that the workshop covered a wide-range of topics and featured over 90 slides and an extensive verbal narration. Given the breadth of the presentation, this letter will be limited to broader policy issues and overall program design.

WSPA will provide additional comments as our understanding of the issues grows and as details emerge.

Approach to harmonizing a Cap-and-Trade Program - Consistency and integration with Federal Clean Air Act Program and WCI

We are aware that the Federal EPA is proceeding with development of GHG regulations under the federal Clean Air Act. Many of these federal regulations will affect the same facilities as California's program. Regulations that are in conflict with, or perhaps even slightly different from their federal counterpart will lead to duplicative regulatory requirements and, more importantly, place unnecessary cost burdens on businesses.

California's Cap-and-Trade program should be designed with contingency plans to prevent or minimize conflicts and duplications, and mesh as seamlessly as possible with the emerging federal Clean Air Act program.

WSPA agrees with comments that have been made by Professor Robert Stavins that a "federal system – absent the complications of overlapping state systems – represents the most cost-effective, environmentally effective and simplest approach to achieving economy-wide reductions in GHG emissions".

Although California continues to work with WCI Partners, we remain concerned that the WCI will not be ready to be a viable regional program at the start of 2012.

Consequently, we recognize that ARB needs to design the State's Cap-and-Trade program to handle the additional challenges of a single state program and critically focus on cost containment, leakage, and other factors described below.

Design of a California Cap-and-Trade program

WSPA encourages a smooth and carefully thought-out transition as part of the AB 32 implementation process so as to not damage California's economy. In particular, the program should be implemented in a manner that ensures California has adequate, reliable and affordable energy supplies, especially transportation fuels.

We encourage ARB to evaluate and address the potential impacts of all of the Cap-and-Trade design elements on the ability of our members and others to reduce emissions in a cost-effective manner without unnecessary short-term costs, and to provide adequate, reliable and affordable energy supplies.

Minimize Adverse Economic Impacts

WSPA is encouraged with the approach outlined by ARB to: i) minimize auctions initially, ii) consider broader use of offsets as a cost containment mechanism, iii) address leakage, and iv) evaluate issues relating to allocation of allowances.

All of these elements are vital to ensuring that California's economy and jobs are transitioned carefully as the price of carbon is introduced into the cost of doing business in California.

WSPA remains concerned that ARB has not fully recognized the extent of the Energy Intensive and Trade Exposed (EITE) issue for the California refining and oil and gas production industries and desires to work closely with ARB on this issue.

To assist in that effort, WSPA has begun preparing materials for ARB to review.

Minimize use of auctions

The Governor's letter to ARB of March 24, 2010 recognized the need to minimize reliance on auctions as the means to allocate allowances. This approach has the benefit of minimizing potential impacts on the economy. Further, we are encouraged by the discussion in the workshop regarding free allowances for trade exposed industries and for transition assistance.

We urge that ARB minimize the use of auctions and develop a program that is consistent with the approach outlined by the Governor.

Broad Use of Offsets as Cost Containment

Throughout the AB 32 implementation process, WSPA has asked ARB to incorporate cost containment mechanisms in the design of the California Cap-and-Trade program. We believe that a very important cost containment design element is a robust offsets program – one with no quantity or geographical limits on the use of offsets.

California must consider policies and procedures that ensure an ample supply of high quality offsets and then design the program accordingly. California's program should link with other working cap and trade programs, in particular the offset programs in the European Union Emission Trading Scheme (EU ETS).

Emissions Leakage

Addressing and minimizing emissions leakage has been a major priority for WSPA. We are pleased that ARB is evaluating that issue very seriously and that ARB plans to design the program to minimize leakage. As we have stated in previous comments, WSPA believes that the refining industry and oil and gas production are EITE industrial sectors highly susceptible to leakage.

We support addressing leakage issues in the oil industry via free allocations. We are concerned, however, with ARB's characterization of the refining and oil and gas production sectors as having moderate risk for leakage. We strongly feel that these sectors are at high risk for leakage.

We will be providing detailed comments on all of the above issues related to trade exposure, leakage and transition assistance in the near future. However, so that we may better understand your proposal, we request more detailed information and clarification on your rationale for using the other indicators such as PPI for evaluating trade exposure.

Jobs Leakage

We are encouraged by your frank discussion of "leakage" at the workshop. As the Governor's letter of March 24, 2010 clearly states, protecting the economy must be a major priority as you move forward.

We believe that your definition of "leakage" needs to also encompass "jobs leakage." As you move forward, minimizing jobs leakage needs to be a priority goal along with minimizing emissions leakage.

Tiering of Allowance Value

WSPA supports the two tiered use of allowance value as defined by ARB. We believe that use at the Tier 1 level should be prioritized to fulfill some of the clearly mandated directives in AB 32 (i.e., design regulations, including distribution of allowances to minimize costs and maximize total benefits to California, and minimize leakage).

Price Mitigation Allowance Reserve

As previously stated, WSPA believes that a robust offsets program is a very important element to ensure cost containment within a Cap-and-Trade program. However, a mechanism to mitigate price spikes or extreme market fluctuations may also be appropriate and necessary. At this time WSPA is working on further comments on this design element that we foresee will be submitted at a later date.

Transportation Fuels

WSPA believes that transportation fuels, particularly gasoline and diesel, should not be in the program in the first compliance period. Bringing those fuels into California's program will have significant economic ramifications. It seems prudent to evaluate fully and understand the potential impacts before making the final decision on whether and/or how to bring fuels under the Cap-and-Trade program.

We understand that ARB is considering gathering more data to undertake such an evaluation. We are supportive of this measured approach rather than rushing to create a regulatory structure before the underlying data have been developed.

Output Based Allocation

Identifying a fair and representative benchmarking scheme for the refining sector is a very complex undertaking that will require time. It is clear that refineries differ in complexity from one another and therefore a single simple emission intensity benchmark for the refinery sector may not accurately or fairly reflect refinery emissions.

Thus, the use of simple benchmarking schemes that do not correlate well with actual GHG emissions such as a simple output based benchmark approach is inappropriate. WSPA is committed to working diligently with ARB to evaluate options fully.

Outreach and Plan Forward

In the ARB presentation, staff highlighted that "moving forward" meant public discussion on all the key design elements. We strongly support and encourage this outreach.

Most importantly, ARB needs to provide sufficient time for the regulated industry to absorb the information in a meaningful manner by releasing presentations, documents, etc. at least a week prior to a workshop.

For example, the recent presentation, comprising over 90 slides, was made available to the public only after the close of business on Thursday, May 13. This was just one business day prior to the meeting on the 17th.

Given the complexity of the issue, expecting the regulated community to develop a meaningful understanding of the concepts, policies, and implications of the program in such a short period of time is unreasonable.

Thank you for considering our comments. Please consider these comments as initial thoughts on these topics due to the lack of availability of ARB materials. We hope to develop additional comments as more details become available.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in blue ink, reading "Catherine A. Quinn-Boyd". The signature is fluid and cursive, with the first name "Catherine" being the most prominent.

cc: Linda Adams, CALEPA
Cindy Tuck, CALEPA
Dan Pellissier, CALEPA
Dan Dunmoyer, Governor's Office
David Crane, Governor's Office
John Moffatt, Governor's Office
Darren Bouton, Governor's Office
James Goldstene, California Air Resources Board
Edie Chang, California Air Resources Board