State of California
AIR RESOURCES BOARD

Resolution 10-30

July 22, 2010

Agenda Item No.: 10-7-2

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (ARB or Board) to adopt standards, rules, and regulations, and to do such acts as may be necessary for the proper execution of the powers and duties granted to, and imposed upon, the Board by law;

WHEREAS, the Legislature has enacted the Global Warming Solutions Act of 2006 (AB 32; Health and Safety Code section 38500 et seq.), which declares that global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California, and creates a comprehensive multi-year program to reduce California's greenhouse gas (GHG) emissions to 1990 levels by 2020;

WHEREAS, AB 32 designates ARB as the State agency charged with monitoring and regulating sources of GHG emissions in order to reduce these emissions;

WHEREAS, section 38561(a) of the Health and Safety Code directs the Board to prepare and approve a Scoping Plan for achieving the maximum technologically feasible and cost-effective reductions in GHG emissions by 2020;

WHEREAS, section 38561(b) of the Health and Safety Code requires the Scoping Plan to identify and make recommendations on direct emission reduction measures, alternative compliance mechanisms, market-based compliance mechanisms, and potential monetary and nonmonetary incentives for sources and categories of sources that the Board finds necessary or desirable to facilitate the achievement of the maximum feasible and cost-effective reductions of GHG emissions by 2020;

WHEREAS, section 38652(b) of the Health and Safety Code requires ARB, in adopting GHG regulations, to the extent feasible and in furtherance of achieving the statewide GHG emissions limit, to design the regulations in a manner that is equitable and seeks to minimize costs and maximize the total benefits to California; ensure that activities taken to comply with the regulations do not disproportionately impact low-income communities; ensure that activities undertaken pursuant to the regulations complement efforts to achieve and maintain ambient air quality standards and to reduce toxic air contaminant emissions; consider the cost-effectiveness of the regulations; consider overall societal benefits; minimize administrative burden; and minimize leakage;

WHEREAS, the Board acknowledges the importance of ensuring adequate and reliable energy supplies while the State implements AB 32;

WHEREAS, ARB has adopted the Climate Change Scoping Plan (Scoping Plan), which sets forth California's strategy for meeting the GHG emissions reductions required by AB 32;

WHEREAS, one of the measures contained within the Scoping Plan would require a one-time energy efficiency and co-benefits assessment for major industrial facilities, which include refineries, electricity generating facilities, oil and gas extraction and transmission facilities, cement plants, mineral plants, and hydrogen plants;

WHEREAS, the Scoping Plan measure envisioned that each applicable facility would assess individual combustion and other direct sources of GHG emissions within the facility to determine potential emission reduction opportunities, including those for criteria air pollutants and toxic air contaminants, and the impacts associated with implementation;

WHEREAS, ARB staff conducted three public workshops in 2009 and 2010 and participated in several stakeholder meetings in order to include the public and affected stakeholders in the regulatory development process;

WHEREAS, staff is proposing the adoption of a regulation to require energy efficiency and co-benefits assessment of large industrial facilities;

WHEREAS, the proposed regulation would adopt new article 2.1, subchapter 10, sections 95150 to 95162, title 17, California Code of Regulations, as set forth in Attachment A hereto;

WHEREAS, ARB staff has prepared a staff report entitled "Initial Statement of Reasons for Proposed Rulemaking: Regulation for Energy Efficiency and Co-Benefits Assessment of Large Industrial Facilities" (ISOR), which presents the rationale for the proposed regulation;

WHEREAS, the ISOR and the proposed regulatory language were made available to the public for at least 45 days prior to the public hearing to consider the proposed regulation;

WHEREAS, the Board has considered the impact of the proposed regulation on the economy of the State, and the potential adverse economic impacts on California business enterprises and individuals;

WHEREAS, the Board has considered the community impacts of the proposed regulation, including environmental justice concerns;

WHEREAS, the Board acknowledges that it is appropriate to establish an applicability threshold for the regulation based on total carbon dioxide equivalent (CO_2e) emissions, which includes both biogenic and non-biogenic sources of GHG emissions;

WHEREAS, the Board acknowledges that including biogenic sources of CO_2 in the total CO_2e emissions is an appropriate surrogate and will identify large facilities in California for the purpose of exploring opportunities for energy efficiency improvements that could result in GHG emission reductions as well as reductions of criteria air pollutants and toxic air contaminants;

WHEREAS, the California Environmental Quality Act (CEQA) requires that no project that may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, a public hearing and other administrative proceedings have been held in accordance with the provisions of chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code;

WHEREAS, the Board finds that:

1. The proposed regulation is necessary as a means to collect greenhouse gas, criteria pollutant, and air toxics emissions data;

2. The proposed regulation is necessary as a means toward ensuring future technologically feasible and cost-effective GHG reductions;

3. The proposed regulation is necessary as a means to obtain data needed to implement AB 32;

4. Requiring an energy efficiency and co-benefits assessment from electricity generating facilities, mineral plants, and hydrogen plants emitting GHG emissions of at least 500,000 metric tonnes (0.5 million metric tonnes) of CO_2e per year, and petroleum transportation fuel refineries and cement plants emitting GHG emissions of at least 250,000 metric tonnes (0.25 million metric tonnes) of CO_2e per year, is necessary to include the most significant California stationary GHG emission sources;

5. A facility-conducted assessment is important to ensure a comprehensive analysis of potential energy efficiency improvement opportunities, to limit the amount of time needed to conduct the assessment, and to limit the costs to the regulated community;

6. ARB staff is responsible for reviewing the facility operator Assessment Reports, and it is appropriate for ARB staff to designate selected Assessment Reports

for a third-party review to determine the completeness of the energy efficiency and co-benefits assessment;

7. The information collected from the facilities subject to the proposed regulation should be made available to the public in order to ensure transparency in informing the communities that are located near the facilities of the potential for emission reductions;

8. The facility information required in the proposed regulation is meant to be preliminary data gathered at a budgetary level to avoid reporting of confidential business information; however, any requests for confidentiality will be handled in accordance with the procedures specified in title 17, California Code of Regulations, sections 91000 through 91022;

9. The information gathered as a result of the proposed regulation is expected to provide ARB, industry, and the public with a broad range of opportunities available to reduce GHG, criteria air pollutant, and toxic air contaminant emissions and will aid in fulfilling ARB's responsibilities of AB 32, the Climate Change Scoping Plan, and other emission reduction programs;

10. The economic impacts of the proposed regulation have been analyzed as required by California law, and the conclusions and supporting documentation for this analysis are set forth in the ISOR;

11. The proposed regulation is consistent with ARB's environmental justice policies and will equally benefit residents of any race, culture, or income level;

12. The requirements of the proposed regulation, which apply to businesses, are necessary for the health, safety, and welfare of the people of the State;

13. No reasonable alternative considered, or that has otherwise been identified and brought to the attention of the ARB, would be more effective in carrying out the purpose for which the regulation is proposed, or be as effective and less burdensome to affected private persons and businesses than the proposed regulation; and

WHEREAS, pursuant to the requirements of the CEQA and the Board's regulations, the Board further finds that the proposed regulation will not result in any significant adverse impacts on the environment.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the adoption of sections 95150 through 95162, title 17, California Code of Regulations, as set forth in Attachment A hereto, with the modifications shown in Attachment B hereto.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to adopt sections 95150 through 95162, title 17, California Code of Regulations, after making the

modified regulatory language available for public comment for a period of 15 days, provided that the Executive Officer shall consider such written comments regarding the modifications as may be submitted during this period, shall make modifications as may be appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if he determines that this is warranted.

BE IT FURTHER RESOLVED that the Board encourages facility operators to implement cost-effective energy efficiency improvement opportunities identified as a result of the energy efficiency and co-benefits assessment.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to monitor the implementation of the regulation and to propose amendments to the regulation for the Board's consideration when warranted to resolve any implementation issues that may arise.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to designate selected facility operator Assessment Reports for a third-party review to determine the completeness of the energy efficiency and co-benefits assessment.

I hereby certify that the above is a true and correct copy of Resolution 10-30, as adopted by the Air Resources Board.

Mary Alice Morency, Clerk of the Board

FILED
MAY 09 2011
Resources Agency of California

Resolution 10-30

July 22, 2010

Identification of Attachment to the Resolution

Attachment A:	The Proposed Regulation for Energy Efficiency and Co-Benefits Assessment of Large Industrial Facilities, as set forth in Appendix A to the Staff Report (released June 2010).
Attachment B:	Staff's Suggested Modifications to the Original Proposal, presented at the July 22, 2010, Board hearing.

ATTACHMENT B TO THE RESOLUTION

PUBLIC MEETING TO CONSIDER THE ADOPTION OF PROPOSED REGULATION FOR ENERGY EFFICIENCY AND CO-BENEFITS ASSESSMENT OF LARGE INDUSTRIAL FACILITIES

Staff's Suggested Modifications to the Original Proposal

AS PRESENTED AT THE JULY 22, 2010 HEARING
OF THE AIR RESOURCES BOARD

Shown below are staff's suggested modifications to the originally proposed amendments to the regulatory text set forth in Attachment A to Resolution 10-30. The text of all proposed modifications will be made available to the public for a fifteen-day comment period prior to final adoption.

Criteria Pollutant and Toxic Air Contaminant Emissions Reported to the Air Pollution Control and Air Quality Management Districts (Districts)

Staff is proposing to modify the proposed regulatory language to add accommodation for a 12-month period instead of calendar year period when including criteria pollutants and toxic air contaminants that were reported to the district, since some districts require reporting on a 12-month (i.e., July to June) basis.

Additional Guidance for Facilities Not Required to Report Emissions to the Local Air District

Staff is proposing to modify the proposed regulatory language to provide guidance to facilities that are not required to report their criteria air pollutant and/or toxic air contaminant emissions to their local air quality management or air pollution control district (district). The modification will require the emissions to be reported in accordance with the existing regulations and district rules and will ensure the same requirements will apply to all facilities, regardless of district reporting status.

Assessing Energy Efficiency Improvement Project Estimated Time Frame

Staff is proposing to modify the proposed regulatory language to clarify that the estimated implementation time frame is needed for all projects that are identified in the assessment. Additionally, the proposed modification would clarify that the facility must provide the estimated or actual completion year, instead of completion date, for those projects that are scheduled, on-going, or already completed.

Third Party Assessor Certification Statement

Staff is proposing to modify the proposed regulatory language to clarify that, if the Assessment Report is conducted by a third party, the third party assessor must certify that they are duly authorized to represent the facility and operator on all matters related to the Assessment Report. The previously proposed language required the third party to certify that the operator was duly authorized to represent the third party, which was not the original intent.

Additional Modifications As Needed

Staff may propose additional modifications as needed, and all proposed modifications will be made available to the public for a fifteen-day comment period prior to final adoption.

State of California
Environmental Protection Agency
AIR RESOURCES BOARD

Notice of Decision and
Response to Significant Environmental Issues

Item:	**NOTICE OF PUBLIC HEARING TO CONSIDER THE ADOPTION OF PROPOSED REGULATION FOR ENERGY EFFICIENCY AND CO-BENEFITS ASSESSMENT OF LARGE INDUSTRIAL FACILITIES**
Approved By:	Resolution 10-30
Adopted by:	Executive Order R-11-004
Agenda Item:	10-7-2
Public Hearing Date:	July 22, 2010
Issuing Authority:	Air Resources Board
Comment:	No comments were received identifying any significant environmental issues pertaining to this item. The Staff Report identified no adverse environmental effects.
Response:	N/A
Certified:	Trini Balcazar, Regulations Coordinator
Date:	March 3, 2011

FILED
MAY 09 2011
Resources Agency of California