State of California
AIR RESOURCES BOARD

Resolution 10-43

December 16, 2010

Agenda Item No.: 10-11-2

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; Stats 2006, ch. 488, 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, section 38510 of the Health and Safety Code designates ARB as the State agency charged with monitoring and regulating sources of GHG emissions in order to reduce these emissions;

WHEREAS, section 38530 of the Health and Safety Code directed ARB, on or before January 1, 2008, to adopt regulations to require the reporting and verification of statewide GHG emissions;

WHEREAS, section 38530 of the Health and Safety Code also requires that the GHG reporting regulations shall require annual reporting, beginning with the largest sources; account for GHG emissions from all electricity consumed in the State, including imports and line losses; ensure rigorous and consistent emissions accounting, and provide reporting tools and formats to ensure collection of necessary data; ensure that GHG emission sources maintain comprehensive records of all reported GHG emissions; and make reasonable efforts to promote consistency with existing GHG emission reporting programs.

WHEREAS, the Board approved the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (title 17, California Code of Regulations, section 95100 et seq.) on December 6, 2007;

WHEREAS, section 39607 of the Health and Safety Code requires the Board to inventory sources of air pollution and gather air pollution information;

WHEREAS, section 39607.4 of the Health and Safety Code requires the Board, as part of its responsibilities under section 39607 of the Health and Safety Code, to prepare, adopt, and update the climate change inventory;

WHEREAS, the United States Environmental Protection Agency (U.S. EPA) has adopted federal GHG emissions reporting rules;

WHEREAS, mandatory GHG reporting supports California's efforts to improve our GHG emission inventory, track emission trends, support regulatory development, and assist in the development of carbon trading markets;

WHEREAS, California has proposed the adoption of a cap-and-trade program (proposed title 17, California Code of Regulations, section 95800 et seq.), which would rely on reported GHG emissions data derived from calculation methods that are accurate, rigorous, and consistent;

WHEREAS, amending the existing Regulation for the Mandatory Reporting of Greenhouse Gas Emissions is necessary to promote consistency with U.S. EPA GHG reporting rules and to support California's proposed cap-and-trade regulations;

WHEREAS, ARB staff conducted a public workshop on March 23, 2010, and participated in numerous stakeholder meetings in order to include the public and affected stakeholders in the regulatory development process;

WHEREAS, ARB staff participated with other states and provinces under the auspices of the Western Climate Initiative to review the U.S. EPA GHG emissions reporting rules, develop language to harmonize with those rules in a manner to support a cap-and-trade program, and obtain public input on proposed harmonized requirements;

WHEREAS, ARB staff has prepared a staff report entitled "*Initial Statement of Reasons for Rulemaking, Revisions to the Regulation for Mandatory Reporting of Greenhouse Gas Emissions Pursuant to the California Global Warming Solutions Act of 2006 (Assembly Bill 32)*" (Initial Statement of Reasons), which presents the rationale for the proposed amendments to the regulations;

WHEREAS, the Initial Statement of Reasons and proposed regulatory language were made available to the public for at least 45 days prior to the December 16, 2010 Board hearing;

WHEREAS, ARB staff has received and considered the recommendations of the California Public Utilities Commission and the California Energy Commission for emissions reporting in the electricity sector;

WHEREAS, the California Environmental Quality Act and Board regulations require that no project which 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, the Board has considered the impact of the proposed amendments to the regulations on the economy of the State and the potential for adverse economic impacts on California business enterprises and individuals;

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; and

WHEREAS, in consideration of the information in the public record, including the Initial Statement of Reasons, written comments, and testimony provided at the hearing, the Board finds that:

1. The proposed amended regulations meet the requirements specified in sections 38530, 39607, and 39607.4 of the Health and Safety Code;

2. The proposed amended regulations promote consistency with the U.S. EPA GHG reporting rule;

3. While there are differences between the proposed amended regulations and the U.S. EPA GHG emissions reporting rule, these differing state regulations are authorized by AB 32, and the cost of the differing regulations is justified by the benefit to human health, public safety, public welfare, or the environment, as provided in Government Code section 11346.2(b)(5);

4. The emission estimation methods, schedules, and other provisions of the proposed amended regulations focus on the most significant GHG emission sources, use rigorous and consistent emission accounting methods, provide accounting for all electricity consumed in the state, including imports, require verification of emissions data, and to the extent feasible, maintain consistency with other GHG reporting programs;

5. To include the most significant California GHG emission sources, it is necessary to require annual reporting of GHG emissions and supporting information from cement production facilities, electric power entities including importers and exporters, electricity generation and cogeneration units, petroleum refineries, hydrogen plants, stationary fuel combustion sources, glass production facilities, lime manufacturing facilities, nitric acid production facilities, pulp and paper manufacturing facilities, iron and steel production facilities, suppliers of transportation fuels, suppliers of natural gas, natural gas liquids, and liquefied natural gas, suppliers of carbon dioxide, and petroleum and natural gas systems that emit over 10,000 metric tons of carbon dioxide equivalent per year;

6. GHG emissions reporting by facilities emitting between 10,000 and 25,000 metric tons of carbon dioxide equivalent is necessary to update California's GHG inventory and to monitor facilities below the cap-and-trade threshold in order to ensure the rigor of the cap-and-trade program; the proposed amended regulation includes an abbreviated reporting option to simplify reporting by these facilities;

7. Accurate GHG emissions reporting is necessary to support a rigorous cap-and-trade program;

8. Continuing third-party verification of GHG emissions data is necessary to ensure credible and accurate greenhouse gas emissions accounting and compatibility with existing and proposed international and state GHG reporting programs;

9. The economic and cost impacts of the proposed amended regulations have been analyzed as required by California law and the conclusions and supporting documentation for these analyses are set forth in the Initial Statement of Reasons;

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

11. ARB staff has considered less prescriptive standards and procedures for reporting but determined that these would be less effective in providing complete, consistent, verifiable, and accurate GHG emissions data; and

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

WHEREAS, pursuant to the requirements of the California Environmental Quality Act and the Board's regulations, the Board further finds that the proposed regulations will not result in any significant adverse environmental impacts.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the adoption of amendments to sections 95100, 95101, 95102, 95103, 95104, 95105, 95106, 95107, 95108, 95109, 95110, 95111, 95112, 95113, 95114, 95115, 95130, 95131, 95132, and 95133, title 17, California Code of Regulations, as set forth in Attachment A hereto, with the modifications set forth in Attachment B hereto.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Board hereby approves the repeal of section 95125, title 17, California Code of Regulations, and the adoption of new sections 95100.5, 95116, 95117, 95118, 95119, 95120, 95121, 95122, 95123,

95129, 95150, 95151, 95152, 95153, 95154, 95155, 95156, 95157, and 95158, title 17, California Code of Regulations, as set forth in Attachment A hereto, with the modifications set forth in Attachment B hereto.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to take final action to adopt the amendments set forth in Attachment A, with the modifications set forth in Attachment B and such other conforming modifications as may be appropriate, after making the modified regulatory language and any additional supporting documents and information available to the public 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 the Executive Officer determines that this is warranted.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to continue working with stakeholders and regulated entities to make such modifications as may be appropriate to the enforcement provisions of section 95107.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to make any appropriate clarifying changes to the abbreviated reporting requirements in section 95103(a) consistent with staff's intent as expressed in the Initial Statement of Reasons to simplify reporting requirements for reporting entities emitting between 10,000 and 25,000 metric tons of carbon dioxide equivalent and to provide notification to potentially affected businesses of any changes to these requirements.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to work with the interested stakeholders in reviewing the reporting requirements for transportation fuels to ensure that data is reported in a manner appropriate to support the coverage of transportation fuels under the cap-and-trade program, and, if necessary, to incorporate in the 15-day modifications any revisions to the regulation necessary to achieve that end.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to update the training and accreditation program to ensure that adequate numbers of qualified verifiers are available.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to continue to monitor the development of the U.S. EPA Mandatory Reporting of Greenhouse Gas Emissions rules.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to return to the Board as needed to amend the GHG reporting regulations to include additional emissions sources, update emission estimation methods, or provide other enhancements to the regulations.

FILED
OCT 28 2011
Resources Agency of California

I hereby certify that the above is a true and correct copy of Resolution 10-43, as adopted by the Air Resources Board.

Mary Alice Morency, Clerk of the Board

Resolution 10-43

December 16, 2010

Identification of Attachments to the Board Resolution

Attachment A: Underline/Strikeout Display of Proposed Amendments to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions, as set forth in Attachment B to the Initial Statement of Reasons, released October 28, 2010.

Attachment B: Staff's Suggested Modifications to the Original Proposal (Distributed at the December 16, 2010 Board hearing)

Resolution 10-43

ATTACHMENT B

FOR CONSIDERATION BY THE AIR RESOURCES BOARD AT THE PUBLIC HEARING ON THE PROPOSED AMENDMENTS TO THE REGULATION FOR THE MANDATORY REPORTING OF GREENHOUSE GAS EMISSIONS

DECEMBER 16, 2010

Staff's Suggested Modifications to the Original Proposal

The attachment shows staff's suggested modifications to the originally proposed amendments. The suggested modifications to existing language in the originally proposed amendments are shown in double-underline. All proposed modifications will be made available to the public for a fifteen-day comment period prior to final adoption.

Section 95101. Applicability.

Staff intends to propose changes consistent with staff's intent not to require reporting of fugitive methane emissions from livestock waste and landfills. Staff also proposes to add language to section 95101(f) excluding agricultural irrigation pumps from reporting, consistent with U.S. EPA.

Section 95103. Greenhouse Gas Reporting Requirements.

Staff intends to propose changes that are necessary and appropriate to clarify the abbreviated reporting requirements in section 95103(a) consistent with staff's intent as expressed in the Initial Statement of Reasons to simplify reporting requirements for reporting entities emitting between 10,000 and 25,000 metric tons of carbon dioxide equivalent.

Section 95107. Enforcement.

Staff also intends to continue working with stakeholders to make such modifications as may be appropriate to the enforcement provisions of section 95107.

Section 95133. Conflict of Interest Requirements for Verification Bodies for Emissions Data Reports.

Staff proposes to add the following language to section 95133 to clarify the role of air quality management districts and air pollution control districts as third-party verification bodies under the proposed regulation:

(h) *Specific Requirements for Air Quality Management Districts and Air Pollution Control Districts.*

(1) If an air district has provided or is providing any services listed in section 95133(b)(2) as part of its regulatory duties, those services do not constitute non-verification services or a potential for high conflict of interest for purposes of this subarticle;

(2) Before providing verification services, an air district shall either submit a conflict of interest self-evaluation pursuant to 95133(e) for each reporting entity for which it intends to provide verification services, or shall submit an annual self-evaluation to ARB no later than April 1 of each calendar year containing the information specified in section 95133(e)(1)(A)-(F) for all reporting entities for which it intends to provide verification services;

(3) As part of its conflict of interest self-evaluation submittal under section 95133(e), the air district shall certify that it will prevent conflicts of interests and resolve potential conflict of interest situations pursuant to its policies and mechanisms submitted under section 95132(b)(1)(G);

(4) If an air district hires a subcontractor who is not an air district employee to provide verification services, the air district shall be subject to all of the requirements of section 95133.

Additional Proposed Modifications

In addition to the modifications described above, staff also intends to propose the following modifications:

- Changes that are necessary and appropriate to clarify reporting requirements;
- Changes that are necessary and appropriate to clarify verification requirements;
- Changes that are necessary and appropriate to better harmonize reporting requirements with updated U.S. EPA reporting rules while still meeting the needs of the California cap-and-trade program;
- Changes as may be necessary and appropriate in light of the stakeholder comments received.

State of California
Environment Protection Agency
AIR RESOURCES BOARD

Notice of Decision

Project Title: **Amendments to Regulation for the Mandatory Reporting of Greenhouse Gas Emissions**

Project Location: Statewide

Public Meeting Date: December 16, 2010; Agenda Item 10-11-2

Project Description: In accordance with the requirements of AB 32, ARB adopted a greenhouse gas reporting regulation that became effective on January 2, 2009. The amendments to the regulation make revisions necessary to streamline and avoid duplicate GHG reporting and to provide the high quality of data needed to support a market-based cap-and-trade program.

Approved By: Air Resources Board
Executive Order R-11-014
Dated: October 28, 2011

This notice is to advise that ARB, as the lead agency, has adopted the above described regulatory action on October 28, 2011and has determined that the regulatory action will not have a significant adverse effect on the environment (see attached Executive Order R-11-014).

There were no comments received identifying any significant environmental issues pertaining to this item. No findings, mitigation or statement of overriding considerations were adopted.

A copy of Staff Report: Initial Statement of Reasons and the Final Statement of Reasons are available at the ARB rulemaking webpage at:
http://www.arb.ca.gov/regact/2010/ghg2010/ghg2010.htm

These rulemaking documents may also be examined at:

California Air Resources Board
Attn: Board Administration and Regulatory Coordination Unit
1001 I Street
Sacramento, CA 95814

FILED
OCT 28 2011
Resources Agency of California

Certified: Jeannette Bolkhiche
ARB CEQA Unit

Date: 10/28/11

Attachment:

- Executive Order R-11-014