

State of California
Air Resources Board

Resolution 11-27

August 24, 2011

Agenda Item No: 11-6-1

WHEREAS, the Legislature 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 environment of California and creates a comprehensive multi-year program to reduce greenhouse gas (GHG) emissions that cause global warming;

WHEREAS, AB 32 designates the Air Resources Board (ARB or the Board) as the State agency charged with monitoring and regulating sources of GHG emissions in California in order to reduce these emissions;

WHEREAS, section 38561(a) of the Health and Safety Code directs the Board, on or before January 1, 2009, to prepare and approve a Scoping Plan for achieving the maximum technologically feasible and cost-effective reductions in GHG emissions by 2020;

WHEREAS, adoption of the Scoping Plan is not a condition precedent for the ARB's adoption of GHG emission reduction measures; AB 32 gives ARB the authority to adopt GHG emission reduction measures whether or not the measures are included in a Scoping Plan;

WHEREAS, in June 2008, ARB staff prepared and circulated for public review a *Draft Climate Change Scoping Plan* (Draft Plan); staff then held three public workshops to discuss the Draft Plan, considered public comments received on the Draft Plan, and modified the Draft Plan in response to these comments;

WHEREAS, in October 2008, ARB staff prepared and circulated for public review a *Proposed Climate Change Scoping Plan* (2008 Proposed Scoping Plan), in accordance with the requirements set forth in Health and Safety Code section 38561;

WHEREAS, in preparing the 2008 Proposed Scoping Plan, ARB staff considered advice and input from the Environmental Justice Advisory Committee and the Economic and Technology Advancement Advisory Committee;

WHEREAS, ARB has a regulatory program certified under Public Resources Code section 21080.5, and pursuant to this program ARB conducts environmental analyses to meet the requirements of the California Environmental Quality Act (CEQA);

WHEREAS, ARB staff prepared an environmental analysis for the 2008 Proposed Scoping Plan pursuant to its certified regulatory program; this analysis is contained in a CEQA functional equivalent document (2008 FED) setting forth a programmatic analysis of the potential environmental impacts associated with the 2008 Proposed Scoping Plan, including potential alternatives to the Plan;

WHEREAS, in October 2008, the 2008 FED was released for public review and comment as Appendix J of the 2008 Proposed Scoping Plan;

WHEREAS, at the Board's December 11, 2008 public hearing, in consideration of the 2008 Proposed Scoping Plan, the 2008 FED, and the written and oral testimony presented by the public, industry and government agencies, the Board found that the 2008 Proposed Scoping Plan met all of the requirements of AB 32 and voted to approve Resolution 08-47 which, among other things:

- (a) Initiated steps toward the final approval of the 2008 Proposed Scoping Plan and its Appendices with the modifications identified;
- (b) Delegated to the Executive Officer the decision maker authority in accordance with title 17, California Code of Regulations, section 60007 to prepare and approve written responses to all significant environmental issues raised, and then to either: (1) return the 2008 Proposed Scoping Plan to the Board for further consideration if it were determined that such action was warranted, or (2) take final action to approve the 2008 Proposed Scoping Plan with the modifications identified at the December 11, 2008 public hearing, any conforming modifications that were appropriate, and any modifications that were necessary to ensure that all feasible measures or feasible alternatives that would substantially reduce any significant adverse environmental impacts were incorporated into the final action;

WHEREAS, the Board further directed the Executive Officer to perform the environmental analyses required by CEQA in conjunction with future rulemaking actions to implement measures recommended in the 2008 Proposed Scoping Plan, and to ensure that the potential environmental impacts identified in the Plan, and any other impacts that are subsequently identified, were avoided or mitigated to the extent feasible;

WHEREAS, pursuant to the Board's direction, staff summarized and prepared written responses to comments on the 2008 FED raising significant environmental issues;

WHEREAS, on May 7, 2009, the Executive Officer signed Executive Order G-09-001 taking action to:

1. Approve the environmental analysis in the 2008 FED and the written response to comments;
2. Make the necessary findings and statement of overriding considerations required pursuant to CEQA regarding adverse environmental impacts;
3. Approve the final *Climate Change Scoping Plan* (2008 Scoping Plan) as modified pursuant to the Board's direction in Resolution 08-47;

WHEREAS, on May 11 2009, ARB filed a Notice of Decision with the Secretary of the Natural Resources Agency;

WHEREAS, on June 10, 2009, a coalition of organizations filed a petition and complaint in the Superior Court of San Francisco asserting that ARB failed to meet the statutory requirements of AB 32 and CEQA in preparing and approving the 2008 Scoping Plan;

WHEREAS, on March 17, 2011, the court issued a statement of decision, denying the petition as to all of the petitioners' AB 32 causes of action and their CEQA cause of action regarding the adequacy of the programmatic environmental impacts analysis in the 2008 FED, but granting the petition in part with regard to the adequacy of the 2008 FED alternatives analysis and the timing of approval of the 2008 Scoping Plan. Although the court concluded the depth of ARB's analysis of the alternatives was inadequate, petitioners did not challenge, and the court did not question, the reasonableness of the range of the five alternatives analyzed by ARB;

WHEREAS, on May 20, 2011, the court issued a preemptory writ of mandate ordering ARB to set aside Board Resolution 08-47 and Executive Order G-09-011 approving the 2008 FED and the 2008 Scoping Plan. The court further ordered the Board to take no action in reliance on the 2008 FED or the 2008 Scoping Plan until it came into compliance with its obligations under CEQA and its certified regulatory program, and it enjoined any further acts in furtherance of "Cap-and-Trade Resolution 10-42";

WHEREAS, on May 23, 2011, ARB filed an appeal of the trial court's order and on June 2, 2011, filed a petition for writ of supersedeas to confirm the stay of the trial court's order, including the trial court's order enjoining acts in furtherance of "Cap-and-Trade Resolution 10-42";

WHEREAS, on June 24, 2011, the Court of Appeal granted ARB's petition staying the trial court's order pending consideration of the appeal;

WHEREAS, although the trial court's order has been stayed, in the interest of informed decision-making and public participation, ARB staff prepared an expanded analysis of the five alternatives presented in the 2008 FED;

WHEREAS, on June 13, 2011, pursuant to the requirements of CEQA and ARB's certified regulatory program, ARB released the expanded alternatives analysis in a draft *Supplement to the AB 32 Scoping Plan Functional Equivalent Document* (Supplement). The five alternatives include: Alternative 1 (No-Project Alternative), Alternative 2 (Cap-and-Trade only approach), Alternative 3 (Direct Source-Specific Regulations approach), Alternative 4 (Carbon Fee or Tax approach), and Alternative 5 (combination of Alternatives 2,3 & 4 approach). The Supplement was released for a 45 day public comment period to offer interested individuals, organizations, and governmental agencies an opportunity to review the Supplement and provide comments regarding the adequacy of the expanded alternatives analysis;

WHEREAS, on July 8, 2011, ARB held a public workshop to discuss the Supplement and solicit public questions and comments;

WHEREAS, during the 45-day public comment period, ARB received numerous written comments on the Supplement;

WHEREAS, following the close of the written comment period on July 28, 2011, ARB staff reviewed written and oral comments received on the Supplement and prepared written responses to these comments;

WHEREAS, on August 19, 2011, ARB released staff's written response to comments (which contains all comments and recommendations received on the Supplement; a list of persons, organizations and public agencies that submitted comments on the Supplement; and written responses by ARB staff to comments received) in the *ARB Responses to Comments on the Supplement to the AB 32 Scoping Plan Functional Equivalent Document* (ARB Response to Comments);

WHEREAS, the Supplement, dated June 13, 2011, has been revised in accordance with comments received and is now the *Final Supplement to the AB 32 Scoping Plan Functional Equivalent Document* (Final Supplement) released on August 19, 2011 as Attachment D to the ARB Response to Comments document;

WHEREAS, at a duly noticed public hearing held on August 24, 2011, staff presented the Final Supplement and the ARB Response to Comments to the Board for review and reconsideration of the alternatives, and for approval of each document, along with the currently proposed Scoping Plan, as described in the Final Supplement (Proposed Scoping Plan);

WHEREAS, the Board has reviewed and considered the Final Supplement, the ARB Response to Comments, and the Proposed Scoping Plan;

WHEREAS, CEQA and ARB's certified regulatory program require that before taking final action on any proposal for which significant environmental issues have been raised, the decision maker must approve a written response to each such issue;

WHEREAS, CEQA and ARB's certified regulatory program require that any proposal for which significant adverse environmental impacts have been identified during the review process shall not be approved if there are feasible mitigation measures or feasible alternatives which would substantially reduce such adverse impacts;

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby sets aside ARB's approval of the 2008 Scoping Plan by taking the following actions:

1. The Board sets aside that portion of Board Resolution 08-47 initiating steps towards final approval of the 2008 Proposed Scoping Plan (as set forth on pages 5, 6, and 7 of Resolution 08-47), and
2. The Board sets aside Executive Order G-09-001, in which the Executive Officer approved the 2008 FED, approved the written responses to the 2008 FED, and approved the 2008 Proposed Scoping Plan.

BE IT FURTHER RESOLVED that the Board shall proceed by considering all information properly before it, giving no further force or effect to the previous approvals.

BE IT FURTHER RESOLVED that the Board hereby certifies that the Final Supplement was completed in compliance with CEQA and ARB's certified regulatory program, reflects the agency's independent judgment and analysis, and was presented to the Board whose members reviewed, considered and approved the information therein.

BE IT FURTHER RESOLVED that the Board hereby certifies that the complete 2008 FED, as revised by the Final Supplement, was completed in compliance with CEQA and ARB's certified regulatory program, reflects the agency's independent judgment and analysis, and was presented to the Board whose members reviewed, considered and approved the information therein.

BE IT FURTHER RESOLVED that the Board approves the written responses to comments on the Supplement, as set forth in *ARB Responses to Comments on the Supplement to the AB 32 Scoping Plan Functional Equivalent Document*, and approves the written responses prepared in 2009 to comments on the 2008 FED, as set forth in the *ARB Response to Public Comments on the Functional Equivalent (FED) for the Proposed Climate Change Scoping Plan*.

BE IT FURTHER RESOLVED that in consideration of the 2008 FED, as revised by the Final Supplement, and public comment received by ARB, the Board finds that:

1. The program-level analysis contained in the 2008 FED indicates that there is the potential for adverse environmental impacts associated with the implementation of various GHG emission reduction measures recommended in the Proposed Scoping Plan. Additional analysis concerning the potential impacts of these measures must wait for project-level review. At this stage, further analysis of the potential impacts would be speculative and it is not feasible to quantify or describe

with further specificity the potential impacts of particular measures. When the details of each measure are developed during the rulemaking process for each measure, a more detailed environmental analysis, including feasible mitigation and alternatives, will be performed in accordance with the requirements of CEQA and ARB's certified regulatory program.

2. The 2008 FED generally identifies potential mitigation strategies to address potential impacts. During the rulemaking process for each specific emission reduction measure pursued by ARB, project level mitigation and/or design features can be incorporated. For example, as part of the ongoing rulemaking for the proposed Cap-and-Trade Regulation, ARB staff has proposed an adaptive management approach to monitor the implementation of the program to identify the potential for increases in criteria air pollutants or toxic emissions resulting from the program, and if any adverse impacts are identified, to the extent feasible, modifying the program to lessen identified impacts.
3. In addition to the No-Project Alternative, the 2008 FED, as revised by the Final Supplement, considers a reasonable range of four action alternatives potentially capable of reducing the proposed project's environmental effects, while accomplishing most of the project objectives.
4. The alternatives analysis is sufficient to inform the Board and the public regarding the tradeoffs between the degree to which the alternatives could reduce environmental impacts and the corresponding degree to which the alternatives could achieve the project objectives.
5. Based upon the full evaluation of the alternatives, none of the four action alternatives are found to substantially reduce the project's potentially adverse environmental impacts while achieving most of the project's objectives. Adoption and implementation of the Proposed Scoping Plan is the most desirable, feasible, and appropriate action for achieving the objectives of the project, and the Board rejects the other alternatives as either less desirable or infeasible based on consideration of the relevant factors identified in the 2008 FED as revised by the Final Supplement and as follows:
 - a) The No-Project Alternative fails to meet the most basic objective of the project, which is to reach the AB 32 required 2020 emissions limit. Further, this alternative is not feasible because AB 32 requires ARB to prepare and approve a Scoping Plan to achieve the statutory limit (Health and Safety Code section 38561(a)).
 - b) Alternative 2 has the same features as the Proposed Scoping Plan but relies more heavily on a cap-and-trade program by excluding the Advanced Clean Car Program and other measures recommended in the Proposed Scoping Plan. This alternative would be expected to meet the fundamental project objectives of reaching the 2020 emissions reduction limit. However,

by excluding the Advanced Clean Car Program, this alternative forgoes a key ARB charge to reduce air pollutant emissions from California's largest single source -- passenger cars and trucks. The Advanced Clean Car Program will significantly reduce greenhouse gas and smog emissions from California's cars and trucks, will accelerate the numbers of plug-in hybrids and zero-emission vehicles on the roads in California, and will ensure that fuels such as electricity and hydrogen are available for these new vehicle technologies passenger vehicles. Although transportation fuels are proposed to be covered under a cap in a cap-and-trade program, with no advanced clean car regulation, auto manufacturers would be less likely to incorporate technological changes to reduce greenhouse gas reductions from cars. Further, this alternative does not substantially reduce the project's adverse environmental impacts because it has environmental impacts similar to Proposed Scoping Plan which includes cap-and-trade program. For the foregoing reasons, the Board rejects this alternative.

- c) Alternative 3 relies on direct source-specific regulatory requirements to meet all the required emissions reductions. While this alternative may be technically feasible, it is less likely to meet the project objectives because it does not provide a hard cap on emissions. Until specific regulatory measures have been developed, anticipated reductions are estimates. If any of the adopted regulatory measures fails to achieve the estimated emission reductions, the ability to achieve the AB 32 requirement to reduce emissions to 1990 levels by 2020 would be seriously compromised. Direct regulations are also typically more costly than a market mechanism because the compliance options are substantially limited. Without the inherent flexibility of a market mechanism, the direct regulation approach has the potential to be less cost-effective at reducing emissions for industry and the economy as a whole. Higher control costs lead to an increased risk of emissions leakage which undermines the goals of AB 32 to reduce greenhouse gas emissions while minimizing leakage. This alternative also involves numerous rulemaking activities that would each need to identify the control technologies specific to each regulated sector achievable in a technically feasible and cost-effective manner. Due to the diverse nature of many industrial processes and a lack of data, it would take substantial time and resources for ARB to craft and implement such regulations. Therefore, this alternative is not likely to be feasibly accomplished in a successful manner within a reasonable period of time. Finally, while this alternative reduces some potential adverse impacts of the proposed project, it has other environmental tradeoffs that on balance do not substantially reduce the project's environmental impacts. For the foregoing reasons, the Board rejects this alternative.
- d) Alternative 4 relies on a carbon tax or fee to meet the required emissions reductions. Without a firm cap, the required emissions reductions cannot be ensured, and therefore, this alternative does not fully satisfy the project

objectives. Since the price on carbon is set administratively to encourage emissions reductions, rather than set by a cap and priced by market conditions, there is a risk of pricing too low, leading to falling short of the target, or pricing too high, leading to over-compliance and unnecessary additional costs with the attendant risk of undermining of the goals of AB 32. The greater uncertainty in meeting the emission reduction goals is an important policy reason to reject this alternative. Further, this alternative does not substantially reduce the project's potential adverse environmental impacts because it has the potential for similar adverse impacts as the Proposed Scoping Plan; while it may reduce some impacts of the proposed project, it presents other environmental tradeoffs that on balance do not substantially reduce the project's potential adverse impacts overall. For the foregoing reasons, the Board rejects this alternative.

- e) Alternative 5 focuses on a combination of the strategies identified in Alternatives 2, 3 and 4 including direct regulations, cap-and-trade for large industrial sources and electricity generation and carbon fees on transportation, commercial and residential fuel sectors. This alternative does not provide as much certainty as the Proposed Scoping Plan. Although a fee approach on fuel sectors is expected to incentivize reductions of greenhouse gases, the level of reductions is less certain than under a cap. Further, this alternative does not substantially reduce the project's potential adverse environmental impacts. For the foregoing reasons, the Board rejects this alternative.
- f) These findings are supported by substantial evidence in the record.

BE IT FURTHER RESOLVED that the Board finds that despite the potential for adverse environmental impacts associated with implementation of the measures in the Proposed Scoping Plan, other benefits of the project, which will flow to all residents of the State, outweigh the potential for significant environmental effects; these benefits include:

1. A substantial reduction in greenhouse gas emissions thereby benefitting the environment and current and future generations;
2. Related statewide health benefits from the reduction of other co-pollutants; and
3. Economic benefits in the form of cost savings for households and businesses from increased energy efficiency and improved technology in the transportation sector.

BE IT FURTHER RESOLVED that the Board hereby approves the Proposed Scoping Plan, as described in the Final Supplement.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to transmit the Notice of Decision along with the written responses to comments to the Secretary of the Natural Resources Agency.

I hereby certify that the above is a true and correct copy of Resolution 11-27, as adopted by the Air Resources Board.

Mary Alice Morency, Clerk of the Board

Resolution 11-27

August 24, 2011

Identification of Attachments to Resolution 11-27

All of the following attachments are available on ARB's website at <http://www.arb.ca.gov/cc/scopingplan/scopingplan.htm>

- Attachment A: *ARB Responses to Comments on the Supplement to the AB 32 Scoping Plan Functional Equivalent Document* (released to the public on August 19, 2011)
- Attachment B: *Final Supplement to the AB 32 Scoping Plan Functional Equivalent Document* (released to the public on August 19, 2011)
- Attachment C: *ARB Response to Public Comments on the Functional Equivalent (FED) for the Proposed Climate Change Scoping Plan* (prepared by ARB staff in 2009).
- Attachment D: Climate Change Scoping Plan (December 2008)
- Attachment E: *Functional Equivalent Document for the Proposed Climate Change Scoping Plan* (Appendix J of the 2008 Proposed Scoping Plan, which was released to the public on October 15, 2008)