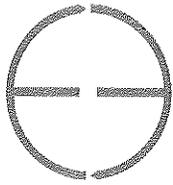


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# California Council for Environmental and Economic Balance

100 Spear Street, Suite 805, San Francisco, CA 94105 · (415) 512-7890 · FAX (415) 512-7897

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February 13, 2009

Mr. Jon Costantino  
California Air Resources Board  
1001 I Street  
Sacramento, CA 95814

**RE: CCEEB's Initial Comments on the California Air Resources Board's  
AB 32 Administrative Fee Regulation, Conceptual Proposal**

Dear Mr. Costantino:

The California Council for Environmental and Economic Balance (CCEEB) appreciates this initial opportunity for comment on the Draft AB 32 Administrative Fee Regulation Concept that was presented at a January 27, 2009 Workshop. Though CCEEB understands and supports the need to adopt an equitable system of fees to recover the administrative costs associated with the implementation of different elements of AB 32, we are surprised that CARB has apparently embraced an upstream carbon fee mechanism, instead of a traditional permit/point of regulation fee required by the statute.

We note that Health and Safety Code Section 38597 states that fees are to be "paid by the sources of greenhouse gas emissions regulated pursuant to this division, consistent with Section 57001". We are concerned that it is premature to impose a fee until the ARB adopts regulations specifying those entities that will be subject to regulation under AB 32. While the Scoping Plan provides a general overview of the sectors to be regulated and emission reduction targets, the Scoping Plan is not a regulation. Therefore, we believe that this conceptual proposal does not currently meet the threshold requirements for an administrative fee to support AB 32 implementation.

We are concerned that the proposal outlines a vague and overly generalized assumption that fees on various fuel sources should be assessed to recover revenue to generally support AB 32 implementation. In our view, this is insufficient to establish a viable, equitable fee structure designed to recover specific implementation costs as required by statute.

### **Factual and equitable elements of fee principles are ignored**

CCEEB has long acknowledged the legitimacy of program fees assessed on regulated entities designed to recover the costs of administering the necessary environmental regulation. CCEEB has also long advocated that the design and application of such fees abide by clear principles designed to assure their correct and adequate assessment in a fair and equitable manner to reimburse the administrative agency for its necessary costs.

CCEEB remains concerned that the current proposal is more weighted toward an administratively simple method of collecting a targeted revenue number than it is to any other principle of factual accuracy of emission burden or equity regarding the imposition of such a fee. Rather than calculate the administrative burden of each of the "...sources of greenhouse gas emissions regulated pursuant to this division..." as CCEEB believes is required by AB 32, the simple formula proposed by the conceptual proposal assumes all greenhouse gasses are emitted in proportion to the consumption of these fuels and that the resulting calculated fee rate will be paid in proportion to all greenhouse gas emissions. CCEEB questions these assumptions.

### **Retroactive cost accruals and resulting administrative debt is blended with future administrative costs**

CCEEB acknowledges that some mechanism should be identified to address the administrative loans issued to allow for administrative costs to date. Any approach considered for potential reimbursements should be carefully scrutinized to assure that the result is lawful, equitable and accurately reflects legitimate past expenditures. In no case should an obligation be created that requires a retroactive application of a fee to a consumption that has already occurred. At a minimum, we suggest that retrospective and prospective objectives be addressed separately.

Some effort will be required to establish and to clearly assign the costs of agency involvement to date. Prior to the February 25 workshop, it would be important for CARB to define all agencies' administrative activities funded under AB 32 and furnish documentation to clarify what 2006-2009 costs are applicable to the start-up expenses. In addition, CARB should also show the 2009 revenue requirement. Looking forward, fees need to be established based upon an equitable distribution of actual program costs.

### **At a minimum, CARB must abide by H&S Code Section 57001**

Consistent with the code, ARB's management of the administrative fee program is subject to accountability in implementing AB32 and that the fee cannot be greater than is reasonably necessary to fund the efficient operation of activities required to implement AB 32 as designed by statute and ARB.

Annual budgeting processes entail the need for consistency in definition, especially when funds are dispersed across state agencies working on common goals. How each agency defines its “administrative” endeavors supporting ARB charge under the AB 32 statute is a critical element to providing transparency to those providing the revenue. Clearly defined annual work plans and budget requests are important to account for operational expenditures from the fee. It is important that agencies budgets are transparent enough to clearly identify administrative expenditures associated with required AB 32 activities.

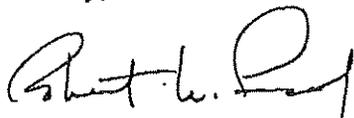
Looking forward, CCEEB believes that it is essential that these specific administrative costs be calculated in a manner that will allow an equitable payment of these costs by those responsible for the regulated activities.

### **Further Detailed Considerations**

- The current process must be conducted in a transparent manner. Considerably more information must be collected and broadly distributed to demonstrate the factual and equitable basis for any fee proposal before CARB anticipates undertaking any decision regarding the adoption of an actual AB 32 fee program.
- Additionally, the costs for AB 32 should be made transparent to the consumers who will ultimately bear the costs and who’s behavior we seek to influence to reduce GHG emissions. Approaches such as displaying the average costs/fees related to AB 32 for the fuel, as a line item on a utility bill or on the gasoline dispenser sign, should be considered.
- AB 32 requires regulation of emissions associated with electricity imports. Nowhere does the fee proposal address how those responsible for such emissions pay a fair share of the regulatory fee burden.
- Any fee payment proposal should reflect the broadest base accurately determinable to assure that costs are properly distributed between emission sources.
- All fee proposals must be carefully screened to ensure that the fee is being imposed on regulated sources of greenhouse gas emissions in accordance with Health and Safety Code Section 38597 and avoid double counting of source emissions. The apparent blending of fee collection, based upon fuel sales and distribution with ultimate fuel use, raises significant issues of double counting that can only be avoided by complicated and cumbersome administrative mechanisms that would negate the administrative simplicity of the proposed concept.

Thank you for this opportunity for initial comment. CCEEB looks forward to continuing to work with you as this process unfolds and the proposals become more refined.

Sincerely,



Robert W. Lucas  
Climate Change Project Manager

cc: Edie Chang, Air Resources Board  
Gerald Secundy, President  
Jackson Gualco, The Gualco Group, Inc.