State of California
AIR RESOURCES BOARD

Amendments to the California Cap-and-Trade Regulation

Resolution 13-44

October 25, 2013

Agenda Item No.: 13-9-9

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 California Global Warming Solutions Act of 2006 (AB 32; Chapter 488, Statutes of 2006; Health & Safety Code section 38500 et seq.) declares that global warming poses a serious threat to the economic well-being, public health, natural resources, and 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 added section 38501 to the Health and Safety Code, which expresses the Legislature's intent that ARB coordinate with State agencies and consult with the environmental justice community, industry sectors, business groups, academic institutions, environmental organizations, and other stakeholders in implementing AB 32; and design emissions reduction measures to meet the statewide emissions limits for greenhouse gases in a manner that minimizes costs and maximizes benefits for California's economy, maximizes additional environmental and economic co-benefits for California, and complements the State's efforts to improve air quality;

WHEREAS, section 38501(d) of the Health and Safety Code confirms that national and international actions are necessary to fully address the issue of global warming, but action taken by California to reduce GHG emissions will have far reaching effects by encouraging other states, the federal government, and other countries to act;

WHEREAS, section 38510 of the Health and Safety Code designates ARB as the State agency charged with monitoring and regulating sources of GHG emissions to reduce these emissions;

WHEREAS, section 38560 of the Health and Safety Code directs ARB to adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective GHG emissions reductions from sources or categories of sources;

WHEREAS, in Resolutions 11-32 and 12-33, the Board directed staff to continue to work with stakeholders on several topics related to implementation of the Cap-and-Trade program, including reconsidering leakage risk determinations, the allowance allocation approach for California industries including refineries, and product benchmarks, as necessary;

WHEREAS, in Resolutions 12-51 and 12-33, the Board directed staff to analyze and, if necessary, propose amendments relating to resource shuffling, legacy contracts, combined heat and power, emissions leakage, allowance allocation to universities, cost containment, product-based benchmarks, and waste-to-energy facilities, as necessary;

WHEREAS, pursuant to Resolution 10-42, the Board directed the Executive Officer to initiate a public process for the review of additional compliance offset protocols for the purpose of bringing additional protocols to the Board for consideration; and ARB staff has proposed a new Compliance Offset Protocol Mine Methane Capture (MMC) Projects as part of this rulemaking;

WHEREAS, staff has proposed amendments to the Cap-and-Trade Regulation that include the following elements:

The provision of allowance allocation for additional sectors and the modification of allocation for sectors based on new information;

The inclusion of an additional cost containment mechanism;

The identification of new covered entities and exempt sectors where direct regulation best meets the goals of AB 32;

The exemption of certain emissions from incurring a compliance obligation under the program for the first compliance period;

The provision of additional clarity regarding resource shuffling;

The inclusion of a new offset protocol and clarification and addition of processes for the implementation of the compliance offset program;

The addition and modification of market rules for auctions and transfers in the tracking system; and

The inclusion of additional provisions to enhance market security.

WHEREAS, ARB has inter-agency agreements for leakage studies related to several industrial sectors receiving free allowances, which will be completed before the beginning of the second compliance period;

WHEREAS, the proposed cost containment mechanism ensures environmental integrity, but only addresses near-term needs and more long-term certainty is needed;

WHEREAS, staff prepared a document entitled "Staff Report: Initial Statement of Reasons for the Proposed Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms" (ISOR), which presents the rationale and basis for the proposed regulation and identified the data, reports and information relied on;

WHEREAS, the California Environmental Quality Act (CEQA) requires that a public agency not approve a project as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental impacts of such a project; In the event that specific economic, social, or other conditions make infeasible the alternatives or mitigation measures, the project may be approved if it is determined that any remaining unavoidable significant impacts are acceptable due to overriding considerations;

WHEREAS, Public Resources Code section 21080.5 allows public agencies with regulatory programs to prepare a plan or other written document in lieu of an environmental impact report or negative declaration once the Secretary of the Resources Agency has certified the regulatory program;

WHEREAS, that portion of the ARB's regulatory program that involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans has been certified by the Secretary of Resources Agency (CEQA Guidelines, section 15251(d));

WHEREAS, in accordance with ARB's certified regulatory program at title 17, CCR, section 60005 (b), and the policy and substantive requirements of CEQA, as part of the Staff Report, ARB staff has prepared an assessment of the potential for significant adverse and beneficial environmental impacts associated with the proposed amendments and a succinct analysis of those impacts;

WHEREAS, the ISOR, including the environmental analyses, was circulated for a 45-day written public comment period from September 9, 2013 until October 23, 2013; and

WHEREAS, the draft update to the AB 32 Scoping Plan recommends the development of post-2020 emissions reduction targets, and that sending a signal that Cap-and-Trade will continue beyond 2020 is critical to fully realizing the benefits of the program;

NOW, THEREFORE, BE IT RESOLVED that the Board hereby directs the Executive Officer to take the following actions:

1. Consider the topics set forth in Attachment A, and make such additional conforming modifications as may be appropriate 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 as

may be submitted during this period, shall make such further modifications as may be appropriate in light of the comments received, and shall present the proposed regulations to the Board for further consideration;

2. Evaluate all comments received during the public comment periods, including comments raising significant environmental issues, and prepare written responses to such comments as required by ARB's CEQA certified regulations at title 17, CCR, section 60007 and Government Code section 11346.9(a);

3. If appropriate, prepare and circulate any further environmental analysis to the extent required by ARB's regulations at title 17, California Code of Regulations, sections 60001-60007 and incorporate all feasible mitigation or alternatives that could eliminate or substantially lessen any significant adverse environmental impacts identified; and

4. Present at a subsequently scheduled Board hearing, the Board with staff's written responses to comments raising significant environmental issues, along with the environmental analysis, for consideration for approval, and the Final Regulation order for consideration for adoption.

BE IT FURTHER RESOLVED that the Executive Officer will review the findings of the leakage studies and, in response, propose any modifications to the allocation assistance factors, as necessary, prior to the start of the third compliance period.

BE IT FURTHER RESOLVED that the Executive Officer will make available for public review an analysis of the potential impact of cap-and-trade offsets on coal mine economics.

BE IT FURTHER RESOLVED that pursuant to the draft update to the AB 32 Scoping Plan, the Board directs the Executive Officer to develop a plan for a post-2020 Cap-and-Trade Program, including cost containment, before the beginning of its third compliance period to provide market certainty and address a potential 2030 emissions target.

I hereby certify that the above is a true and correct copy of Resolution 13-44, as adopted by the Air Resources Board.

Tracy Jensen

Tracy Jensen, Clerk of the Board

Resolution 13-44

October 25, 2013

Identification of Attachment to the Board Resolution

Attachment A: Staff's Proposed Topics of 15-day Changes
(Distributed at the October 25, 2013 ARB hearing)