State of California
AIR RESOURCES BOARD

California Cap-and-Trade Program

Resolution 12-33

September 20, 2012

Agenda Item No.: 12-6-1

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 and 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 acknowledges that by exercising a global leadership role to reduce emissions of greenhouse gases, California will also position its economy, technology centers, financial institutions and businesses to benefit from national and international efforts to reduce emissions of greenhouse gases;

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 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 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, the Cap-and-Trade Regulation was adopted by the Board and is codified in title 17, California Code of Regulations, sections 95800-96023;

WHEREAS, in Resolutions 10-42 and 11-32, the Board directed staff to work with stakeholders on a number of follow-up activities related to the implementation of the Cap-and-Trade Regulation;

WHEREAS, ARB has been working with stakeholders to address and minimize, to the extent feasible, emissions leakage from imported electricity, and to ensure adequate and reliable electricity supply for California;

WHEREAS, ARB continues to evaluate the need for refinements to industry benchmarks and trade exposure categorization;

WHEREAS, pursuant to Resolution 11-32, ARB is continuing to work with CalRecycle and stakeholders to characterize lifecycle emissions reduction opportunities for different options for handling solid waste, including recycling, remanufacturing of recovered materials in state, composting and anaerobic digestion, waste-to-energy facilities, landfilling, and the treatment of biomass, in an effort to align AB 32-related programs with statewide waste management goals, while providing equitable treatment to all sectors involved in waste handling, and considering the best available information;

WHEREAS, California universities have taken early action by investing in greenhouse gas emission reduction projects;

WHEREAS, entities with legacy contracts that were entered into prior to AB 32 may not have an appropriate mechanism for recovery of carbon costs associated with the Cap-and-Trade Regulation;

WHEREAS, the auction purchase limit for covered entities should provide the ability to acquire sufficient allowances to comply with the Cap-and-Trade Regulation, and should assure equitable treatment among covered entities;

WHEREAS, the Cap-and-Trade Program should reward existing and incentivize new efficient distributed electricity generation technologies, such as combined heat and power (CHP);

NOW, THEREFORE, BE IT RESOLVED that the Board directs the Executive Officer to suspend the enforcement of the required attestation addressing resource shuffling for the first 18 months of the program, and to continue to work with the Emissions Markets Advisory Committee (EMAC), the California Independent System Operator, state agencies, and stakeholders to provide certainty to the electricity market about how the regulation will address resource shuffling. Staff shall provide a report to the Board, and any recommendations for action at the October 2012 Board meeting.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to continue evaluation of trade exposure categorization and, if necessary, propose regulatory amendments by mid-2013 to modify the leakage risk determinations to be implemented prior to the allocation of allowances for the second compliance period.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to develop regulatory amendments to exempt waste-to-energy facilities from the Cap-and-Trade Program for the first compliance period. Staff shall return to the Board with proposed regulatory amendments by mid-2013.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to work with CalRecycle, other agencies and stakeholders, and propose by 2013 a comprehensive approach for the most appropriate treatment under the Cap-and-Trade program for all end-of-life management options for Municipal Solid Waste, including but not limited to, landfills, waste-to-energy, composting, and recycling to be implemented starting January 1, 2015.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to develop a methodology to allocate allowances to California universities' that recognizes early actions to reduce greenhouse gas emissions, energy efficiency and CHP, and to return to the Board in mid-2013 with proposed regulatory amendments.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to develop a methodology that provides transition assistance to covered entities that have a compliance obligation cost that cannot be reasonably recovered due to a legacy contract. The Executive Officer shall work with the California Public Utilities Commission (CPUC) to ensure consistency in the way that legacy contracts are addressed. Staff shall return to the Board with proposed regulatory amendments in mid-2013.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to work with the EMAC, the Market Simulation Group, and stakeholders, and to take appropriate action, including proposing potential regulatory amendments in 2013 as necessary, to ensure that the purchase limit will allow covered entities to acquire sufficient allowances at auction to comply with the Regulation, and do not deny the largest facilities the flexibility that regulation was designed to provide all covered entities.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to work with the CPUC, the California Energy Commission and stakeholders, to develop a methodology that exempts the steam and waste heat emissions for all facilities that would not be included in the Cap-and-Trade program "but for" their investment in CHP, and to return to the Board in mid-2013 with proposed regulatory amendments.

I hereby certify that the above is a true and correct copy of Resolution 12-33, as adopted by the Air Resources Board.

Lori Andreoni

Lori Andreoni, Manager, Office of Legal Affairs