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President

(Submitted via web: http://www.arb.ca.gov/cc/capandtrade/comments.htm)

April 13, 2012

Mr. Steve Cliff
Chief, Climate Change Markets
Air Resources Board
1101 I Street
Sacramento, CA 95814

RE: Comments on Draft Amendments for Linking California's and Quebec's Cap-and-Trade (C/T) Programs

Dear Mr. Cliff:

WSPA members have been intensively following all the proposed regulations governing the (C/T) Program. Our interest reflects the importance with which the regulations, provisions and requirements directly affect the effectiveness of the C/T program. We continue to see this program as a critically important element in ARB's efforts to achieve AB 32 targets using market-based mechanisms.

WSPA, staff and members, were in attendance (both in Sacramento and on the web) for your April 9 workshop and, in reviewing the workshop slides and the oral statements made by Staff, we have identified several issues that deserve comments and recommendations.

ARB's Current Proposal to Link with Quebec using a Combined Market Goes Beyond Simple Linkage

ARB's original concept of linking California's CTR in a combined, multi-state market would have furthered the goals identified through WCI. At the time, a number of US states were actively contemplating adopting cap-and-trade regulations and, if they had, the potential regional market would have been much larger. However, as of today, that opportunity is limited to Quebec as the only remaining member of WCI with a C/T regulation. ARB's proposal to link with the Canadian Province of Quebec would create a combined carbon market relying only on a highly specialized market infrastructure reflecting the two jurisdictions. This specialized market structure may well adversely impact linkage to other markets in the future if they also require specialized requirements.

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Recommendation: Impose only the simplest regulations for linkage so that other programs that may be added in the future benefit from program flexibility and are attracted to join.

The Combined Market will Propagate Flawed Market Policies

Quebec has followed the WCI design and California regulations closely in preparing its own program. As a result, the Quebec program contains a number of market design flaws identical to those of California. A prime example is the holding limit which will remove from the California market a quantity of allowances in excess of the entire amount of GHG allowances contained in the Quebec program. The holding limit is flawed because (1) it restricts liquidity in the market, (2) it creates opportunities for financial intermediaries to exercise market power, (3) it is without factual basis and is thus arbitrary, and (4) it does not take into account the need for different limits for larger compliance entities. Because changes to the joint market will require changes to both Quebec and California policies, linkage will result in unreasonable new hurdles to modify flawed market policies.

Recommendation: We recommend simpler linkage approaches that would not require the detailed market harmonization and that would work for both this linkage and broader linkages.

"Know Your Customer" (KYC) requirements should minimize collection of individual's confidential information

WSPA recognizes the need to ensure the identity of individuals accessing the tracking system. However we believe that KYC should (1) recognize the differences between a representative of a covered entity and a representative for a non-covered entity and, (2) minimize collection of individual's confidential information only to the extent required to ensure the identity of the individuals. Requiring information beyond what is required solely to determine identity is unnecessarily intrusive.

As an example, assume that a covered entity has assets which include one or more processes or other operations in California. In this situation, ARB holds those covered entities responsible for complying with numerous C/T requirements, including significant compliance obligations. If these covered entities have the capacity to manage these operational and compliance activities, then they should be assumed to also have the capacity to ensure the identity of their employees who the entities authorize and attest are acting on their behalf. Therefore documentations, such as an open bank account in the US and/or Canada, addresses of permanent residents, and passport numbers which are particularly intrusive, should not be necessary for an authorized representative for a covered entity.

Recommendation: Add an additional paragraph to Section 95834(b) as (10) below:

> (b) The individual must provide documentation of the following:
> (1) Name
> (2) The address of the permanent residence of the applicant, which may include:
> (A) A valid identity card issued by a state or province with an expiration date;
> (B) Any other government-issued identity document containing an individual's permanent address; or

(C) Any other document that is customarily accepted in the State of California or any jurisdiction operating an external GHG ETS to which California has linked, as evidence of the permanent residence of the individual.
(3) Date of birth
(4) Employer name and address
(5) Passport number (if issued)
(6) Driver's license number
(7) An open bank account in the United States or Canada.
(8) Employment or other relationship to an entity that has registered or has applied to register with the California GHG cap-and-trade program or an external GHG ETS to which California has linked, if the individual is listed by an entity registering pursuant to section 95830.
(9) A government-issued document providing photographic evidence of identity of the applicant which may include:
(A) A valid identity card issued by a state or province with an expiration date; or
(B) A passport.
(10) An individual representing a covered entity is required to provide documentation only as required in Section 95834(b)(1), (4), (8), and (9).

Push, push, pull is unnecessarily burdensome

WSPA believes that the requirement for "push, push, pull" to register a transfer of compliance instruments between two entities is unnecessarily burdensome. Specifically, two authorizations from the same entity requesting the transfer are unnecessary. Internal corporate controls, in addition to ARB notifications to multiple entity representatives of the transfer requests, should provide sufficient oversight to prevent unintended or deceptive transfer requests. A "push, pull" process would provide sufficient safeguard while significantly reducing unnecessary burden.

Recommendation: WSPA recommends that the process for transferring compliance instruments be revised to a "push, pull" process.

Consequences of push, push, pull timing requirements should only be rejection of the transfer request; it should not be consider a violation

Section 95921(a)(1)(A) and (B) specify a 48 hour time limit for the second authorized representative of the entity submitting a request for transfer of compliance instruments to confirm the request and 24 hours for the receiving entity to confirm the transfer. We believe that the consequence of missing these time limits should be only the cancellation of the transfer request. These time limits will not result in any harm to the market or cause environmental harm. Conversely, the limits will unnecessarily increase exposures to potential violations. We see no compelling reason to classify missing these time limits as a violation of the regulations nor has Staff provided any reason for maintaining them.

Recommendation: add the following paragraph to section 95921(c):

> Section 95921(c) (3) If the time limits specified in Section 95921(a)(1)(A) and (B) are not met, the transfer request will be cancelled. Should a request be cancelled because the time limits were not met, and the entity wishes the transfer to be executed, the entity must submit a new transfer request.

Parties should not be required to agree to submit documentations on the transaction (contracts)

Section 95921(b)(7) requires parties of the transfer request to, upon request of the Executive Officer, provide documentation on the transaction for which the transfer request was submitted. As currently proposed, ARB will already have access to transaction information regarding the parties involved, the date of the transaction and price. Access to the contract documents is unnecessary for market oversight. Such contracts are confidential business information that should not be subject to ARB oversight.

Recommendation: delete Section 95921(b)(7)

> ~~(7) Parties to the transfer request agree to provide documentation on the transaction for which the transfer request was submitted upon the request of the Executive Officer.~~

Reporting the date of the transaction agreement and price of a particular transfer would provide limited value for ARB and should be deleted

Sections 95921(b) (4)&(6) require reporting of the date of the transaction agreement for which the transfer request is submitted and the price of the compliance instrument. However, we can envision numerous situations where arrangements may be made during a particular year for delivery at a later time in the year (i.e., a contract between parties may be agreed upon in March for execution or delivery in December). The dates and prices of the transaction agreement would not be contemporaneous with the transfer request date. Therefore this information would not provide current relevant data that we believe ARB is seeking and would have limited value.

ARB should be able to more effectively gather current price and quantity data from exchanges and brokers and, if desired, publish them the next year in an aggregated and useful format. In addition, due to the netting of delivery obligations under different contracts with the same counterparty, it would not be possible to report an actual transaction date and price for that (net) transfer. This issue is particularly problematic for exchange-traded contracts. Therefore, Sections 95921(b) (4) & (6) provide little or no useful information.

Recommendation: Delete Section 95921(b) (4) & (6)

Minimize list of names and addresses of key responsible parties of an entity

Section 95830(c)(1)(B) should be amended so that it requires listing of 2 or 3 of the entity's officers who are: i) responsible for the conduct of the authorized account representatives, ii) alternate account representatives, and iii) account viewing agents. Listing of all the directors and officers of a large entity may be a very long list, which will be difficult to keep current, and is unnecessary to ARB's program oversight.

Moreover, it is unclear why a list of persons controlling over 10% of the voting rights is necessary.

Recommendation: revise section 95830(c)(1) as follows:

(1) An entity must complete an application that contains the following information:
(A) Name, address and contact information, and type of organization, date and place of incorporation;
(B) Names and addresses of at least three of the entity's directors and officers who are responsible for the conduct of the authorized account representatives, alternate account representatives and account viewing agents.
(~~C) A list of persons controlling over 10% of the voting rights attached to all the outstanding voting securities of the entity.~~
(D) A business number, if assigned, to the entity by a California state agency.
(E) A U.S. federal tax Employer Identification Number, if assigned.
(F) Data Universal Numbering System number, if assigned.
(G) Statement of basis for qualifying for registration pursuant to sections 95811, 95813, or 95814;
(H) Identification of all other entities registered pursuant to this article with whom the entity has a corporate association, direct corporate association, direct or indirect corporate association pursuant to section 95833, and a brief description of the association;
(I) Applicants may be denied registration (i) based on information provided; or (ii) if the Executive Officer determines the applicant has provided false or misleading information, or (iii) has withheld information material to its application.

Relationship of CEQA to Cap-and-Trade

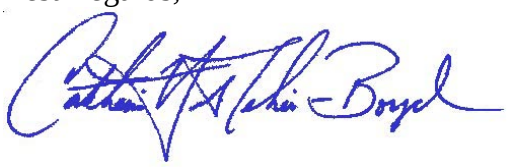
WSPA continues to have significant concerns regarding the interplay between the requirements of CEQA and the AB32 C/T program. For example, one could envision emission reductions from a C/T program as mitigation for project-related impacts if the reductions exceed project emissions. In other words, allowances purchased under the C/T program that are in excess of project-related emissions should be considered as valid mitigation under CEQA.

Yet, ARB staff stated during the presentation that actions under the C/T program are not intended to address CEQA requirements. ARB has provided no explanation for its unwillingness to address this obvious and important issue. It would be very useful to know from the outset that GHG reductions under the C/T program count for CEQA mitigation.

Recommendation: We strongly urge ARB to address the potential of GHG reductions under the CTR as mitigation for CEQA to industries working within the AB32 Cap-and-Trade market-based mechanism.

Thank you for reviewing and acting on these comments. Should you have any questions, feel free to contact me or Mike Wang (mike@wspa.org; 626-590-4905).

Best Regards,



cc: Mike Wang, WSPA
Rajinder Sahota, ARB
Ray Olsson, ARB