American Chemistry Council | Industrial Gases

September 24, 2012

Clerk of the Board
Air Resources Board
1001 I Street
Sacramento, California 95814

Subject: Comments on the Cap-and-Trade Technical Workshop to Discuss Refinery Benchmark in the Second Compliance Period" held on August 28, 2012

To the Clerk of the Board:

The Industrial Gases Panel of the American Chemistry Council appreciates the opportunity to submit comments on the, "Development of GHG efficiency benchmarks for the distribution of free emissions allowances in the California Cap-and-Trade Program Refineries – Preliminary Work Product" that was part of the, "Cap-and-Trade Technical Workshop to Discuss Refinery Benchmark in the Second Compliance Period" held on August 28, 2012. In order to inform and enhance the Air Resource Board's efforts, we offer the following comments on the, "Options for allocation methodology for hydrogen production."

The industrial gas manufacturing industry employs 60,000 workers in the U.S. and 3,400 in California. The Industrial Gases Panel (Panel) represents the six largest global manufacturers in the industry. The industrial gas industry supplies gases to hundreds of thousands of customers in numerous industries in California, including aerospace, agriculture, autos, chemical processing, electronics, energy, food and beverage, and healthcare, among others.

The industrial gases sector also operates numerous production facilities and business operations in California and will be particularly impacted by the allowance allocation and benchmarking provisions in the proposed cap-and-trade regulations. The Panel applauds the proposed revisions to the benchmarking methodology outlined in the work product; and agrees that, "A number of issues raised require further analysis and/or discussion" such as, "How to deal with hydrogen that can be produced inside or outside facility boundaries of refineries?"

The Panel offers the following recommendations to California Air Resources Board (CARB) on the hydrogen benchmark:

1. Implement a hydrogen benchmark methodology equitably.
2. Encourage consistent implementation of industrial performance goals.
3. Correct allocation inequities from the first compliance period.

Implement a hydrogen benchmark methodology equitably

The Panel prefers option 3 in "Table 9: Options for allocation methodology for hydrogen production," described as, "Exclude hydrogen from the CWT approach and use hydrogen benchmark based on actual efficiency for all production," and believes is the most straight forward, logical, and easiest to understand of the options.

The Panel emphasizes the need for CARB to continue a commitment to maintaining an equal allocation to all hydrogen producers. The Panel does not have a preference for either the current (EU ETS-based CWT) or proposed alternate benchmark approaches, provided that hydrogen production at both merchant plants and refinery-owned plants is subject to the same benchmark. The Panel believes there is no basis for having separate benchmarks for merchant and refinery-owned plants, because there are comparable degrees of process and facility integration among these plants, regardless of ownership.

Encourage consistent implementation of industrial performance goals

The CARB benchmarks for non-hydrogen industries are set at the lower of 90% of the industry average or "best in class." Due to a lack of data at the time on which to base the hydrogen industry average, it was suggested that CARB use the data available from European benchmarks for hydrogen production. Unfortunately, CARB suggested adopting the European benchmark for hydrogen, rather than applying CARB methodology to European data.

This is an issue because the European methodology differs significantly from the methodology CARB has applied to every other industry in California. Rather than taking 90% of the industry average, the European benchmark was established using the average emission intensity of the top 10% of the industry. This equates to about 80% of the industry average. In order to be consistent with CARB's established methodology and to be fair and consistent across industry sectors, and to minimize the chance of market distortions, the hydrogen benchmark should be increased to 90% of the sector average, or 9.99 tonne CO2 per tonne H2.

Correct allocation inequity from the first compliance period

CARB should not extend the inequity created under the First Compliance Period, where merchant hydrogen plants, using the current EU ETS benchmark value are receiving only 80% of the average hydrogen emissions in the ETS database as their allocation, while refinery-owned plants receive 90% of their sector average during this same period (including their emissions from hydrogen production). Further, CARB should address the first compliance period differentiation. The Panel suggests that CARB develop a mechanism for retroactive adjustment in the form of the "true-up" for product-based allocation.

Conclusion

The Panel believes that the above recommendations can provide better equity in the implementation of the state's greenhouse gases reduction program and could help prevent market distortions during program implementation. Importantly, the Panel's recommendations also further the California Global Warming Solutions Act's (AB 32) directive that CARB design the cap-and-trade regulations to be "equitable."

The Panel supports responsible environmental policy and California's efforts to develop a fair, effective and economically efficient means for meeting the requirements of AB 32. We also recognize that California's actions can be a model for greenhouse gas programs in other states and internationally. It is therefore important that CARB adopt cap-and- regulations that both minimize potential market distortions and ensure the fair treatment of all regulated entities.

Should you have any questions or if we can provide any additional information, please contact Seth Barna (202) 249-6708 or at Seth_Barna@AmericanChemistry.com

Sincerely,

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