

December 15, 2010

California Air Resources Board
Clerk of the Board, Air Resources Board
1001 I Street, Sacramento, California 95814
Submitted electronically to: <http://www.arb.ca.gov/lispub/comm/bclist.php>

RE: California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms

To Whom It May Concern:

The California Wastewater Climate Change Group's (CWCCG) mission is to address climate change policies, initiatives, and challenges through a unified voice advocating for California wastewater community perspectives. Together, CWCCG treats over 90% of the municipal wastewater in California. We have commented on the California Air Resources Board (ARB)'s previous drafts and work products related to the proposed cap and trade program, and we appreciate the opportunity to offer comments on this proposed regulation.

We would like to start by commending ARB staff for being extremely attentive to stakeholder concerns throughout this process. We have had several in-person meetings with staff, in addition to phone calls and email dialogue, and they have consistently been thoughtful and accommodating.

CWCCG's primary comments are as follows:

- We support modifications to the language in § 95852.2 that clarify staff's intent with respect to biomass sources without a compliance obligation.
- We support ARB's intent to develop its own offset protocols through a public process and discourage reliance on Climate Action Reserve protocols.
- We encourage use of allowance value to incentivize efficient combined heat and power (CHP).
- We suggest that following adoption of this regulation, the ARB direct staff to continue to work with local government stakeholders including the wastewater treatment community regarding full exemption from the regulation.

Additional detail on these comments is provided below.

We support modifications to the language in § 95852.2 that clarify staff's intent with respect to biomass sources without a compliance obligation.

Following the release of the draft regulation for adoption, we have had discussions with staff related to the language on emissions without a compliance obligation. We are greatly concerned that the language proposed in the draft is confusing and not consistent with staff's intent to exclude emissions of biogas, including digester gas from wastewater treatment, from compliance obligations. Staff has recommended the following changes to that section, which we strongly support.

- (a) Combustion emissions from biomass-derived fuels (~~except biogas from digesters~~) from the following sources:
...
- (e) Biomethane **and biogas** from the following sources:
 - (1) All animal and other organic waste; or

(2) Landfills ~~gas~~ and wastewater treatment.

(f) Fugitive and process emissions from:

- (1) CO₂ emissions from geothermal generating units;
- (2) CO₂ and CH₄ emissions from geothermal facilities;
- (3) CO₂ emissions from hydrogen fuel cells;
- (4) At petroleum refineries: asphalt blowing operations, equipment leaks, storage tanks, and loading operations;
- (5) At the facility types listed in section 95101(e) of the Mandatory Reporting Regulation, Petroleum and Natural Gas Systems: leak detection and leaker emission factors, and stationary fugitive and “stationary vented” sources on offshore oil platforms; or
- (6) Methane from landfills.
- (7) Methane and N₂O from municipal wastewater treatment plants.

We support ARB’s intent to develop its own offset protocols through a public process and discourage reliance on Climate Action Reserve protocols.

We support ARB’s intent to develop new offset protocols through a public process involving stakeholder engagement. We have been in discussions with staff regarding opportunities for offsets in the wastewater sector and look forward to continuing these discussions. Because the Climate Action Reserve (CAR) has the ability to select members for its protocol development working groups, we do not believe that their process is equivalent to a stakeholder process that would be undertaken by ARB. In several instances, we have been excluded from these working groups and our stakeholder input has therefore not been considered. In light of these concerns, we strongly caution ARB against adopting CAR protocols without opening them up to a full new stakeholder process, and we encourage development of new ARB protocols instead.

We encourage use of allowance value to incentivize efficient CHP.

The AB 32 Scoping Plan calls for the state to increase CHP energy generation by 30,000 GWh, yet the cap and trade regulation provides no incentives for development or expansion of CHP. In fact, the threat of creating a cap and trade compliance obligation is likely to discourage facilities including wastewater treatment plants from installing or expanding efficient CHP systems. We therefore encourage ARB to direct some portion of allowance value to development of a program that incentivizes CHP.

We suggest that following adoption of this regulation, the ARB direct staff to continue to work with local government stakeholders including the wastewater treatment community regarding full exemption from the regulation.

As we have outlined before, we believe that local government agencies such as wastewater treatment facilities should be exempted from compliance obligations under the cap and trade program. While wastewater facilities currently fall under the compliance threshold due to the exclusion of biomass emissions (assuming the changes recommended above are made), we are concerned that changes to plant operations, calculation methodologies, covered sectors under EPA’s mandatory reporting rule (which ARB is aligning with in its mandatory reporting rule), thresholds, or other unforeseen conditions have the potential to bring wastewater treatment agencies into the cap in the future. Rather than waiting for these changes to occur, we request that staff continue to work with us to consider solutions including an exemption.

Wastewater treatment is a necessary service, and emissions associated with wastewater would happen whether or not our facilities are present. We cannot control the quantity or quality of our inflow nor the water quality requirements placed on our effluent, which drive the treatment methods selected. Therefore, we cannot control our emissions, and because we cannot move, we do not present any leakage risk. As public agencies, we have very specific procurement rules and lengthy budgeting processes, and we cannot adapt to market conditions sufficiently to ensure compliance at a reasonable cost in a market-based system. Finally, we cannot pass compliance costs on to customers due to the public processes associated with our rate-setting. For these reasons, we believe an exemption from compliance obligations is appropriate and we would like to continue to work with staff toward this end.

Thank you for your consideration. Please contact me if you have any questions at (510) 206-3820 or [jkkepke@ch2m.com](mailto:jkepke@ch2m.com).

Sincerely,



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cc:

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