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

Re: CARB's Cap-and-Trade 15-Day Rulemaking Package

Dear California Air Resources Board Members:

CMTA is a trade association representing over 700 manufacturers in California, including such diverse industries as glass, fuels, chemicals, steel, cement, aerospace, consumer products, food and drink processors and more. Many members will be directly subject to the proposed cap-and-trade regulation, and/or will be incurring the costs passed through from application of the rule on upstream electric generators, transportation fuel suppliers and natural gas providers.

Large manufacturers are subject to high operating costs in California, particularly for electricity, with rates more than 50% higher than the average of other states. These high energy prices have already forced existing manufacturers to embrace energy efficiency in order to cut costs and stay in business. Since 2000 we have lost about a third of our manufacturing employment, and the most recent data shows manufacturing either declining less, or growing more rapidly, in other states. We believe more job losses will occur when new costs are imposed on California manufacturers to meet AB 32 targets.

PROGRAM TIMELINE ADJUSTMENT

CMTA supports the decision by the California Air Resources Board (CARB) to adjust the start date for compliance to 2013. This adjustment will allow the regulated industries the time necessary to assure their reporting and emission reduction protocols are in place and allow CARB the time to make any fine-tuning adjustments to the program to ensure its success in meeting AB 32 implementation goals.

In addition, California industry is faced with state, local and federal requirements for air emissions that threaten to conflict, duplicate, or otherwise increase costs above that necessary to achieve our individual and collective policy goals. The current political and legal situation is confusing, to say the least, and entities are struggling to predict and plan for what may be coming in the next years. A policy statement from CARB that recognizes the situation and puts a high priority on addressing these questions to protect the California economy would be welcome and provide some confidence that CARB will not proceed in a manner that puts California industry at risk. CMTA recommends that CARB resolve to continue to monitor and make adjustments to the timeline, content, and implementation strategy of the state cap-and-trade program to avoid these excess costs and burdens.

MARKET MECHANISMS

CMTA believes that a well-designed market mechanism should be included in the measures to achieve AB 32 goals. Market mechanisms such as cap-and-trade can minimize the costs of compliance by providing flexibility for compliance entities and allow for the use of lower cost emission reductions outside the capped sector. CMTA opposes design elements that would undercut the cost minimizing benefits of the program. Our comments here reflect our major concerns with the program as proposed by CARB.

BENCHMARKS

CMTA supports direct allocation of emissions allowances without charge. The fundamental principle on which CARB has decided to conduct direct allowance distribution is the prevention of leakage by protecting industries that are energy intensive and trade exposed. The valid purpose of distribution benchmarks is to establish equitable bases for distribution of free allowances within industries, taking into account the complexity and existing energy efficiency of California industrial facilities. Benchmarks should be developed that are supported by the affected industries and serve to distribute allowances equitably among members of the industry.

CARB should not use benchmarking methodology to serve unrelated goals and thus undercut the basic principle of free allocation of allowances to prevent leakage of emissions and economic activity of energy intensive and trade exposed industries. Benchmarks that penalize the superior energy efficiency of California industries relative to competitors in other states or that distort the distribution of allowances among industry members without regard to energy efficiency could result in significant allowance shortages for industry members relative to their in-state competitors. This will result in large allowance shortages for many facilities, with significant adverse impacts for California businesses and their workers.

ALLOWANCE ALLOCATIONS

CARB proposes less than 100% allowance allocation for various industrial sectors in future compliance periods despite the fact that it has determined that these sectors, due to their energy intensity and trade exposure, qualify for 100% free allowance allocation. For those sectors determined to be energy intensive and/or trade exposed, CARB should be providing 100% free allowances, consistent with its own policy and in the interest of achieving the target reductions in the most cost-effective manner possible.

In addition, it is premature to make a determination of leakage risk less than 100% for any industrial sector past the first compliance period. The leakage analysis is insufficient to justify this. There is adequate time to do a leakage risk analysis prior to the 2015 compliance time period. The analysis should include the level of participation by other states and jurisdictions in the program as a key metric for how much each industry sector is at risk for leakage. CMTA reaffirms the comments on this topic made to CARB on December 9, 2010. There is not substantial evidence in the record to justify the leakage categorization less than 100% for any industrial sector.

Multi-Year Allocations

Without the benefit of multi-year allowance allocations, regulated entities will not be able to properly determine their growth potential and plan accordingly to select new sites or expand current facilities. A multi-year allocation approach allows regulated entities the time necessary for capital planning purposes. It is not feasible for a facility to responsibly plan an expansion or retrofit that will take multiple years if it must start the project without knowing how it will obtain allowances to cover facility emissions in future years of the project.

LIMITATION ON USE OF OFFSETS

CMTA opposes the limit on the use of qualified offsets. Stringent offset qualification rules and the need for CARB approval of any offset protocol will ensure only effective projects will be approved, and the rigorous process will likely constrain the availability of offsets in any event. There should be no additional, artificial constraints on the use of qualified offsets, and the evidence in the rulemaking record does not support a finding that limits in the use of offsets are necessary to meet the goals of AB 32.

Buyer Liability for Offset Reversals

CMTA believes it is unreasonable and counterproductive to impose liability for intentional or unintentional offset reversals. The enforcement and potential penalty assessment of such liability ignores the purpose of the certification process. Since

CARB has assured quality offsets through stringent offset qualification rules and third party verification, it is redundant and unreasonably onerous for the entity purchasing or surrendering the offset credit to also be responsible for it being real, permanent, etc.

Allowing CARB to invalidate offsets eight years from the time they are issued will create unnecessary uncertainty and risk that could suppress the market. There is not substantial evidence in the record to justify the need for buyer liability to protect the integrity of the offset market.

Forward Carry Of Unused Offset Capacity

In an effort to provide flexibility and reduce compliance costs to regulated entities, these entities should be allowed the flexibility of banking unused offsets on a year-to-year basis. Another mechanism that should be available to regulated entities is the ability to trade the balance of their remaining offsets to another company.

AUDIT REQUIREMENT

CARB has proposed that industrial audits may form the basis of command and control regulations for emissions now covered by the cap-and-trade program. The industrial audit was not included in the scoping plan for this purpose, and such a purpose directly conflicts with the cost-minimization purpose of the cap-and-trade program. This proposal will reduce operational flexibility and increase costs and should be rejected.

DISPUTE RESOLUTION PROGRAM

Currently the cap-and-trade and mandatory reporting regulations give CARB's Executive Officer sole authority over program implementation, including determining whether regulated parties have complied with regulations and determining penalties. Absent costly and time consuming litigation, there is currently no independent administrative option for compliance entities to challenge the Executive Officer's decisions.

The Executive Officer should not have the final decision on such a comprehensive program. It would be in both CARB's and the regulated industry's best interest that a formal, autonomous dispute resolution process be established to provide independent decision making with equity for all parties involved in any dispute.

This program should use an unbiased mechanism to resolve disputes, variances and penalty disagreements with the Executive Officer. Without such a program issues that could be resolved relatively quickly could become time-consuming litigation which could hinder the goals of AB 32.

FUELS-UNDER-THE-CAP

CMTA is concerned about the impact of including transportation fuels under the cap beginning in 2015. The Scoping Plan proposed inclusion of transportation fuels in the cap-and-trade program beginning in 2015, largely due to the expectation that Western Climate Initiative states would address fuels this way in their state programs. Since California is already implementing the Low Carbon Fuel Standard, and no WCI states are prepared to link to California's cap-and-trade rule, we recommend that the leakage impacts of a California-only fuels-under-the-cap (on top of the LCFS) be studied and that a decision with regard to the treatment of transportation fuels under cap-and-trade be postponed pending that analysis.

INDUSTRY STAKEHOLDER ADVISORY

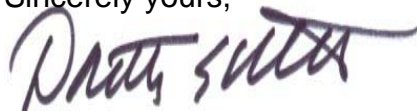
CMTA supports the development of an industry stakeholder advisory committee to provide continual and thoughtful feedback to the CARB Board for its consideration as the program rolls out during the next few years.

CONCLUSION

CMTA reasserts comments made on December 9, 2010 for those elements of the cap-and-trade rule that have not been modified in the 15 day package, including our comments regarding the need for more information to set price collar levels for the allowance containment reserve account and that penalties for non compliance should be less punitive and not take allowances out of the market.

Thank you for considering our comments. If you have any questions, feel free to contact me at 916-498-3319.

Sincerely yours,



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California Manufacturers & Technology Association