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Mary D. Nichols, Chairman, and Members
California Air Resources Board
c/o Clerk of the Board
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: ***Comments from MillerCoors on Proposed California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation***

Dear Ms. Nichols and Members of the Board:

On behalf of our client, MillerCoors, we appreciate the opportunity to submit comments on the proposed regulation to implement a "cap-and-trade" program to control greenhouse gas emissions. MillerCoors is America's second largest brewer of beer and operates one of its major brewing facilities in the City of Irwindale, California. Our Irwindale brewery, which is one of three California breweries subject to the cap-and-trade rules, produces roughly 6.5 million barrels[1] of beer annually, packaged under 33 different brands. Irwindale currently employs 520 Californians in high wage and benefit jobs, pays more than $45 million a year in state and local taxes and fees, and has a direct and indirect economic impact of $150 million annually in goods and services purchased from California businesses.

Beer production is a mature industry that competes nationally and globally with producers subject to vastly different environmental regulations and local cost structures. MillerCoors' six domestic breweries compete against one another to achieve the lowest per-unit cost of production possible. Small changes in production costs matter and are factored into company decisions about where MillerCoors' production occurs. Based on current demand, Irwindale has the capacity to meet only 60 percent of its regional needs and must rely on imports from its out-of-state breweries to bridge the gap. Expanding beer production at the Irwindale brewery is an option MillerCoors wants to keep open. Clearly any additional costs associated with California's greenhouse gas emissions control program will be important considerations that MillerCoors will need to take into

[1] A barrel equals 31 gallons.

account for future planning. MillerCoors has every intention of continuing a strong manufacturing presence in California, but as the Board embarks on its greenhouse gas control program it must be careful not to inadvertently impose burdensome costs on in-state brewers that would discourage the maintenance of existing beer production levels or close out opportunities to expand production of beer within the state as the economy rebounds.

Our review of the proposed cap-and-trade rulemaking has identified several significant concerns relating to benchmarking methodology, which could adversely affect our brewery operations and production levels if adopted as proposed.

A. Energy-Based vs. Product-Based Benchmarking for Breweries

Under the current proposal, emission allowances for breweries would be benchmarked using an energy-based methodology that assumes boiler efficiencies of 85 percent for the years 2008-10 and ratchets down emission levels in three-year increments through 2020. Among the inherent flaws of energy-based benchmarking approach for beer production are that it (1) fails to reward producers that took early actions to reduce emission levels in the three baseline years, (2) gives no recognition to how efficiently a brewer uses its fuel inputs in the production process, (3) encourages large brewers to import more beer from their out-of-state plants, and (4) effectively caps beer production at the major California breweries at 2008-10 levels.

Because of these deficiencies, MillerCoors urges the Board to place breweries within a separate industrial classification and apply a product-based benchmark methodology to allocate allowances. A product-based benchmark would cap emissions from breweries on a per-unit of production basis, such as annual CO2e per barrel of production. Product-based benchmarking is particularly appropriate for breweries because beer is a homogenous product with each unit of production having similar energy inputs. Differences in emissions per unit of production would be reflected almost entirely by the relative energy efficiency of each brewer's production process. More importantly, the product-based approach allows a brewer to expand beer production within the state without having to purchase additional allowance since efficiencies of scale are likely to result in lower emissions from each incremental barrel of production, even though total energy use would increase. Finally, product-based benchmarking creates the correct incentives for brewers by encouraging investment in the best available technology to get the most production from the least amount of energy inputs.

B. Measurement of Emission Intensity from Breweries

Because only three breweries within the state are subject to the proposed regulation, MillerCoors' support for product-based benchmarking is conditioned on using average emission intensity data from comparable brewing facilities operating in other states. This approach recognizes the relatively higher production efficiencies already achieved by California-based breweries because of the state's high energy costs. Using out-of-state breweries in the benchmarking calculation also addresses what we believe is an understatement of the leakage risk for beer production due to the potential for large brewers to bulk ship beer in refrigerated rail tank cars for local bottling. Any decline of beer production at the three breweries covered by the proposed rule would have a negative impact economic activity and jobs in California.

C. Consider Alternative Baseline Periods

In 2008 and 2009, MillerCoors made significant investments at Irwindale which reduced greenhouse gas emissions by 16 percent below 2008 levels. Using average emissions from 2008-10 essentially punishes the company for taking early actions to reduce its carbon footprint. We urge the Board to give facilities, whether using an energy-based or product-based benchmark, the ability to select one of three options for the baseline period: (1) average emissions for 2008-10, or (2) average emissions for any consecutive two-year period between 2008-10, or (3) any single year within that period.

D. Single Facility Product-Based Benchmarking

While we think that product-based benchmarking would be advantageous for all California breweries, we recognize that may not be the case. Consequently, MillerCoors would like the option of benchmarking emissions from Irwindale against the average per-unit of production emissions at other comparable MillerCoors' breweries in the United States.

We look forward to working with the Board and its staff to further refine the adoption of a product-based benchmarking methodology for California's brewing industry. Given the fragile condition of the state's economy, it is critical that the implementation of cap-and-trade be done with the utmost care and with minimal cost impacts to the state's businesses and consumers.

Sincerely yours,

Jim Mattesich

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