California Council for Environmental and Economic Balance

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September 27, 2011

Chairman Mary Nichols and Members of the Air Resources Board
Air Resources Board
State of California
1001 I Street
Sacramento, CA 95814

Subject: Comment Letter- Proposed California Cap on Greenhouse Gas Emissions and Market Based Compliance Mechanism Regulation, Including Compliance Offset Protocols

The California Council for Environmental and Economic Balance (CCEEB) is a coalition of business, labor, and public leaders that advances strategies for a strong economy and a healthy environment. On behalf, of CCEEB, we want to thank the California Air Resources Board (ARB) for this opportunity to comment on the proposed 15-day changes to the California Cap-and-Trade Program. Additionally, CCEEB appreciates the assurance by staff and the Chair that there will be 45-day notices in the future to amend this regulation and hopefully address CCEEB's persisting concerns.

CCEEB supports adoption of a cap-and-trade program as the best means to achieve greenhouse gas (GHG) reductions at the lowest possible cost and we appreciate the work that ARB staff has done over the last year. CCEEB believes that the proposed changes require additional modifications and an expressed commitment to develop additional tools and the necessary details to have an operable market. CCEEB is committed to working with the ARB to build a workable regulation that balances the environmental and economic needs for a healthy and vibrant California. As such, CCEEB comments continue to include the 10 key recommendations listed below. We have been told that ARB does not intent to make further changes to this regulation before the October hearing. We believe many of these changes and processes are essential for an effective program and request that if no further regulatory changes will be made at this time, as a minimum these issues/recommendations be flagged in the resolution for further development in 2012.

1. Revise the cap reduction slope to allow for a smoother transition.
2. Remove unnecessary constraints on the market that increase the cost of compliance; increase holding limits and offset limits.
3. Establish a program to monitor the health of California's economy and market.

4. Establish a trade exposure test.
5. Establish a process to refill the Allowance Reserve using offsets.
6. Establish a workplan to ensure that the tools, guidance, training, market tests, and infrastructure that are necessary to comply with the regulation are in place before requiring entities to comply with the requirements.
7. Begin the process to delegate approval of offsets to third party registries and adopt additional offset protocols as rapidly as possible.
8. Revise enforcement penalties, align with federal reporting requirements, and establish a dispute resolution process.
9. Expedite linking to other GHG markets.
10. Clearly state the intent of the ARB to seek equivalency to the Environmental Protection Agency's (EPA) emerging GHG programs, or other alternatives to ensure California's businesses are not subject to duplicative National, State, and Local GHG regulations.

In addition to these 10 items there are additional specific recommendations addressed in this comment letter.

Comment 1: Design the program elements to ensure a smooth transition
CCEEB recognizes that the ARB has proposed several program elements designed to create a smooth transition to a market, such as the transition assistance. However, design elements, such as the stringency of the benchmark can place some facilities in a position that will require reductions or compliance obligations that are 5 to 10 times more than the average cap reduction for industry, beginning in the first year. The benchmarking methodology and stringency should be carefully considered to provide a smooth transition period for entities.

CCEEB also believes that because it is unlikely that California's program will be broadly linked with other state, federal or international programs in the early years, the combined effects of the cap slope and the allowance reserve deductions in the first and second compliance periods are likely to result in serious impacts to the economy. In the Functional Equivalency Document for the Cap-and-Trade, ARB reported 2010 emissions, which are far below projections made to justify the capped reductions. Since there are no linkages and there is a reduced need for emission reductions, CCEEB recommends that the cap slope be revised to reflect a smoother transition of 1% in 2013 and 2014, and 2% per year in the second compliance period and that benchmarking design elements that further reduce allocation to trade exposed industry early in the program be re-thought. This creates a smoother transition and realistically addresses the potential that California's cap-and-trade program will operate without the possibility of broad linkage to other state or federal programs in the first 5 years.

Additionally, CCEEB is concerned that the cap in this regulation exceeds previously defined scoping plan levels, driving the program reductions below 1990 emissions levels. This is particularly evident given the new 2010 emissions levels that are roughly half of the projected emissions for 2012. CCEEB recommends that the ARB clearly articulate the rational for this increased compliance obligation and the reasons why the emission estimates are higher when the economy, production, and business are down, and reconcile this data with the updated GHG forecast and the recent Legislative Analyst Office analysis.

Comment 2: Remove unnecessary constraints on the Market that increase cost
Portions of the proposed regulation will unnecessarily constrain the market. The advantage of a cap-and-trade program is to allow market pressures to create solutions that best fit business models and consumer behaviors. Due to the small market currently proposed initially, some limitations are necessary. However, care must be taken to ensure market liquidity. Of particular concern are:

- The holding limit is too low for regulated entities with large compliance obligations and may be unnecessarily high for entities that lack any compliance obligation. As amended, significant amounts of allowances, for large compliance entities will be locked in compliance accounts. This creates an uneven playing field that favors traders over regulated entities. Compliance entities, especially those with large compliance obligations, must be able to hold and trade a larger portion of their allowances to adequately manage their risk throughout the cap-and-trade program.

- CCEEB recommends that the program allow compliance entities to hold, in holding accounts, sufficient allowances to cover their obligation for the entire compliance period based on a rolling 3-year emissions obligation. This change would free up allowances for the major compliance entities and enable a much more liquid market where an entity could adequately hedge its forward risk without major complications. While there are still allowances locked in compliance accounts in some years, the increase in holding limits makes these limitations much more manageable.

- Holdings limits are intended to prevent one entity from cornering the market. However, this also places significant strain on many compliance entities. Auction frequency would ostensibly alleviate the concern of one entity cornering the market while creating more liquidity within the market. CCEEB recommends moving towards monthly auctions in order to avoid the need for holding limits.

- Business fluctuations at the end of a compliance period are anticipated. These fluctuations could adversely impact the smooth operation of the market. CCEEB recommends that vintage allowances (i.e. borrowing from current year) be allowed to be used during the true-up period. This will provide a mechanism for the end of compliance truing-up that will increase market confidence.

- ARB should fix the "buyer liability" issues with regard to offsets and allow carryover of the 8% compliance limit across years and compliance periods. CCEEB would recommend amending the regulation to read:

  § 95854. Quantitative Usage Limit on Designated Compliance Instruments—Including Offset Credits

  (a) Compliance instruments identified in section 95820(b) and sections 95821 (b), (c), and (d) are subject to a quantitative usage limit when used to meet a

compliance obligation.
(b) The total number of compliance instruments identified in section 95854(a) that each covered entity may surrender to fulfill the entity's compliance obligation ~~for a compliance period~~ must conform to the following limit:

O_O/S must be less than or equal to L_O
In which:
O_O = Total number of compliance instruments identified in section 95854(a) submitted since January 1, 2013 to fulfill the entity's total compliance obligation ~~for the compliance period~~ through the current compliance year.
S = Covered entity's total compliance obligation beginning January 1, 2013 through the current compliance year.
L_O = Quantitative usage limit on compliance instruments identified in section 95854(a), set at 0.08.

Comment 3: Establish a program to monitor California's economic health and market operation

Market Monitoring

CCEEB supports ARB's decision to contract with an independent market monitor. Market monitoring is essential to help ensure reasonable market behavior and results, and to instill confidence with market participants and other stakeholders. CCEEB recommends that the Independent Market Monitor that ARB selects be established with authority to: (1) review the auction and certify results prior to any consummation of any trades from that auction prior to the running of any auction; (2) provide analysis of the competitiveness of any auction, preferably on an ex-ante basis (e.g. prior to running the auction); and (3) report findings and concerns to the ARB.

Economic Health Monitoring and Program Review

This regulation impacts a significant portion of California's businesses and consumers. It is imperative that the State monitor leading indicators that reflect the economic health of California. California must be positioned to identify any potential problems that may be inadvertently caused by this regulation, before they cause significant damage to the economy so that any regulatory structural problems can be corrected in a timely manner. CCEEB recommends that the ARB include provisions in the cap-and-trade regulation to:

(1) monitor specific economic indicators, including the following cap-and-trade market elements,:

- the price in the auctions,
- the functioning of secondary markets,
- adequacy of the Allowance Price Containment Reserve,
- detection of market manipulation,
- offset supply,
- evidence of contract shuffling,
- progress towards achieving the 2020 target,
- total cost of the program,
- jobs in manufacturing,

- vacancy rates,
- home sales,
- volume of trade through ports,
- Gross State Product,
- energy prices, and
- other indicators used by the Department of Finance to monitor the health of California's economy;

(2) establish criteria and process to be used to determine the need and amend the regulations

(3) establish formal reviews of the regulation at least once each compliance period; and

(4) develop and implement a more structured process and approach for evaluating the comparative cost-effectiveness of program measures, as well as the relative cost-effectiveness of those measures vis-à-vis the cap-and-trade program and identify any potential problems.

In a letter to the ARB on May 17, 2007, regarding *Proposed Early Actions to Mitigate Climate Change in California*, CCEEB stated, "that it is important to view the market mechanisms as a continuum that continually examines the economic impact of the program and allows for realistic turnover of capital investments." CCEEB suggested that, "the [ARB] consider recommending additional details surrounding the implementation of the cap-and-trade program in its report so that any market system failure can be properly mitigated with as minimal impact to the California economy as possible. This detail should include identification of the criteria and data that will be needed to determine that there is a working market and the information that needs to be tracked to identify market system failures before they cause significant harm."

Comment 4: Establish a Trade Exposure Test

In the absence of national and global GHG policies, all California sectors will be trade exposed. because they are competitively disadvantaged compared to companies that are not subject to any carbon costs. The only way to mitigate this exposure is 100% free allocations. The cost of carbon will be set by the direct measures adopted under AB 32 and the cost of purchasing offsets. In the absence of national and global policies, an auction of allowances will further and unnecessarily increase the costs of the program without providing additional environmental benefits, and perhaps lead to environmental degradation due to leakage of emissions and jobs to states or countries with less stringent environmental policies.

CCEEB believes that the 2018 trajectory towards 35~60% reduction in free allowances only five years into the program is a significant step and should not be taken without clear indications that it will not result in leakage. We are concerned that the analysis for trade exposure on a state level is an untested new process with potential for inadvertent oversight and errors and/or the cumulative impact of the other technology forcing complementary measures on California businesses may impact trade exposure in ways not fully accounted.

To remedy this problem, CCEEB recommends that the ARB establish a test to determine if an industry remains trade exposed. The ARB's trade exposure test should rely on two criteria: (1) is there a federal program; and (2) is there linkage to broad markets (i.e., larger or equal to the California market)? Allocations should be evaluated every three years in relation to the trade

exposure test and other market indicators, such as the reports and recommendations by an independent market monitoring committee.

Comment 5: Establish a process to refill the Allowance Reserve
In addition to the primary cost containment mechanism of using offsets, CCEEB supports the allowance reserve as an insurance policy against events such as unexpected market dynamics or difficulties obtaining ARB-approved offsets. We understand that it is the ARB's intent to fix any problems through the regulatory process or initiate the emergency provision of the Health and Safety Code, Section 38599 if the reserve is depleted. We believe that the regulatory process may be too time consuming to respond in a timely manner and that relying on the emergency trigger creates undue disruptions and is unwarranted when it can be handled in a less draconian manner through preplanning. CCEEB recommends that the ARB identify reserve indicators to monitor and the criteria and process for backfilling the reserve before it is completely depleted. The refill mechanism should trigger once the reserve is 50% depleted to bring more supply into the market, recognizing that use of the reserve indicates scarcity in the market and potential liquidity problems.

Comment 6: Establish a workplan for compliance tools, guidance, and infrastructure
This regulation places many requirements on regulated entities, which must be able to plan for and comply within a timely manner. Entities will be unable to do so without the necessary enabling compliance tools, guidance, and infrastructure (e.g., compliance instrument tracking systems, a registration process, verified offsets, adequate third party verifiers, IT systems, training, and a dispute resolution process) in place from the onset of this regulation. Recent regulations, such as the AB 32 administrative fee and LCFS, have relied on regulatory enforcement advisories to minimize enforcement exposure when compliance tools and guidance have not been provided in a timely manner. Such delays and uncertainties will unnecessarily increase costs and exposure to violations. CCEEB appreciates the 2013 start date and believes this should help implementation of this regulation.

CCEEB recommends that:

1) The ARB develop a workplan with a clear lists of tools, guidance, policies, trainings, and systems that they must develop, along with completion deadlines for each activity that must be in place for the regulated entities to comply. This should include the timeline for the 45-day changes in the future that will be needed prior to the launch of the market.

2) The ARB include a mechanism that links an entity's compliance deadlines directly to availability of theses compliance tools, allowing for sufficient lead time for facility compliance.

3) The ARB should release a "formal declaration of readiness" at least 60 or 90 days prior to "going live" with their first auction. The CAISO for the Market Redesign and Technology Upgrade underwent this process including system testing by market participants and CAISO ran into some software problems. It is important for ARB to have the same type of formal action to notify market participants. Furthermore, this

declaration would be an opportunity for stakeholders to raise to ARB's attention any concerns they may have about the status of the program and readiness to go live.

ARB should clearly announce the full schedule from now to the end of this rulemaking in October 2011. Additionally, ARB should outline the additional rulemakings and amendment topics that will take place through 2012.

Comment 7: Adopt offset protocols as quickly as possible, avoid unnecessary limitations
CCEEB supports the use of high-quality offsets to constrain costs. Offsets should only be limited based only on quality in contrast to imposing quantitative limits. Essentially all of the studies on the economics of cap-and-trade demonstrate that offsets are critical to minimize costs. In some models (most notably those by USEPA, CRS and CRA), cap-and-trade program cost reductions range from 40% to 80% depending on the model and the restrictions) on the use of offsets. Limiting offsets increases costs to California businesses and consumers leading to leakage of both jobs and emissions out of the state. Within California and the nation, economic modeling has demonstrated that offset projects will provide near-term opportunities for cost-effective, verifiable GHG reductions that deliver long-term, sustained emissions reduction benefits. Although the ARB adjusted its limits on the use of offsets, from 4% to 8%, this limitation is still unnecessary.

Arguments in favor of limiting offsets due to localized impacts have been eliminated by the ARB Co-Pollutant Emission Assessment that indicates de minimis co-pollutant co-benefits from quantitative and geographic restrictions of offsets. This analysis has dispelled concerns over greater potential increases in co-pollutant emissions as well as assumptions that communities could significantly benefit from additional co-pollutant reductions. Geographic restrictions and quantitative restrictions do not provide co-benefits. As such, there is no reason to limit the use of offsets as a compliance instrument. Abundant offsets will ultimately provide environmental benefits and effectively contain costs, yet this regulation unreasonably restricts their use.

Offset credits should be allowed without any geographical or quantitative restrictions. Restricting offsets generation to projects located within a certain geographic sphere or to those that provide co-benefits is contrary to what should be the fundamental aim of an offsets program, i.e. maximizing GHG reductions at the least cost to mitigate the effects of global warming.

Developing economies are using more energy to fuel their economic growth, thereby increasing global GHG emissions, while at the same time rejecting binding caps on emissions. If we place constraints on finding low-cost offsets in the name of obtaining local co-benefits or creating local "green jobs," California will inhibit the adoption of similar GHG policies in other nations. Moreover, imposing limits on the use of offsets—either quantitative or geographic—simply raises the cost of the emission reduction program to California residents. This increased cost will affect the ability to reach longer term and increasingly challenging emission reduction targets at a cost that is acceptable to society.

Instead, the ARB should move rapidly to begin the process to delegate approval of offsets to third party registries, adopt offset protocols, and recognize other national and international offset programs, while establishing a process early for developing projects in California. This will

ensure that local benefits are captured while still leading the developing world towards a low-carbon future. In addition, the restriction on carrying over unused portions of an entity's offset limit into subsequent compliance periods should be removed.

CCEEB recommends that the ARB begin the process to delegate approval of offsets to third party registries and adopt new protocols rapidly to ensure that adequate supply is available in the first compliance period. Additional supply options should include:

a) Use of five additional Climate Action Reserve Protocols;
b) Use of offsets from Western Climate Initiative Partners;
c) Support the development of Pilot REDD Projects;
d) Allow use of Climate Action Reserve Landfill Credits generated before 2012;
e) Approve protocols developed by California air districts, as appropriate.

Offset Reversals

CCEEB is concerned that the risks associated with invalidation of approved offset credits will inhibit the development of the offset market. We appreciate the changes that ARB has made in establishing a criteria and limitations to the invalidation process. However more work must be done. CCEEB supports the IETA proposal and recommends that ARB should expand the Forest Buffer Account concept to create a compliance buffer account for all offset credits.

Comment 8: Revise enforcement penalties and establish a dispute resolution process—

Mandatory Reporting

The recently proposed enforcement provisions that consider failure to report every ton of excess emissions and submittal of inaccurate information as separate violations would potentially result in unwarranted and excessive penalties, relative to other criteria pollutant penalties. GHG emissions levels are a thousand times higher than criteria pollutant levels. The mandatory reporting rule is complex, and the volume of data collected is enormous; the sheer size and complexity significantly increases the potential for unintended reporting errors.

In addition, the proposed enforcement language would still permit ARB to impose penalties for the period between submission of the initial unverified report and the final verified emissions report if the verified report indicates inaccuracies in the initial report . ARB should further amend this section so that changes in reported emissions occurring between the initial emissions data report and submission of the final verified emissions data report are violations only if initial under-reporting was due to intentional misrepresentation.

Dispute Resolution Process

Currently, the ARB Executive Officer and staff make significant enforcement decisions that are not subject to review. The only appeal process available to a regulated party is to sue the State. This requires significant resources and time that may not be reasonably available to the majority of regulated parties. Moreover, lawsuits frequently do not solve problems. In other situations, the ARB might wish to extend a compliance deadline, but there is no formal or public process to approve such an extension.

The AB 32 program requires that the ARB create a brand new, far reaching, and complex program under very tight statutory deadlines. The statutory deadlines are driving rapid

development of regulations, which may have unintended consequences and unknowable problems at every individual facility. Since every facility is different these types of problems, which bridge both energy and air pollution issues, require a dispute resolution process to allow for considerations and solutions outside of the traditional enforcement process and litigation.

CCEEB recommends that the ARB establish an independent administrative dispute resolution process that will provide a fair, efficient, and predictable process available to all individual facilities. This will reduce the money and time spent defending lawsuits and in informal negotiations. It will also increase the transparency of the appeal process as all interested stakeholders can weigh-in during a hearing. The proposed dispute resolution process could be modeled after existing air pollution hearing processes for disputes at individual facilities that occur under local air district rules.

Comment 9: Expedite linking to other GHG cap-and-trade programs
California businesses will need access to a pool of verifiable offsets and allowances starting in 2012. Developing a new ARB offset review and approval process to review credits and allowances for use in California that have already been reviewed in the EU is costly and unnecessary. The EU carbon markets produce robust offsets and allowances. Linking to the EU would ensure a supply of high-quality and tradable market instruments for California's carbon market.

Relying on a limited market CO2 cap-and-trade program to reduce emissions in California without linkage to a broad liquid market loses the economic efficiency of the market-based approach and undermines the policy goals.

CCEEB recommends expediting linkage and making it a priority to be completed. If linkage is not possible, then CCEEB believes that other cost-containments measures must be adopted to soften the economic impact of this regulation and limit leakage of jobs and emissions.

Comment 10: Clearly state the intent of ARB to seek equivalency to EPA's emerging GHG program or other alternatives to ensure California's businesses are not subject to duplicative Federal and State GHG regulations
CCEEB is concerned that California businesses will be subject to duplicative GHG regulations from the state and federal government. Although it is unlikely that a federal cap-and-trade regulation will be forthcoming in the near term, EPA has been working to develop GHG regulations such as GHG BACT and NSPS. Compliance with duplicative regulations will be costly and will not result in material benefit toward our GHG reduction goals.

CCEEB recommends that ARB clearly state its intent to not subject California's businesses to duplicative GHG regulations.

Other Specific Recommendations
Resource Shuffling
In Section 95802(a)(251), ARB revised the definition of "Resource Shuffling," removing two hypothetical situations where delivery of electricity to the California grid could be considered resource shuffling. In addition, ARB has removed the unnecessary use of the term "fraud" in

Section 95852(b)(2). CCEEB apreciates the changes. The scenarios were too broadly written and could too easily encompass situations where a covered entity was either (1) acting for valid economic dispatch reasons, or (2) engaging in activities that resembled resource shuffling with no intent to circumvent emissions regulations.

While the resource shuffling provisions in the regulation have been clarified, some concerns remain. Necessary clarity to regulated entities regarding what electricity transactions would constitute resource shuffling and which transactions should be excluded. For example, the regulation does not include procedures that can be followed during emergency scenarios when a utility may be called upon to provide power for another load-serving entity. Because the resource shuffling provision has the potential to impact the wholesale electricity markets beyond California, CCEEB recommends that the ARB address additional resource shuffling provisions as soon as possible as part of the new regulatory proceeding in 2012 and seek the input from other entities, including the Federal Energy Regulatory Commission (FERC), North American Electric Reliability Corporation (NERC), and Western Electricity Coordinating Council (WECC).

Electricity Importers

The ARB staff made changes to a number of definitions that appear to resolve a problem with unspecified electricity imports into the CAISO pool (unspecified electricity is electricity that cannot be tracked back to the source). However, those revisions may result in unintended consequences for reporting emissions and compliance obligations for other electricity imports that are specified (originate from a known facility or source – can be renewable, coal, nuclear, etc). Changes to the following C&T and MRR definitions remove the requirement that the importer "hold title" to the power, including: 1) electricity importers, 2) marketer, 3) purchasing selling entity. In the electricity sector, there are contractual arrangements where an entity that owns the electricity may not have the transmission capacity to schedule it into California and thus contracts with another entity to "move" it into California. At this point, ARB has not adequately vetted this issue before making the amendments they made in this Second 15-Day set of amendments, and it appears that this "tiny" change will have a ripple effect on imports that otherwise are very straightforward and uncomplicated. CCEEB recommends that ARB not remove the requirement to hold title to power imports until the potential impacts on reporting and compliance obligations for specified imports is more fully vetted and it can be demonstrated that such changes to key definitions are both warranted and do not cause harm to other entities with specified imports. ARB recommends that the ARB Board direct staff to further evaluate this potential change to electricity imports as part of the new regulatory proceeding in 2012.

ARB Deadlines

Deadlines should be established for ARB decision-making processes to provide entities with a degree of certainty. Decision making processes include:

> section 95830(e) [pg A-63]
> Completion of Registration. Registration is completed when the Executive Officer approves the registration and informs the entity and the accounts administrator of the approval. *The executive officer shall approve or deny a registration application within 30 days of submittal.*

section95912(k) [pg A-167]
(l)(k) Following the auction, the Executive Officer will:
(1) Certify whether the auction was operated pursuant to this article *within 5 days*;
(2) After certification, *immediately* direct the financial services administrator to:
(A) Collect payments from winning bidders;
(B) Declare forfeit and retain the bid guarantee mechanism submitted pursuant to section 95912(ih) for any bidder that fails to tender full payment when due for allowances awarded at auction, in an amount equal to any unpaid balance.;
(C) Deposit auction proceeds from sales of ARB allowances sold at auction into the Air Pollution Control Fund.; and
(D) Distribute auction proceeds to entities that consigned allowances for auction pursuant to section 95910(d).;
(3) Upon determining that the payment for allowances has been deposited into the Air Pollution Control Fund or transferred to entities that consigned allowances, transfer the serial numbers of the allowances purchased into each winning bidder's Holding Account, or to its Compliance Account if needed to comply with the holding limit;
(4) Inform each approved external GHG emissions trading system and the associated tracking system of the serial numbers of allowances purchased at auction; and
(5) Publish the auction results in the manner set forth in section 95912 at www.arb.ca.gov.

Include a process to add to the list of fuels without a compliance obligation
§ 95852.2. [pg A-102]

Emissions from the following source categories and from the combustion of the following fuel types count toward applicable reporting thresholds, as applicable in MRR, but do not count toward a covered entity's compliance obligation set forth in this article unless those emissions are reported as non-exempt biomass derived CO_2 under MRR. *The Executive Officer may add additional source categories meeting similar criteria.* Emissions without a compliance obligation include:

Re-insert into § 95852.2 the language the provides for existing waste-to-energy facilities to receive a full exclusion from compliance obligations

The 15-day modification discussion draft contained in § 95852.2, language that excluded from compliance obligations, "*Direct combustion of municipal solid waste with energy recovery in an existing permitted facility.*" CCEEB request that the language contained in the discussion draft be re-inserted in § 95852.2. The owner/operators of these facilities have previously demonstrated to the satisfaction of CARB staff that the existing waste-to-energy facilities cannot spread the cost of allowances to a consumer base; haulers would simply take the post-recycled waste to the cheaper option, landfills, resulting in much higher levels of GHG. The facilities would have no choice but to absorb the cost of the allowances creating a huge financial burden for already financially strapped local governments.

CARB has presented two analyses justifying the removal of the waste-to-energy exclusion language, both of with have been demonstrated to be flawed technically. To date, nothing in the administrative record supports CARB's changed position. The fact remains that subjecting the existing waste-to-energy facilities to the proposed cap and trade regulations will have an adverse impact on the environment. Also, re-inserting the language is consistent with the resolution adopted at the 12/16/10 Board meeting requiring, "*the Board determine and report back to the Board a mechanism to satisfy all the risk of emissions leakage and compliance obligations of existing municipal waste-to-energy facilities in the proposed cap-and-trade program.*"

> Section 95820 (c) [Pg A-55] There should be criteria on cause to terminate or limit authorization to emit or the sentence should be deleted.
> (c) Each compliance instrument issued by the Executive Officer represents a limited authorization to emit up to one metric ton in CO2e of any greenhouse gas specified in section 95810, subject to all applicable limitations specified in this article. ~~No provision of this article may be construed to limit the authority of the Executive Officer to terminate or limit such authorization to emit~~. A compliance instrument issued by the Executive Officer does not constitute property or a property right.

Minimize unnecessary bureaucratic requirements

- Investment grade credit-rating should be permitted in lieu of bid guarantees. Section 95912(h) & section 95913(e)(2) [pg A-166 & A-171(
- Disclosure of unnecessary information will place significant unnecessary reporting burden (i.e. Time of transaction, time of settlement, price) and should be deleted – Section 95921 (c)(4&5) [pg A-162]

Drafting errors and clarifications

Sector based offsets should not be limited to US, Canada & Mexico Section 95991 [pg276]
Sector-based offset credits may be generated through reduced or avoided GHG emissions from within, or carbon removed and sequestered from the atmosphere by a specific sector in a particular jurisdiction. The Board may consider for acceptance compliance instruments issued from sector-based offset crediting programs that meet the requirements set forth in section 95994 and originate from developing countries or from subnational jurisdictions within those developing countries~~,~~. ~~except as specified in subarticle 13~~

Conclusion

CCEEB would like to thank ARB for considering its comments on the proposed changes to the cap-and-trade regulation and looks forward to additional changes in the future. CCEEB is a unique organization that represents a broad cross-section of the covered entities in California. As such, CCEEB is in a position to represent diverse industry sectors and would like to assist ARB in developing these ideas further. CCEEB looks forward to playing an integral role in the future development and operability of California's Cap-and-Trade Program. If there are any questions please call Robert Lucas at (916) 444-7337.

Sincerely,

Robert W. Lucas
Climate Change Project Manager

Gerald D. Secundy
President

cc: Matthew Rodriguez, Secretary, California Environmental Protection Agency
James Goldstene, Executive Officer, California Air Resources Board
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