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THE GUALCO GROUP, INC.

Jackson R. Gualco
THE GUALCO GROUP, INC.

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LUCAS ADVOCATES

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California Council for Environmental and Economic Balance

100 Spear Street, Suite 805, San Francisco, CA 94105 • (415) 512-7890 • FAX (415) 512-7897

October 18, 2011

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

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 on-going concerns.

CCEEB has supported cap-and-trade throughout this process since passage of AB 32 in 2006. 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.

However, CCEEB continues to have concerns with the operability of this regulation. We believe that the current version of the cap-and-trade regulation is too tightly controlled for a free market (holding limits, price controls, etc.) and lacks cost reducing components such as adequate offsets (quantity and protocols) and linkage to other systems. CCEEB believes that the regulation requires additional modifications and a commitment from Board Members to be involved in the development of the necessary details to have a functional and efficient market.

CCEEB's comments continue to include the 10 key recommendations listed in our September 27th letter. We understand that the Board does not intend to make further changes to this regulation before or during the October hearing. CCEEB believes our recommendations are essential for an effective program and request that if no further regulatory changes will be made at this time, as a minimum these recommendations and issues will be noted in the Adoption Resolution for further development in 2012. We ask the Board to direct staff to present a monthly briefing to the Board, as part of the Adaptive Management Plan that includes opportunity for public comment through 2012 on the progress of resolving these issues.

Additionally, there are outstanding issues with the Mandatory Reporting Regulation and how it interacts with cap-and-trade including the ability to maintain compliance, lack of a safe harbor when working with the 3rd party verifiers, and lack of an administrative appeal or review process. CCEEB would appreciate continued Board involvement with staff on these issues prior to the next reporting cycle.

Process Issues

CCEEB understand the Board's desire to move forward in order to meet the deadlines set forth by the administrative procedures act. However, it is important that in the upcoming months that the public, especially compliance entities, are engaged and informed on the process leading up to the initial surrender and auction. CCEEB believes that it is prudent for the staff to provide monthly updates at each Board meeting that will also allow public comment. These updates should also include updates from entities that are being contracted to provide oversight and essential services for the market.

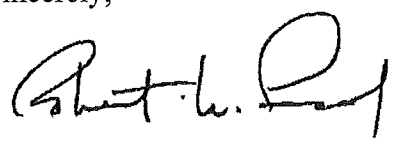
We believe that the ARB should also establish an AB 32 oversight sub-committee, similar to the Moyer Administrative Committee that Board Member Berg runs. The Moyer Administrative Committee provides a beneficial service to stakeholders and Board Members to engage in the implementation of this landmark regulation. CCEEB would urge Board Members to make a commitment to become involved with staff on the development of the remaining policy questions from the first resolution and this upcoming resolution.

ARB should also address resolution language from previous resolution not addressed in the past year, including the shift on waste-energy by staff despite Mayor Loveridge's resolution amendment.

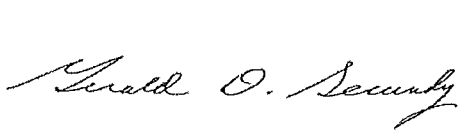
Attached is CCEEB's suggested resolution language that reflects the persisting concerns raised in our comment letters and the desire of our membership to have a functional and cost-effective cap-and-trade program. California is leading by example in the absence of a national policy. California needs to have this program right from Day 1 in order to be that national leader. An overly constrained and expensive market will serve as the example to dissuade other jurisdictions and the nation against adopting carbon policies.

CCEEB would like to thank ARB for considering our comments on the proposed changes to the cap-and-trade regulation and looks forward to additional changes in the future. Attached are a number of suggested resolution items as well as our detailed September 27, 2011 comment letter. 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
Ellen Peter, Chief Counsel, California Air Resources Board
Bob Fletcher, Deputy Executive Officer, California Air Resources Board
Richard Corey, Chief, California Air Resources Board
Edie Chang, Assistant Division Chief, California Air Resources Board
Michael Gibbs, Acting Deputy Secretary, Climate Change, Cal/EPA
Jackson Gualco, The Gualco Group, Inc.

Attachments

Suggested Resolution Language
CCEEB Comments on 2nd 15-day Notice (September 2011)

Suggested Resolution Language

Whereas:

- AB 32 mandates that ARB achieve GHG emission reductions to 1990 levels and that at the same time ARB minimize emission and jobs leakage and minimize economic impacts;
- ARB has identified certain business sectors in the Cap-and-Trade Program as energy intensive and trade-exposed (EITE) requiring assistance to mitigate transition risk and emissions leakage risk;
- ARB must continue an on-going dialogue with stakeholders to ensure successful implementation of the overall program as the Cap- and-Trade Program becomes initiated, in particular, dialog must focus on;
    - The potential contribution of reductions in allowances (10% initially, then 25% and 50% as shown in the declining Industry Assistance Factors) to leakage of jobs and emissions to facilities outside the state;
    - Additional documentation needed to evaluate the impacts of the allowance reduction on the cap and trade market and the statewide economy;
    - Options to reduce the impacts of the reductions on EITE sector entities;
- All stakeholders should be encouraged to identify, evaluate and, where appropriate, implement alternatives that achieve the goals of AB 32;
- Industries charged with implementing and complying with air quality, water quality and fuels regulations over the past years have spent billions of dollars in support of State Agency initiatives;
- Over a 10-year period ending in 2009, the petroleum industry spent over $200 billion on environmental improvements with the highest portion coming in California;
- Programs should encourage investment in California to produce jobs while minimizing GHG emissions.

Now Therefore Be It Resolved that the Board:

- Approves the Cap-and-Trade Program with the express proviso that the 10% reduction in allowances is removed – and that all participants in EITE sectors get 100% of Industry Assistance Factor during the first and second compliance period (2013-2017). To accomplish this task, ARB must edit all sections in the regulation (e.g., Sub-article 9 and following) to adjust upward by 10% the calculated allowances directly allocated to an operator of an EITE sector industrial facility for the period 2013-2017.

- Directs Staff to, by December 31, 2012, develop the mechanisms necessary to equitably align the compliance obligations under the Cap-and -Trade Program with the lifetime GHG impact of waste management practices, including waste to energy, through the application of appropriately validated and peer reviewed information, consultation with other regulatory agencies and industry experts, including the U.S. EPA and CalRecycle, and use of the U.S. EPA's Municipal Solid Waste Decision Support Tool.

- Directs Staff to develop, through a public process, an approach to quantitatively evaluate the appropriate level of reduction, if any, of allowances to be provided to participants in EITE sectors during the 3rd compliance period.

- Directs Staff to conduct Overall Program Review that includes semiannual reports on the following tasks:
    - Review and report back to board the basis for and impact of the 10%, 25%, and 50% reduction in allowances on Energy Intensive and Trade Exposed (EITE) industries.
        - Review recent economic and trade data to provide input into an updated evaluation of trade-exposure and leakage to California business and industry.

- Work with stakeholders to:
  - Review and identify obstacles to compliance in the Cap-and-Trade and Mandatory Reporting Regulation programs.
  - Perform needed updates to the Mandatory Reporting Regulation to allow for successful implementation of the Cap-and-Trade Program, including the implementation of the USEPA reporting requirements and for compliance with the calibration and accuracy requirements in the 2011 changes to the Mandatory Reporting Regulation.
  - Ensure the appropriateness and accuracy of the petroleum and natural gas sector benchmark values, including full consideration of indirect emissions associated with electricity usage through confirmation of the reported and verified data and the calculation methodologies.
  - Ensure that the recent modification of Mandatory Reporting Regulation to incorporate federal Subpart W equipment categories is properly accounted for in the in petroleum and natural gas sector benchmark values.
  - Ensure that portable equipment, currently subject an existing ARB program, is properly addressed in petroleum and natural gas sector benchmark values.
  - Complete the work required by Resolution 10-42 of December 16, 2010 including:
    - Identify needed expertise and tools to monitor and measure effectiveness of the operation of the Cap-and-Trade Program, including all the elements outlined on page 13 of Resolution 10-42.
    - Preparation of an annual report on status of the Cap-and-Trade Program as outlined on page 14 of Resolution 10-42.
    - Identify obstacles to compliance and to enhance compliance assistance.
    - Identify measures to mitigate economic impacts of Cap-and-Trade Program.
    - Evaluate Treatment of Combined Heat and Power projects (CHP).
    - Clarify the Point of regulation for transportation fuels to ensure all fuels are covered by the Cap-and-Trade Program.
    - Develop protocols for geologic sequestration of CO2.
    - Assess enforcement provisions.
    - Propose additional offset protocols.
    - Pursue federal equivalency for the state program.
    - Identify remaining tasks and a schedule for completing needed for a successful start to the allowance auction, offset and trading for the Cap-and-Trade Program in 2013.
    - Ensuring that the proposed allowance value directed to the electric distribution utilities is used for the benefit of industrial ratepayers that might otherwise face indirect costs from the implementation of this regulation.

➢ <u>Directs Staff to conduct Economic Review, in consultation with Department of Finance and CEC, that will evaluate the impacts of the Cap-and-Trade Program on the state economy. Further, Staff will</u>
- Work with stakeholders to identify economic indicators, such as changes in consumer price index and energy (electricity, natural gas, and transportation fuels) supply and price volatility that allow ARB, Department of Finance and CEC to assess the impact of cap-and-trade.
- Work with CEC and Finance on measures to track and evaluate economic and jobs impacts of the Cap-and-Trade Program.
- Work with stakeholders to evaluate and report on the impacts of the operation of the market to ensure that the market is working effectively and that the cost containment mechanisms are robust, in particular ARB shall evaluate the impacts of the sale and backfilling of allowances in the reserve account.