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June 1, 2007
Project 10096.001

Ms. Catherine Witherspoon
Executive Director

Mr. Doug Thompson
Manager, Reporting Section

Mr. Webster Tasat
Manager, Emission Inventory Section
California Air Resources Board
1001 'I' Street
Post Office Box 2815
Sacramento, California 95812

Subject: Initial Comments for the California Air Resources Board Mandatory Reporting and Emission Inventory Sections

Dear Ms. Witherspoon and Messrs. Thompson and Tasat:

As members of the California cement industry, we would like to share our initial thoughts and concerns on the design and implementation of a California greenhouse gas (GHG) emissions reduction program. We look forward to working closely with the California Air Resources Board (ARB) in the development of effective, efficient, and equitable regulations.

We recently submitted a letter to the Market Advisory Committee (MAC) with recommendations about design of a cap-and-trade program, including a recommendation that the program be expanded to include all non-trivial emitters. A more inclusive program will ensure that GHG reductions are undertaken at the lowest cost sources, thereby mitigating the program's negative economic impact on the state. We also noted in our letter that, to maximize effectiveness and efficiency, all major emission sources should be included in the regulatory framework as soon as practically possible.

The following comments build on those comments made to the MAC and focus on the overall regulatory development process that ARB is undertaking, including the activities of the mandatory reporting group and the emission inventory group.

Scope and Timing of Mandatory Reporting and Greenhouse Gas Reducing Regulations

Although ARB has not yet articulated the specifics of how its GHG reducing regulations will follow and rest on mandatory reporting regulations, logic suggests that sectors subject to mandatory reporting are more likely to be regulated. Given that a scoping plan for the GHG reducing regulations is not due until the end of 2008, ARB should use the next 18 months to collect data and learn about all sectors that make an above de minimis contribution to GHG emissions in California.

Public statements by ARB staff in various workgroups or presentations suggest that ARB may only focus on three sectors for the mandatory reporting regulations due at the end of 2007:

- Utility sector
- Petroleum refining sector
- Cement sector

However, these three sectors represent less than 18 percent of the overall GHG inventory (based on the existing California Energy Commission (CEC) inventory, per the handout at the April 2007 cement industry meeting). This artificial limitation appears unnecessary, particularly given that other sectors already have either CAR protocols or international protocols and could be included in the mandatory reporting regulations if ARB were so inclined.

Such an approach would not only be consistent with Assembly Bill 32's (AB32) stated goals of equity between sectors, cost-effective controls, and avoidance of leakage, but it would also increase substantially the likelihood of achieving these goals.

Process for Verification of the California Energy Commission Emissions Inventory

ARB staff are undertaking an updating process for the CEC emission inventory that is the starting point for the inventory to be used to evaluate the 1990 baseline and to set the 2020 emissions cap. Given that the 2020 limit will be set based on the 1990 emissions inventory and that the existing CEC inventory has significant weaknesses, it is important that the recently announced ARB updating process address all sectors, not just the sectors included in the "first tier" as noted above, namely the utility, petroleum refinery, and cement sectors. An equitable and objective process should review the entire inventory, catalog and verify data and assumptions, and check calculations for accuracy. In addition, the AB32 regulatory process should include provisions for the inherent uncertainty in an inventory based on a "top-down" process, through backstop provisions that go into effect once facility emission inventory reports are submitted, namely provisions that allow the rules to be changed in case of unintended consequences.

Assembly Bill 32 Procedural Issues

As stated in our letter to the MAC, all AB32 regulatory proceedings and decisions should have a public review process, including review of the sequence and timing of the application of regulations to various sectors. Decisions reached for one sector have significant implications for other sectors, and only a transparent public participation process will identify and address these implications in an equitable and cost-effective manner as required under AB32. These concerns apply particularly to mandatory reporting and emission inventory issues, because they supply the foundation for the ultimate GHG-reducing regulations.

Utility Sector Regulations

We understand that ARB, together with the CEC and Public Utilities Commission (PUC), are currently working with the utility sector to develop regulations to reduce GHG emissions from this sector, using both command-and-control and cap-and-trade mechanisms. Careful development of these rules is critical, as the results of the utility sector regulatory development process will have a substantial impact on other industrial sectors in the state of California, who will likely face not only the burden of making GHG reductions at their own facilities, but also the burden of increases in rates paid for electricity. At a minimum, the effect of these higher rates needs to be factored into the evaluation of the overall burden of AB32 for non-utility facilities. Because of these impacts, the concerns of industrial sector representatives should be considered in the utility sector regulatory development process.

More specifically, the cement industry has the following concerns about the potential impact of AB32 utility sector decisions on operating costs and AB32 compliance flexibility:

- If the utility sector rules permit utilities to pass their increased costs onto the cement industry, the resulting costs need to be recognized and included in ARB's economic review when assessing the overall AB32 cost burden on the cement industry, as well as minimized to the maximum extent possible.

- Although we do not know of specific decisions made in the utility sector meetings relating to on-site generation, any future decisions made by this group should allow the cement industry to install and obtain credit for efficient on-site generation as part of a GHG compliance effort. This is necessary to avoid limiting the flexibility of the industry in making GHG reductions. There are also existing California regulations (unrelated to AB32) that provide a disincentive for installing on-site generation that we would like reviewed and revised.

- In addition, the cement industry should receive GHG credit under the state-wide market mechanism for any electricity consumption reductions achieved by efficiency projects that the cement industry undertakes.

- Furthermore, there are existing regulations affecting the economics of potential energy efficiency (i.e. GHG reduction) measures at cement kilns that we would like revised.

We look forward to discussing these issues further with the mandatory reporting and emission inventory staff at ARB and with other ARB staff involved in regulating the utility sector. We also plan to raise these issues in further detail with the CEC and PUC in the near future, but we wanted to coordinate with ARB in this letter.

As stated in our letter to the MAC, we intend to play a constructive role in helping ARB meet its challenge of designing an effective and equitable system that can balance economic and environmental objectives. We hope that ARB will make a concerted effort to understand the unique conditions faced by California's cement manufacturers as an industry that is operating in an intensely competitive marketplace and is a sector of high strategic importance to the state's economic and environmental future.

We look forward to working with ARB on any regulatory issues through informal discussions and the submission of more detailed comments throughout this regulatory process. We would be happy to meet with ARB staff to discuss the issues raised in this letter.

Sincerely yours,

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