



December 8, 2008

VIA ELECTRONIC MAIL

Mr. Doug Ito  
Planning and Technical Support Division  
California Air Resources Board  
P.O. Box 2815  
Sacramento, CA 95812  
[www.arb.ca.gov/cc/localgov/ceqa/ceqacomm.htm](http://www.arb.ca.gov/cc/localgov/ceqa/ceqacomm.htm)

Re: Comments on Preliminary Draft Staff Proposal: Recommended Approach for Setting Interim Significance Thresholds for Greenhouse Gases under the California Environmental Quality Act (Oct. 24, 2008).

Dear Mr. Ito:

We write to encourage the Air Resources Board (“ARB”) to continue its efforts to establish a recommended statewide threshold of significance for greenhouse gases under the California Environmental Quality Act (“CEQA”). Having a statewide recommendation is an appropriate approach to assessing the significance of emissions that contribute to a global problem. We have been troubled by some of the early efforts put forward at the local air district level and encourage you to continue to take the lead in this area. We believe ARB is in the best position in terms of resources and expertise to establish an appropriate threshold. That said, we do not believe ARB’s first draft reflects that expertise. We offer the following comments on areas where further work is necessary to provide substantial evidence supporting the recommended thresholds.

## **I. ARB Has Not Provided a Sound Basis for Rejecting a Zero Threshold**

ARB suggests that zero thresholds are not mandated in light of the fact that (1) some level of emissions in the near term and by mid-century is still consistent with climate stabilization and (2) other programs will increasingly reduce greenhouse gas emissions. The draft proposal then refers to the timing of California’s greenhouse gas emissions “peak” and consistency with the State’s 2020 and 2050 emission reduction targets. This brief discussion lacks any detail and contrary to ARB’s assertion provides no evidence at all for rejecting a zero threshold.

ARB references the now outdated IPCC recommendation that atmospheric levels of greenhouse gases must be stabilized around 450 parts per million (ppm) by 2050 and that this can be achieved by reducing emissions 80 percent below 1990 levels by 2020. The growing consensus is that both of these recommendations were overly optimistic. Scientists, including NASA’s James Hansen, believe that we are already beyond a sustainable level of greenhouses

gases in our atmosphere and that stabilization requires a reduction from current levels to 350 ppm. *See* Hansen, J. *et al.*, Target Atmospheric CO<sub>2</sub>: Where should Humanity Aim? (April 2008) available at <http://arxiv.org/ftp/arxiv/papers/0804/0804.1126.pdf>. Certainly these conclusions should come as no surprise given the accelerating impacts of global warming that we are already seeing. Similarly, scientists are also questioning the belief that the 80 percent reduction in emissions below 1990 levels by 2050 will be sufficient. A recent paper by Matthews, H.D., and Caldeira, K. "Stabilizing climate requires near-zero emissions," 35 *Geophys. Res. Letters* L04705 (2008), suggests that in order to stabilize atmospheric levels of greenhouse gases, CO<sub>2</sub> emissions must be reduced not just to 80 percent below 1990 levels but to "nearly zero" by mid-century.

Setting aside the fact that ARB's approach appears to be based on slightly outdated information, what is most troubling about the discussion of zero versus non-zero thresholds is the lack of any information. ARB claims that some level of emissions is consistent with climate stabilization. What level of emissions and what is the necessary path to achieving those emissions? ARB mentions the need to cause California's peak in emissions to occur "sooner" but offers no information on what that peak is, when it is otherwise projected to occur, when it should occur in order to be consistent with scientific evidence on stabilization targets, or how a zero versus non-zero threshold will change the timing of that peak. There is nothing to indicate that ARB has done any analysis to determine when greenhouse gas emissions in the State will peak and whether the proposed threshold is "sufficiently stringent to make substantial contributions to reducing the State's [greenhouse gas] peak." ARB suggests a test for choosing a threshold but then fails to provide any analysis relating to that test.

ARB's general reference to other greenhouse gas reduction programs is similarly devoid of any details or analysis that would support the threshold decision. Many of these activities will affect existing sources rather than those that are the subject of CEQA review. To the extent these programs will set standards for new greenhouse gas emissions of future projects, the obligations are different and do not resolve the question of whether the remaining emissions will be significant under CEQA. Given that our situation demands not just holding the line but actually reducing our current inventory of emissions, any claim that these future programs are relevant to setting a CEQA baseline must demonstrate how growth in greenhouse gas emissions allowed under the proposed CEQA thresholds will hinder the ability of these future programs to achieve the needed emission reductions according to the appropriate time frame.

A zero threshold reflects the reality that there is no room for additional growth in greenhouse gas emissions. There may be other policy and administrative reasons that ARB prefers a non-zero threshold, but these are not based on any analysis of our current environmental situation or the science on what emissions are adding to the global warming problem. If ARB decides to pursue a non-zero threshold, it should be honest about the rationale, so that we can have a meaningful discussion on alternatives to addressing the true concerns with a zero threshold.

## **II. ARB's Proposed Threshold for the Industrial Sector Has No Rational Connection to the Environmental Significance of those Emissions.**

After noting that the issue of determining a threshold of significance requires a consideration of the nature of the environmental problem, Preliminary Draft Staff Proposal at 2, ARB abandons any attempt at such analysis in determining the actual thresholds proposed. The proposal offers the conclusory claim that “[b]ased on available data, ARB staff found that for the industrial sector, small projects – defined as the portion of new projects, that when viewed collectively, were responsible for only a relatively small amount of emissions – could be allowed to proceed without requiring additional mitigation under CEQA.” Preliminary Draft Staff Proposal at 9. The proposal does not provide the referenced “available data” or even cite what it might be. There is no further explanation of what “relatively small” means or, most importantly, why these projects “could be allowed to proceed without requiring additional mitigation under CEQA.” This latter point is the central question for establishing a significance threshold and yet there is nothing more than this assertion offered as a basis for the decision.

Instead of looking at the environmental impact of these collective emissions and analyzing how they relate to emission targets or the timing of peak emissions levels, ARB simply changes the exercise to one wherein the “vast majority” of greenhouse gas emissions from new industrial projects will be subject to mitigation under CEQA. ARB arbitrarily selects 90 percent as meeting this new “vast majority” test. There is no connection, however, between the percentage of emissions captured and the significance of those emissions vis-à-vis the problem of global warming. As noted above, there may be other reasons for selecting this or some other similar cutoff, but it is not based on any analysis of the environmental significance of the emissions and therefore should not be offered as such.

Even if there are other reasons to try to establish a cutoff that exempts the smallest 10 percent of industrial sources, the analysis must be revised to ensure that the threshold is set at the appropriate level. The analysis in the proposal relies upon the 2005 Energy and Environmental Analysis, Inc. report on the national boiler population. ARB uses this data to determine the 90 percent cutoff based on boiler heat input capacity. ARB then uses this size cutoff of 10 mmBtu to calculate the greenhouse gas emission threshold.

We believe ARB's approach overestimates the size of boilers in the State of California, which does not share the same industry mix as other regions of the U.S. that often employ larger boilers. See “Characterization of the U.S. Industrial/Commercial Boiler Population,” Energy and Environmental Analysis, Inc. (May 2005). ARB does not need to rely on this national data to approximate the distribution of boiler sizes in California. Information is available on the actual inventory of boilers in the State and ARB should analyze that data instead. Air districts are already regulating boilers much smaller than 10 mmBtu due to their significant contribution to air quality problems, so it is troubling that ARB would conclude that these sources do not deserve to be treated as significant contributors to the problem of global warming.

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We encourage ARB to push forward and provide the missing rationale for the threshold recommendations for the proposed sectors. In addition, ARB should also make recommendations for all other sectors including agriculture and transportation. We look forward to the next draft of your recommendations and urge you to build in appropriate opportunities for public review and comment. Thank you for your efforts to date. If you have any questions or concerns regarding these comments, please contact Paul Cort ([pcort@earthjustice.org](mailto:pcort@earthjustice.org)) or Will Rostov ([wrostov@earthjustice.org](mailto:wrostov@earthjustice.org)) at (510) 550-6725.

Sincerely,

Paul Cort  
Staff Attorney