December 5, 2008

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Air Resources Board
P.O. Box 2815
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Mr. Douglas Ito, Manager
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Re: **Preliminary Draft Staff Proposal – Recommended Approaches for Setting Interim Significance Thresholds for Greenhouse Gases under the California Environmental Quality Act**

Dear Mr. Karperos and Mr. Ito,

Thank you for the opportunity to comment on the Air Resource Board's Preliminary Draft Proposal - Recommended Approaches for Setting Interim Significance Thresholds for Greenhouse Gases under the California Environmental Quality Act (hereinafter referred to as "Proposal").[1] The following comments are submitted on behalf of the Environmental Defense Center (EDC), a public interest law firm. The EDC, which protects the environment through education, advocacy and legal action, has taken a leadership role in the state in raising concerns about climate change impacts of new

[1] These comments are submitted after the deadline posted on the ARB website; however, as I noted in the comment I submitted online yesterday, the Proposal itself does not include a deadline or instructions for submitting comments, despite the clear request for comments. Hence, I formally and respectfully request that this letter be submitted to the ARB along with other comments that have been submitted.

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development proposals. On behalf of our own organization and our clients, we have submitted scoping comments on a variety of industrial, residential and commercial projects, requesting that the lead agencies provide a thorough analysis of the greenhouse gas (GHG) emissions from the proposed projects, including an analysis of direct, indirect and cumulative impacts, as well as mitigation measures and alternatives that are capable of avoiding or substantially lessening such impacts. We have also commented on Draft and Final Environmental Impact Reports and filed litigation where necessary to ensure full disclosure and consideration of this important impact.

Significance of GHG Emissions on the Environment

The impacts of GHG emissions are far-reaching and dire. The International Panel on Climate Change (IPCC) and individual scientists have made clear that climate change is real, that it is worse than predicted, and that human actions are a significant cause of increasing climate change.[2] AB 32 provides the State of California with a means to address existing sources of GHG emissions; CEQA provides the critical tool to curb *new* potential sources.

As noted by the IPCC, GHG emissions must be stabilized in order to avoid irreversible harm to the global environment.[3] Although the IPCC identifies a goal of 450 parts per million (ppm) by mid-century, James Hansen (NASA climatologist) and other scientists now find that CO_2 emissions will need to be reduced from the current level of 385 ppm to *350 ppm*.[4] Therefore, it is important to actually decrease GHG emissions and avoid *any* new increases in such emissions. As new projects are proposed, the public and decision-makers must be apprised of the full extent of GHG emissions from the projects, including indirect and cumulative impacts, and the mitigation measures and alternatives that are capable of avoiding such impacts.

In addition to climate change impacts, CO_2 emissions are an increasing threat to our ocean ecosystems. Current and predicted levels of CO_2 in the atmosphere have resulted in increasing acidification of the oceans, resulting in damage to coral reefs as well as species that require calcification to form shells and bones. As reported by Dr. Richard Feely (NOAA scientist), the increasing ocean acidification is a direct result of rising levels of CO2 in the atmosphere and is already demonstrating significant – and unpredicted – effects.[5]

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[2] IPCC, 2007: *Climate Change 2007: Synthesis Report. Contribution of Working Groups I, II and III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, Pachauri, R.K and Reisinger, A. (eds.)]. IPCC, Geneva, Switzerland, 104 pgs. p. 37.

[3] Id.

[4] Hansen, J. et al., *Target Atmospheric CO2: Where Should Humanity Aim?* (April 2008), available at http://www.columbia.edu/~jeh1.

[5] Richard A. Feely, et al., *Evidence for Upwelling of Corrosive "Acidified" Water onto the Continental Shelf*, available at www.sciencexpress.org (22 May 2008), 10.1126/science.1155676; see also Environmental Defense Center, *Ocean Acidification and the Channel Islands National Marine Sanctuary; Cause, Effect and Response*, unanimously adopted by the CINMS Advisory Council, September 19, 2008; available at www.EDCnet.org.

The Need for a Zero Emission Threshold

For these reasons, we believe that the threshold for new sources of GHG emissions must be zero. The CAPCOA report provides support for this proposition.[6] The report notes,

> The scientific community overwhelmingly agrees that the earth's climate is becoming warmer, and that human activity is playing a role in climate change. Unlike other environmental impacts, climate change is a global phenomenon in that all GHG emissions generated throughout the earth contribute to it. Consequently, both large and small GHG generators cause the impact. While it may be true that many GHG sources are individually too small to make any noticeable difference to climate change, it is also true that the countless small sources around the globe combine to produce a very substantial portion of total GHG emissions.
>
> A zero threshold approach is based on a belief that, 1) all GHG emissions contribute to global climate change and could be considered significant, and 2) not controlling emissions from smaller sources would be neglecting a major portion of the GHG inventory.[7]

A recent Draft EIR prepared by the California State Lands Commission for the Venoco Full Field Project invoked a zero emission threshold, relying on the CAPCOA analysis.[8]

The ARB Proposal acknowledges that "some have suggested that because of the need for urgent action and the uncertainty of the precise 'tipping point' for dangerous climate change, any contribution of GHGs to the atmosphere may be significant – a so-called 'zero threshold.'" (Proposal at 4.) Rather than discuss this suggestion, however, the Proposal simply concludes that such a threshold is not necessary because some "level of emissions" (i.e., increase in emissions) is consistent with climate stabilization goals and because other measures, such as AB 32, will reduce GHG emissions. However, as noted above, this response ignores more recent scientific evidence that climate stabilization goals should actually be lower than present day; hence, increased emissions cannot be tolerated.[9] In addition, this response fails to recognize that allowing new GHG emissions will undermine the State's work under AB 32 by offsetting hard-fought emissions reductions with new emissions.

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[6] CAPCOA (California Air Pollution Control Officers Association), *CEQA and Climate Change: Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act* (January 2008).
[7] Id. at 27.
[8] California State Lands Commission, *Venoco Ellwood Full Field Development Project EIR* at 4.3-33.
[9] Hansen, *supra*.

Recommendations

The Proposal should be based on the more appropriate and current stabilization goal of 350 ppm. The thresholds should then be geared towards consistency with this goal. Similar to an area that is in non-attainment for air quality standards, our state must avoid any increases in emission levels and in fact support a model that will decrease emissions in a timely manner.

Finally, in assessing project impacts, a lead agency must not rely on speculative or deferred measures to reach a conclusion that a project's impacts will be less than significant. The Proposal notes that if a project "includes equivalent mitigation measures," the agency may presume that the project will result in less than significant impacts related to climate change. (Proposal, Attachments A and B.) We have read several EIRs that rely on vague or deferred mitigation measures to find a less-than-significant effect. Under CEQA, mitigation measures may not support a finding of insignificance unless they are known, feasible, effective, and enforceable.[10]

Some opponents of a zero emission threshold complain that such a threshold would force the preparation of an EIR for every project, even if there are no other potentially significant effects from the project. This statement is not accurate. There are many ways GHG emissions can be mitigated. ***Requiring a zero-emission threshold would provide more of an incentive for project proponents to actually reduce GHG emissions and help the State achieve its goals of reaching climate stabilization.***

In conclusion, we support ARB's effort to develop guidance regarding the evaluation of GHG emissions in the context of CEQA. As noted herein, it is critical that the significance of climate change and ocean acidification not be understated, and that CEQA be followed to not only offer procedural and informational guidance to decision-makers, but that the substantive mandate of CEQA also be implemented to avoid or reduce GHG emissions from future projects.

Thank you for your consideration of these comments.

Sincerely,

Linda Krop,
Chief Counsel

[10] *Federation of Hillside and Canyon Assns v. City of Los Angeles* (2000) 83 Cal.App.4th 1252 [100 Cal.Rptr.2d 301]; *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645 [57 Cal.Rptr.3d 663].