

December 4, 2015

California Air Resources Board (ARB)

<http://www.arb.ca.gov/cc/capandtrade/adaptivemanagement/adaptivemanagement.htm>

RE: Comments on ARB's Cap-and-Trade Adaptive Management Plan

We the undersigned health and environmental justice groups are deeply concerned that the current Adaptive Management Plan (AMP) proposal falls short of our expectations for a highly transparent, inclusive, and accountable process to measure the impacts of California's cap-and-trade regulation. In its current iteration, this plan falls short of achieving the law and the spirit of AB 32 that states that no actions should worsen the conditions of low-income communities and that we must seek to maximize co-benefits.

The following comments will provide solutions for strengthening the AMP in order to allow the public, researchers, universities and advocates to adequately track, and in relative real time, assess and mitigate the emissions impacts of California's cap-and-trade program. The most important outcome of a well-designed and implemented AMP is to take timely and corrective action when carbon-trading results in local emissions increases and other unintended harms. As such, we recommend the following improvements to the AMP.

Actions to Correct Cap-and-Trade Harm Should Be Inclusive and Not Discretionary

If a project has demonstrated air pollution harms after undergoing data gathering and analysis, the current proposal provides ARB with the sole discretion to act or not act in the case of such findings. While the AMP's decision-making does include a level of public participation, it is currently insufficient in that there is no accountability for a lack of action on ARB's part that leads to public harm. Involving the Environmental Justice Advisory Committee (EJAC) from design to oversight of the AMP would strengthen the Board's responses to polluting entities and would provide additional improvements to the plan and address some public accountability issues. Throughout this process, data gathering and plan implementation should be fully transparent and available to the public.

Define Responses to Adverse Impacts

In order to avoid toxic hot spots and exacerbating health-related harms to surrounding communities, the AMP should delineate certain timely and corrective actions that would be taken if a covered entity fails to reduce their emissions below the required legal thresholds. For instance, the AMP could prevent such facilities from surrendering credits/allowances or using allowances/offsets to meet their compliance obligation, and could instead require entities to engage in complementary measures that have greater proven effectiveness in reducing emissions. Out-of-compliance entities should also be obligated to support local mitigation projects and/or provide reparations to those communities that have been harmed. Examples of

such local projects could include funding pollution reduction projects and/or various asthma and medical programs.

The AMP should also specify a timeline for ARB to take corrective action once an entity's adverse impacts have been determined. For instance, ARB could be required to assess a problem and provide plans for corrective action within 3, 6 or 12 months of determining an adverse air quality. This process would ensure that such harms would be addressed and resolved within an appropriate time frame making for a more effective regulation.

In order to strengthen the AMP's ability to identify adverse impacts and protect vulnerable communities, we recommend that ARB place individual emission limits on the top third stationary polluters throughout the state, so that their impacts may be more closely monitored to ensure that those living within their vicinity are not suffering from health or environment-related harms.

Provide Additional Data for the Facility GHG Emissions Visualization and Analysis Tool

We appreciate ARB's creation of an online tool that can increase public awareness by documenting greenhouse gas (GHG) emissions from large facilities over time. To provide even greater transparency and accountability around emission levels, the new maps and tool should be updated on a regular basis potentially in advance of every new compliance period, and include an easy-to-find section on the website that can provide a space for open public comment for potential improvements. Furthermore, the AMP's online tools for data gathering and analysis should be strengthened to identify changes in co-pollutant emissions and criteria pollutants, in addition to measuring GHG emissions.

While the most recent version of the web-based tool does display each covered entity's emissions reductions over time, it does not show if these reductions are complying with the regulations for each compliance period. Adding a feature that can note whether or not a covered facility has been out of compliance for any commitment period would be important part of this assessment process.

Include Analysis and Mitigation of Co-Pollutant Emissions

The Draft Process to Monitor Emissions at Cap-and-Trade Facilities only considers an analysis of greenhouse gas emissions. ARB should also monitor co-pollutant emissions and take action to honor the letter and spirit of AB 32. AB 32 requires ARB to design its market-based measures to prevent increases in co-pollutants and to not interfere with efforts to reduce air pollution, especially in environmental justice (EJ) communities. Specifically, ARB must design "any market-based compliance mechanism to prevent any increase in the emissions of toxic air contaminants or criteria pollutants." Health & Safety Code sec. 38570(b)(2). ARB also has an obligation to ensure that its regulations, including cap-and-trade, do not interfere with efforts to reduce criteria and toxic air pollution. See Health & Safety Code sec. 38562(b)(4); see *also* Health & Safety Code sec. 38562(b)(2) (activities should not disproportionately impact low-income communities). Accordingly, ARB should expand the AMP to include analysis and mitigation of co-pollutants.

Conduct Post-Evaluations of the Cap-and-Trade Program and the Offset Program

In order to guard against potential adverse impacts resulting from California's offset program and ensure that the cap-and-trade program is structured to effectively support emissions reductions, ARB or Cal EPA should perform full ex-post evaluations of the performance of both programs.

Evaluations of the offset program should include a net-to-gross ratio assessment to understand the actual effects of the program on emissions compared to the total credits generated. ARB's use of the common practice analysis to determine if certain project types would be considered additional only observes past project trends. This is very different from an ex-post assessment of the actual effects of the programs on emissions.

While the current AMP proposal includes an examination of the cap-and-trade program on facilities whose emissions have increased or stayed the same, ARB could strengthen its plan by gathering data and analyzing the effects of the cap-and-trade program broadly on each sector. For instance, when observing facilities whose emissions have decreased, it will be important for ARB to evaluate whether they decreased because of the cap-and-trade program, because of the complementary measures, or because of factors outside of AB 32 regulations. Distinguishing the cap-and-trade program's effects from other policies is essential to understanding the effects of the program over time and determining solutions for strengthening it.

Making substantial improvements to the AMP is crucial as ARB works to document potential emissions reductions while showing the benefits of the state's landmark regulations. These solutions should also provide ARB with the robust tools necessary to conduct real evaluations and assess the effectiveness of the cap-and-trade regulation.

Sincerely,

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