

January 20, 2017

Clerk of the Board
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: U.S. Borax Comments on 15-Day Amendment Text to Proposed Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation

Dear Chair Nichols and Members of the Board:

U.S. Borax, part of Rio Tinto Borates, is pleased to submit the following comments on the California Air Resources Board's 15-Day Amendment Text to the Proposed Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation issued on December 21, 2016 ("15-Day Amendment Text"). U.S. Borax has been an active participant in the Board's efforts to design and implement a cap-and-trade program to address climate change, particularly with respect to provisions intended to minimize the risk of leakage to energy intensive and trade exposed industries operating in California. U.S. Borax's comments on the 15-Day Amendment Text focus on the Assistance Factor for borate mining and manufacturing.

Introduction

U.S. Borax, a California company since 1872, mines and processes borate ores from one of the world's largest deposits in Boron, California. Current operations are projected to continue in Boron for approximately 40 years. Our products have a significant role in a carbon-constrained world as borates are an important ingredient in insulation fiberglass and are used in textile fiberglass for the blades of wind turbines.

U.S. Borax's operations at Boron produce refined borates from natural borates: non-sodium borates (boric acid, boric oxide) and sodium borates (disodium tetraborate pentahydrate, disodium tetraborate decahydrate, anhydrous borax). U.S. Borax does not sell unrefined borates known as "natural borates" or "borate minerals." About 75 percent of U.S. Borax's products are exported to more than 1,000 customers in 100 countries mostly through the Port of Los Angeles and the Port of Long Beach. U.S. Borax is one of the top 10 biggest single exporters out of these California ports.

The world's largest borate producers are located in California and Turkey, followed to a much lesser extent located in Argentina, Chile, Bolivia, Peru, Russia and China. While the United States remains a net exporter of borates, U.S. Borax has lost 40 percent of its global share of refined borate sales over the last two decades due to higher labor, energy and regulatory costs of doing business in California. And, in the U.S. alone, imports of borates, primarily on the east coast, have increased in recent years due to the favorable cost position of Turkish borates over borate products from California. The Turkish borate producer, a government owned company without any mandatory climate change requirements, has recently taken a more aggressive

approach in the West, directly threatening California producers' positions both in California and in the Western US markets.

The Proposed Assistance Factor for Borate Mining and Manufacturing Does Not Reflect the Risk of Leakage Faced by California Borate Producers and Needs to Be Adjusted Upward.

Consistent with the direction of the Global Warming Solutions Act of 2006, in developing the Cap-and-Trade Regulation, the Board recognized it would need to take steps to minimize the risk of leakage as a result of imposing a carbon price on energy intensive / trade exposed industries operating in California. The Board, in the Cap-and-Trade Regulation, rightly classified U.S. Borax, which reports its greenhouse gas emissions under NAICS Code 212391 (potash, borate and soda ash mineral mining), is at a high risk of leakage and assigned an Assistance Factor ("AF") of 100% for each year 2013 through 2020.¹ However, despite the increasing competition U.S. Borax faces for its borate products in domestic and international markets, the 15-Day Amendment Text assigns borate mining and manufacturing an Assistance Factor of 63%. Borate mining and manufacturing must be assigned an AF of 100% to appropriately reflect the leakage risk faced by California borate producers. Anything less than an AF of 100% will adversely affect the ability of California borate producers to compete against international companies whose borate products do not include a carbon cost and will increase the risk of leakage.

1. Distinguishing Borate Mining and Manufacturing from Soda Ash Borate Mining and Manufacturing is Appropriate for Purposes of Allowance Allocation.

In the Cap-and-Trade Regulation, the Board identifies a single Assistance Factor for all covered entities reporting their greenhouse gas emissions under NAICS Code 212391 – potash, borate and soda ash mineral mining. In Table 8-3 of the 15-Day Amendment Text, which sets forth the Assistance Factors for industry sectors eligible for an allowance allocation for the year 2021 and beyond, staff proposes splitting the 212391 sector into two separate subsectors: "Mining and Manufacturing of Borates" and "Mining and Manufacturing of Soda Ash."² U.S. Borax supports staff's proposal and would urge the Board to adopt an amended Cap-and-Trade Regulation which distinguishes between borate mining and manufacturing and soda ash mining and manufacturing.

2. The Board Needs to Adjust the Assistance Factor Assigned to Borate Mining and Manufacturing to Reflect the Highly Competitive Global Market for Borate Products.

While U.S. Borax supports staff's recommendation to separate borate mining and manufacturing from soda ash mining and manufacturing for purposes of industry assistance, the 63% Assistance Factor proposed for borate mining and manufacturing in the 15-Day Amendment Text fails to account for the international competition faced by California borate producers. Attachment B to the 15-Day Amendment Text indicates that staff assigned a domestic AF of 0.60 to both the mining and manufacturing of borates and mining and manufacturing of soda ash.³ U.S. Borax agrees that a domestic AF of 0.60 for the entire 212391 sector is appropriate. However, an international AF of 0.03 was assigned to the mining and

¹ Cal. Code Regs. tit. 17, § 95871, Table 8-1 (March 2016).

² 15-Day Amendment Text § 95871, Table 8.3 (Dec. 21, 2016).

³ 15-Day Amendment Text, Attachment B, Post-2020 Industry Assistance Factor Calculations at p.30 (Dec. 21, 2016).

manufacturing of borates subsector (versus a 0.53 international AF assigned to the mining and manufacturing of soda ash subsector).⁴ Staff did not study the 212391 sector.

Staff states in Attachment B that for non-studied sectors in the mining industry, such as soda ash, diatomite and rare earths, U.S. Geological Survey subsector-specific trade exposure information was used to calculate the international AF component. Staff also notes “[a]s part of the amendment process, staff is reviewing whether or not it is possible to conduct a similar sub-sector trade exposure analysis for borate production.”⁵

U.S. Borax strongly supports staff’s intention to review trade exposure information for borate mining and manufacturing. However, because global borate production is dominated by two companies – U.S. Borax and the government-owned borate producer in Turkey – all sales and pricing data is closely held to protect each companies’ competitive position vis-a-vie each other and the handful of other smaller borate producers. Accordingly, unlike other mining and manufacturing sectors in California, the U.S. Geological Survey does not have the trade exposure information needed by staff.

In December 2016, U.S. Borax met with Board staff to share the information necessary to analyze the trade exposure of California borate producers. This information included the value of domestic U.S. shipments of borate products, the value of U.S. exports of borate products and the value of U.S. imports of borate products. The information provided by U.S. Borax is all Confidential Business Information consistent with the confidentiality provisions of the Cap-and-Trade Regulation⁶ and the California Public Records Act.⁷ U.S. Borax believes the information it has provided to staff supports assigning an international AF to borate mining and manufacturing of 0.50 or greater. U.S. Borax will continue to work with staff so that the Board has all the information it needs to analyze the trade exposure for borate production and establish an international AF component that accurately reflects the global competition, and corresponding price sensitivity, for borate products.

If you or your staff have any questions, please let me know. U.S. Borax appreciates the continuing opportunity to work with you and your staff on the cap-and-trade program.

Sincerely,



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⁴ *Id.*

⁵ *Id.* at p.18.

⁶ Cal. Code Regs. §96021.

⁷ Cal. Govt Code §§ 6250 *et seq.* (2016).