



January 20, 2017

VIA ELECTRONIC SUBMISSION

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

RE: Proposed Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation (15-Day Amendment)

The Wonderful Company LLC ("Wonderful"), on behalf of Wonderful Pistachios and Almonds LLC ("WPA"), appreciates the opportunity to provide additional comments to the California Air Resources Board ("ARB") regarding the proposed amendments to the California Cap on Greenhouse Gas Emissions ("Cap-and-Trade Program") and Market-Based Compliance Mechanisms Regulation (hereinafter "Proposed Regulations").

It is critical that ARB provide industry with the resources and assistance necessary in order to promote the future of the Cap-and-Trade Program. To this end, we reiterate our comments previously submitted to ARB on *September 19, 2016* and *November 4, 2016* (attached to this letter), which remained largely addressed in the Proposed Regulations. During this time, we have continued to work with ARB staff but have not yet reached a resolution of the issues noted in our prior comments.

Wonderful remains committed to working with ARB to further refine the Proposed Regulations in such a way so that they advance California's air quality goals while providing fair and appropriate product-based allowances to local businesses consistent with the intent of AB 32.

Thank you for your consideration of these comments. We would be happy to discuss at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Melissa Poole". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

Melissa Poole
Senior Counsel/Director of Government Affairs

September 19, 2016

VIA ELECTRONIC SUBMISSION

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

RE: Proposed Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulations

The Wonderful Company LLC (“Wonderful”), on behalf of Wonderful Pistachios and Almonds LLC (“WPA”), appreciates the opportunity to provide comments to the California Air Resources Board (“ARB”) regarding the 2016 proposed amendments to the California Cap on Greenhouse Gas Emissions (“Cap-and-Trade Program”) and Market-Based Compliance Mechanisms Regulations (hereinafter “Proposed Regulations”). We have reviewed the Proposed Regulations to the Cap-and-Trade Program and offer the following comments.

1. Roasted Nuts and Peanut Butter Manufacturing (NAICS 311911) Should Remain Under the Product-Based Benchmarking Category

ARB has tentatively proposed to eliminate tree nut manufacturing from the product-based benchmarking category. Instead, manufacturers in this NAICS code will be subject to energy-based benchmarking. In the *Initial Statement of Reasons*, ARB is proposing to change the product-based benchmark for this category based on the following reasons: (1) emissions in these sectors are highly variable making it challenging to accurately predict the energy required to roast nuts; and (2) there are no longer any covered entities conducting activities that fall within this category. We are opposed to the elimination of product-based benchmarking for tree nuts because ARB has failed to provide valid legal or factual rationale for doing so. Therefore, we request that the product-based benchmark for tree nuts be retained. If ARB needs additional technical information to further refine the previously approved benchmarks, WPA is committed to providing ARB that information.

As a fundamental issue, it is inappropriate for ARB to completely eliminate the product-based benchmarks that WPA spent over a year developing in collaboration with ARB, and that were adopted in 2014. Regulated entities need regulatory certainty. It is unfair for ARB to propose such a significant change to its approach a mere two years after it initially adopted the product-based benchmarks.

A. WPA Will Be Back in the Cap-and-Trade Program for 2016

In terms of ARB's factual rationale, while it is true that there are no covered entities currently subject to the Cap-and-Trade Program utilizing the product-based benchmark for roasted nuts, the 2016 crop will put WPA back in the Cap-and-Trade Program. The pistachio crop, like many other agricultural commodities that are impacted by weather, is variable. Last year, the industry produced 275 M lbs, while this year the estimated volume is a record 750-800 M lbs. To date, WPA has already processed 300 M lbs of pistachios at the same Lost Hills facility that was previously covered by the Cap-and-Trade Program. Greenhouse gas (GHG) emissions for nut processing facilities are closely correlated with pistachio and almond harvest volumes, which are directly influenced by climate, a factor outside of WPA's control. Due to extended drought conditions and other weather related issues, including insufficient chilling hours during the winter, 2013, 2014, and 2015 harvest volumes were down, and consequently GHG emissions at the WPA Lost Hills facility stayed below the Cap-and-Trade Program applicability threshold. But, based on a record harvest for 2016, WPA will be back in the Program next year, so elimination on the basis that there are no longer covered entities is not factually justified.

B. Variability of Emissions and Moisture Content is Inherent in Nut Processing and Previously Acknowledged by ARB

With regard to the variability in emissions, like many other agricultural products, the climatic and soil condition under which pistachios and almonds are grown, largely influence the moisture content of these products. As the climate and soil conditions change year to year, the moisture content of the product changes variability of moisture content of the raw pistachios and almonds is an inherent characteristic of tree nuts, which has always existed. During the 2013 rulemaking process, ARB was provided with a great deal of information regarding the harvest production, storage, treatment processes, and fuel consumption related to the processing of pistachios and almonds, and this information was used by ARB to develop the appropriate product-based benchmarks for pistachios and almonds, respectively. The harvest methodology and the inherent variability of moisture content in WPA's raw pistachios and almonds did not change since the 2013 rulemaking. It is therefore neither appropriate nor fair for ARB to propose elimination of the 311911 NAICS code benchmarks because the water content of raw nuts varies year-to-year.

2. If Necessary, ARB Should Refine the Product-Based Benchmark, Rather Than Eliminate It

ARB asserts that product-based benchmarking is the preferred approach in order to minimize leakage. However, ARB's proposal to eliminate product-based benchmarks for pistachio and almond products is inconsistent with that approach and the intent of AB 32. As such, we strongly recommend that ARB consider refining the product-based benchmarks for pistachios and almonds, as opposed to elimination of the category. Such an approach is similar to ARB's proposal with respect to calcium ammonium nitrate solution and nitric acid production (NAICS code 325311), where emissions are also highly variable. Wonderful recommends that

ARB bear in mind the following when considering the product-based benchmark calculation for this category:

- The initial benchmarks were derived using 2010 and 2011 data. The product-based benchmarks should be updated using data years 2010-2015 because: (1) ARB has Mandatory Reporting Regulation data to ensure the rigorousness of the data quality (2010 through 2015 data are verified); and (2) efficiency tends to improve over time, such that using these data years for nut products ensures that efficiency improvements are taken into account in an equitable manner.
- Because WPA is the only covered entity under the Cap-and-Trade program, apply ARB's benchmark stringency with "90% of Average" or "Best-in-Class" value, using the 2010-2015 data from WPA.

If ARB requires additional information to further refine the product-based benchmark for roasted nuts, including developing refined benchmarks for each process, WPA would be happy to work with ARB staff to provide that information.

3. Covered Entities Should Not Be Required to Pay Back Allocation Allowances Immediately

ARB has proposed to modify provisions related to the return of allowances by entities that were allocated free allowances and subsequently did not incur a compliance obligation or applied to exit the Cap-and-Trade Program. We acknowledge that the proposed changes are set to take effect for budget year 2018 and forward, but believe this is a critical issue, especially for entities in the agricultural sector that have variable GHG emissions, and therefore could come in and out of the Cap-and-Trade Program.

We recognize that ARB is proposing to apply this new retirement provision only to entities with energy-based benchmarks, but we cannot support ARB employing this method in any case where an entity's operations are not year round and highly variable year over year. This proposed amendment is particularly troubling for covered entities in the agricultural sector where seasonality, light and alternating crops (such is the case with tree nuts), and forces outside of the manufacturers control (i.e., drought and other climate conditions) impact whether an entity remains a covered entity under the Cap-and-Trade Program. We understand ARB's intention with regard to entities that exit the Cap-and-Trade Program permanently, but it is unfair for ARB to arbitrarily penalize covered entities that come in and out of the Program based on conditions beyond their control. To this end, we strongly urge ARB to reconsider this proposed amendment and allow retention of such allowances for a period of time, such as 5 years, to allow entities to retain such credits for future compliance obligations when they re-enter the Cap-and Trade Program.

In conclusion, it is extremely frustrating that ARB has proposed complete elimination of the product-based benchmarks for roasted nuts that we worked, along with ARB staff, for so long to develop and implement – a mere two years ago. ARB has not provided sufficient justification for the proposed elimination, as described above. If ARB needs further information

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in order to refine the benchmark, WPA is happy to provide any information, including more recent data to justify the approach previously adopted by ARB. But it seems patently unfair to not be accorded the ability to utilize a product-based benchmark just because we are dealing with an agricultural product that is highly variable because of Mother Nature.

Thank you for your consideration of these comments. We would be happy to discuss at your convenience.

Sincerely,

A handwritten signature in blue ink, consisting of a series of loops and curves, representing the name Melissa Poole.

Melissa Poole
Senior Counsel/Director of Government Affairs



November 4, 2016

VIA ELECTRONIC SUBMISSION

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

RE: October 21, 2016 Workshop and the Informal Staff Proposal for the Industry Assistance Factor Calculation

The Wonderful Company LLC (“Wonderful”), on behalf of Wonderful Pistachios and Almonds LLC (“WPA”), appreciates the opportunity to provide feedback to the California Air Resources Board (“ARB”) regarding the October 21, 2016 workshop and the Informal Staff Proposal for the Industry Assistance Factor Calculation (“Staff Proposal”).

Fundamentally, Wonderful does not support the Staff Proposal to decrease assistance factors post 2020. We believe that ARB should, at a minimum, maintain the current assistance factors (those allocated in the 3rd compliance period) for 2021-2023, and review additional emissions leakage data from 2018 through 2020 before considering assistance factor refinement.

From the onset of the Cap-and-Trade (“C&T”) program, ARB provided for an allowance allocation methodology that designated food production sector facilities as “medium” leakage risk, whereby granting the food industry free allocation assistance factors of 75 percent through the 2018-2020 compliance period. In 2011, ARB directed staff to investigate and recommend potential improvements to the industrial allowance allocation to better meet the objectives of the establishing legislation (AB 32) by looking for ways to minimize leakage from domestic (California) industries to the extent feasible.

As part of this directive, ARB commissioned three independent studies that utilize different methodology to answer the larger question of the potential leakage risk associated with recalculating the assistance factors for the C&T program. Although specifically commissioned by ARB, staff is only proposing to use two of the three studies to develop assistance factor methodology post 2020. We find this approach to be problematic, as we do not believe the two relied upon studies accurately represent emission leakage risk, which is the intent of the ARB’s directive.

At their core, the two utilized studies, Gray et al. (domestic study)¹ and Fowlie et al. (international study)², fail to accurately assess genuine industry specific emissions, the principal

¹ Gray, W., Linn, J., and Morgenstern, R. (2016). *Employment and Output Leakage under California’s Cap-and-Trade Program*. Accessed 11/4/16: <http://www.arb.ca.gov/cc/capandtrade/meetings/20160518/rff-domestic-leakage.pdf>

² Fowlie, M., Reguant, M., and Ryan, S. (2016). *Measuring Leakage Risk*. Accessed 11/4/16 <http://www.arb.ca.gov/cc/cap-and-trade/meetings/20160518/ucb-intl-leakage.pdf>

reason for ARB commissioning these studies. We cannot support ARB moving forward with the Staff Proposal for assistance factors when the relied upon calculation methodology utilizes results from studies that are incompatible with industry specifics – especially the food industry – and that do not accurately measure emissions leakage for California entities. Some of the more pressing issues we have with the two utilized studies are highlighted below:

- There is no mention of a comparison between California emission control efficiencies versus international emission control efficiencies or other states' control efficiencies. Without comparing the emission controls between industries outside of California, ARB cannot possibly quantify emissions leakage.
- The authors of the two studies acknowledge that they based their conclusions on insufficient statistical data, whereby making it impossible to accurately predict direct leakage risk to California based entities. The authors in the domestic study (*Gray et al.*) acknowledge the study's limitations to predict long-term effects of a carbon price to any degree of certainty; and the international study (*Fowlie et al.*) recognizes that quantifying production leakage rate to international markets solely from California is difficult due to the limited data set available. This fact required the authors to simulate how such a transfer rate may appear, rather than making calculated projections.
- The studies do not adequately represent the leakage risk between California and neighboring US states. The study by Fowlie et al. only compares California to international markets, and the Gray et al. study is focused on how additional carbon prices (emission credits) will affect California industries.
- The food processing industry is a unique category of emitters and should be specifically studied to provide adequate projections as to the impacts of decreased assistance factors post 2020. ARB staff are not proposing to use the data from the third leakage study by *Hamilton et al.*³ which specifically looks at data from the agricultural sector, because staff believes that study was too conservative. We do not agree with ARB's assessment of this study and support ARB reevaluating the conclusions derived from the *Hamilton et al* research.

The aforementioned deficiencies in the two studies are outstanding. We believe it would be counterintuitive and inappropriate for ARB to develop long-term (post 2020) program elements based on studies wherein the authors acknowledge their own limitations to predict long-term effects to any degree of certainty. It would be fundamentally flawed for ARB to use any assumption in place of a fully vetted study for emission control comparison. The intent of AB 32 is to reduce California Greenhouse Gas ("GHG") emissions, and in turn, reduce global GHG emissions, since California as an individual state is a large contributor. However, there is no value in reducing California emissions if that would lead to an increase in GHG emissions elsewhere in the globe as GHG emissions reside in the atmosphere *globally*. In fact, without adequate quantification of industry specific emissions efficiencies between California and non-California facilities, there is no

³ Hamilton, S.F., Ligon, E., Shafran, A., Villas-Boas, S. (2016). Production and Emissions Leakage from California's Cap-and-Trade Program in Food Processing Industries: Case Study of Tomato, Sugar, Wet Corn and Cheese Markets. Orfalea College of Business, Ca Poly San Luis Obispo. Accessed 11/4/16: <http://www.arb.ca.gov/cc/capandtrade/meetings/20160518/calpoly-food-process-leakage.pdf>

guarantee that production leakage from California (no matter how small) will not generate an overall increase in global GHG emissions.

Furthermore, we believe it is incorrect to assume that there is a one-to-one market transfer rate when it comes to emissions leakage. For example, California currently has some of the most energy efficient, most emission efficient, and least GHG emitting facilities in the world. With the onset of AB 32, California emitters were required to produce lower emissions per metric ton than similarly producing facilities almost anywhere else in the world. As such, there is already a disparity in comparing California and non-California emitters. The third study ARB commissioned by *Hamilton et al.* (determined to be insufficient by ARB) elaborates further on this emission efficiency disparity:

For the case of California food processors, the typical plant operates on natural gas; however, global food processing plants including those in other U.S. states rely on other sources such as coal and fuel oil. In 2002, 52% of total energy supply utilized in the U.S. food manufacturing industry was natural gas, 21% net electricity, 17% coal, 3% fuel oil, and 8% other (e.g., waste materials). In aggregate, the market transfer of California production to producers in other U.S. locations in the U.S. therefore is likely to occur to plants relying on a mix of fuels that produce higher levels of emissions per MBtu. In the case of tomato processing, global market transfer that occurs to food processing facilities in China is likely to result in greater emissions per ton of processed tomatoes, as energy used to process tomatoes in China is generally derived from coal-fired plants.

In light of the challenges outlined with the studies above, we respectfully request that ARB reevaluate its assistance factor methodology prior to finalizing the Staff Proposal.

Thank you for your consideration of our comments on the October 21, 2016 workshop and the Informal Staff Proposal for the Industry Assistance Factor Calculation. We would be happy to discuss at your convenience.

Sincerely,



Melissa Poole
Senior Counsel/Director of Government Affairs