



Western States Petroleum Association
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Catherine H. Reheis-Boyd
President

December 14, 2015

Via web: http://www.arb.ca.gov/lispub/comm2/bcsubform.php?listname=captradeamguide-ws&comm_period=1

David Mallory (dmallory@arb.ca.gov)
Johnnie Raymond (jraymond@arb.ca.gov)
Air Resources Board
1001 I Street,
Sacramento, CA

RE: Comments on Adaptive Management

Dears Mr. Mallory and Mr. Raymond:

The Western States Petroleum Association (WSPA) representing 25 companies that explore for, develop, refine, market and transport petroleum and petroleum products in the Western U.S. appreciates the opportunity to submit comments on materials and concepts presented by the Air Resources Board (ARB) Staff at their recent series of workshops on Adaptive Management (AM).

WSPA recognizes that ARB committed to the AM planning process in the Cap and Trade (C&T) Environmental Assessment as a potential mechanism to address concerns about localized air quality impacts from C&T. ARB also acknowledged in the same document and in the recent public workshops that this nexus may be tenuous given the comprehensive regulatory and permitting program that currently exists throughout the State. Accordingly, the AM program and ARB's public messaging on AM must seek to educate stakeholders about how greenhouse gases, criteria pollutants and toxic air contaminants are emitted and how regulatory programs control emissions from stationary sources. Failure to draw these distinctions will promote the misperception that the path to achieve greater criteria and toxics reductions leads through the C&T program.

Indicator of Overall Emissions Pattern

The emissions cap under the Cap and Trade (C&T) program is designed to address overall emission trends on a statewide basis, not a regional or individual facility basis. Indeed, individual facility

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emissions can be expected to fluctuate due to various factors such as operating rates, maintenance needs and other operational factors or market demands. Thus, ARB should configure its proposed AM process and its draft GHG mapping tool to first focus on statewide GHG emissions data and then look at regional patterns as appropriate and consistent with the scope and design of the overall State-wide C&T program.

Screening Purpose Only

We understand ARB intends to interpret Greenhouse Gas (GHG) emission trends as an indicator of the need for further research into potential impacts that may be due to the Cap and Trade program. As discussed at the workshops, if there is no upward trend in facility or regional GHG emissions, then no further analysis is needed.

In the unlikely event an upward trend in GHG emissions is observed, ARB suggested that it would attempt to determine if that trend is a direct result of the Cap and Trade regulation or some other factor. In such a circumstance, ARB would attempt to document how emissions are being affected, whether they result in any actual local or regional impacts, and consider the need for changes to the C&T program. As currently proposed, the AM process would also match facility GHG data to criteria pollutant and toxic air contaminant inventories and separately evaluate these emissions trends. This element suggests an opportunity, if not an intent, to regulate criteria pollutants and toxic air contaminants through the C&T AM process. We submit that this approach misinterprets ARB's directive on AM, and is fundamentally over-reaching in light of the rigorous criteria pollutant and toxic air contaminant programs that exist at both the state and local levels.

Many stakeholders appear to be confused about the purpose of this program, and the reality that local and regional environmental or health impacts can result only from significant increases in criteria pollutants and toxic air contaminants. As stated by ARB staff during the Sacramento workshop, California's comprehensive network of state and local regulations, dating back to the 1970's, as well as permit conditions that result from these laws, makes such impacts highly unlikely. It is even less likely that any observed increase in criteria or toxic emissions can be attributed to C&T – which should be the only objective of the AM analysis.

We agree with ARB's statement that the proposed AM process should monitor and respond as necessary to emissions trends ***resulting from Cap-and-Trade*** (workshop slide #4, first bullet; emphasis added). Moreover, ARB and local air districts maintain separate inventories for criteria pollutants and toxic air contaminants and have separate authority to address any trends they observe that could lead to increased regional or local impacts. These processes should not be conflated with ARB's C&T AM process.

ARB's draft GHG mapping tool (http://www.arb.ca.gov/ei/tools/ghg_visualization/) allows the user to obtain data on individual facilities. This approach promotes the false perception that GHG emissions trends at individual facilities can be correlated with impacts in communities surrounding these facilities. This perception will drive demands to use the GHG mapping tool for policy setting and

potentially for regulatory decisions at the regional level, if not at individual facilities. Clearly such uses are not appropriate when controlling a global pollutant and ARB does not appear to support them.

As participants in the workshop pointed out, the limitations described above, as well as the challenges in use of the tools developed for this program, demonstrate that stakeholders would benefit from greater clarity on the appropriate uses of the GHG mapping tool. Such clarity of use should include explicit reminders that GHG emissions at individual facilities should not be interpreted as indicators of localized air quality or public health impacts.

Emission Trends are not Predictive

We note with interest that ARB's GHG mapping tool appropriately cites data submitted by facilities under the Mandatory Reporting Rule (MRR). As ARB noted, the development of this tool focused on its use as a preliminary screening tool, not as a predictor of emissions in the future or as input for regulatory decision-making. We recommend against using a screening tool to direct investigations into facility emissions.

The workshop discussion also brought up the potential for misuse of the data or potential damage to company reputations if parties attempted to erroneously correlate slight increases in GHG emissions at individual facilities with localized impacts, or trades made in the C&T program with actual facility emissions. Such actions should not be enabled through ARB's programs. As we stated earlier, given the very strict state and local regulatory programs that exist in California, it is unreasonable to target facilities that are fully in compliance with both AB 32 and their air permits with yet another potential regulatory liability based on a screening tool for a global pollutant. ARB's proposal to use the tool in this way can lead to erroneous conclusions concerning the potential for localized impacts.

We understand that ARB intends to look at emissions trends over perhaps 5-6 years – a period that seems reasonable given the compliance intervals under the C&T program. We would also note that it will take more time to develop this data base. However, during the November workshops ARB discussed a year-over-year analysis. Such an analysis would not be appropriate for the oil and gas industry or most other manufacturing because annual changes in excess of 5% can occur due to the need for routine maintenance and other potential operational changes. Such flexibility is necessarily accommodated under existing air quality programs (consider, for example, offsets allowed by local air districts for certain criteria pollutants) and permits, but would appear to be arbitrarily restricted under ARB's proposed AM program. As discussed above, any focus on individual facilities is flawed and will only serve to eviscerate the flexibility and cost containment elements designed into the C&T program.

As ARB is aware, most regulated entities were required to begin reporting and verifying GHG emissions under MRR in 2012 for 2011 emissions and that the 2015 data will not be available for some time; therefore, any reviews of impacts should not occur until at least 3-5 years of verified data are available for years for which there were/are compliance obligations. This approach will ensure

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consistent data quality and reliability. Again, we need to stress that such data is not predictive of future trends and should not be used for that purpose.

Thank you for the opportunity to comment on this issue. Should you have any questions, feel free to call me or Mike Wang of my staff (cell: 626-590-4905: mike@wspa.org).

Sincerely,

A handwritten signature in blue ink, appearing to read "Cathy A. Boyd".