



California Independent Oil Marketers Association

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April 28, 2017

The Honorable Mary Nichols
California Air Resource Board

Re: CIOMA Comments Regarding the California Air Resource Board's Proposed Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation and the Proposed Amendments to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions

The California Independent Oil Marketers Association (CIOMA) represents about 300 members, including nearly 90% of all the independent petroleum marketers in the state and about one quarter of the state's 10,000 service stations. Our members are small, family- and minority-owned businesses that provide services to nearly every family in California. Additionally, CIOMA members fuel local governments, law enforcement, city and county fire departments, ambulances/emergency vehicles, school district bus fleets, construction firms, marinas, public and private transit companies, hospital emergency generators, trucking fleets, independent fuel retailers (small chains and mom-and-pop gas stations) and California agriculture, among many others. CIOMA appreciates ARB's consideration of our comments on the 2030 Scoping Plan.

CIOMA believes the best path to achieve the state's long-range environmental goals is through an integrated and flexible policy framework that optimizes technologically feasible, cost-effective, and sustainable greenhouse gas (GHG) emissions reductions. We continue to believe that the most comprehensive and effective scenario alternative ARB Staff has developed for recommendation to the Air Resources Board for adoption in June is Alternative 3- All Cap-and-Trade: 2030 GHG and Air Quality Reductions.

Section 95913(d)(1)(A) Frequency of Reserve Sales

CIOMA opposes the proposed changes affecting the Reserve sales schedule starting in 2021. ARB is proposing changes that will increase the occurrences of attempted market manipulation. It is shortsighted and a seemingly incorrect assumption to base the criteria of future Reserve sales on past interest, especially as the cap is adjusted. **We encourage ARB to continue to base the availability of Reserve sales on the current criteria, regardless of current and past interest in the quarterly Reserve sales.**

95911(g) Disposition of Unsold Allowances

CIOMA opposes the proposal to transfer to the Allowance Price Containment Reserve (APCR) beginning January 1, 2018, any current vintage allowances that remain unsold for more than 24 months.

This unspecified volume would be *added* to any unsold volumes already in the APCR (currently 141 million tons) and *added* to the proposed forward stocking of approximately 54 million more allowances post-2020.

The existing APCR already contains large volume of allowances (nearly equal to the 2030 cap itself), and adding to it would only further reduce liquidity, increase uncertainty and risk of volatility for market participants and almost certainly increase future allowance cost for compliance entities. Since allowances are still available in the APCR to market participants, the most significant change is to increase the overall costs of allowances in the market by setting the price at \$60 above the floor, raising costs to compliance entities without allowing the market to operate cost-effectively.

ARB's proposed interference and step-change adjustments in the market, intended to take effect less than 12 months from now constitutes a dramatic change in the regulation. It would have the effect of raising market prices in the near term, perhaps for the purpose of increasing State revenue. Further, it would have the perverse effect of rewarding some companies and penalizing others for past business decisions. Program changes, and even proposals such as this, can damage the integrity of the Cap-and-Trade program and erode confidence in the market. ARB should seek to avoid policies and actions that interfere with the current market.

CIOMA continues to recommend that ARB analyze the potential for its APCR proposals to increase program costs and impact market liquidity, and allow more transparent public discussion of these issues through full 45-day notice and comment periods. Pending this review, CIOMA recommends that ARB should: 1) avoid making regulatory changes that would interfere with the operation of the market in the pre-2020 timeframe, and 2) continue to return unsold allowances to auction, which will moderate expected market fluctuations without placing unreasonable new cost burdens on compliance entities.

Section 95892 Allocation to Electrical Distribution Utilities for Protection of Electricity Ratepayers

These proposed changes are unraveling the main reduction methods applied to EDUs under Cap-and-Trade. The Renewables Portfolio Standard is noted as a primary reason for removing the cap adjustment factors, contradicted by the assumption that "not all RPS eligible electricity has zero GHG emissions associated with it", introduced in the same sentence. To exempt EDUs from cap adjustment factors removes the incentive to lower the GHG emissions produced when providing electricity. In 2015, coal accounted for only 0.2% of the electricity produced in California and made up less than one and a half percent of California's electricity at the onset of the Cap-and-Trade program.¹ To cite the divestiture from coal as the example of EDUs decreasing their dependency on coal is misleading as the industry had not relied on coal for any significant energy production. Additionally, the RPS calculations are being adjusted to reflect the fact that they are not as effective in reducing emissions as previously thought, as well as the roadblocks in adopting renewable energy sources.

When coupled with the proposed Transportation Electrification Activities pursuant to Senate Bill 350, the dollar amount being allocated to power companies in California is sky high. This type of regulatory capture is a clear example of CalEPA choosing winners and losers. CalEPA is exempting utility

¹ California Energy Commission, "Actual and Expected Energy from Coal for California"

http://www.energy.ca.gov/renewables/tracking_progress/documents/current_expected_energy_from_coal.pdf

companies from Cap-and-Trade rules while providing tax payer funded rebates for electrical vehicles that will charge at power company owned charging stations paid for by the taxpayers.

The title of this section states it is CalEPA's goal to protect consumers from spiking energy costs. Consideration should be given to the costs of Cap-and-Trade that are passed along to consumers at the pump. Consumers, businesses, and tax payers are not being protected from sudden rises in costs as more fees and taxes are applied to the fuels most commonly used to commute to family gatherings and work, and keep industries across California running.

CIOMA urges ARB to continue to apply the cap adjustment factor and not lower the standards for EDUs in order to continue to incentivize the decrease of GHG emissions.

95832(F)(2) Account Representative

The proposed change requires ARB to review and approve any change an entity makes to their account representation. This will increase the complexity of compliance and cause delays, as well as increasing operating costs and difficulties for both ARB and participating entities.

CIOMA asks that ARB provide the rationale behind the need for this change and perform analysis on the effects this change will have on the staff's workload and any projected need for additional staff or funding.

95973(b) Offset Invalidation

In this section, ARB is bestowing itself with unlimited discretionary power regarding a project's regulatory compliance status. The proposed language states an enforcement action "is not the only consideration ARB may use in determining whether a project is out of regulatory compliance." The loose language will allow ARB to reward and punish projects using indeterminate factors. Not only can a project be deemed out of compliance with no official action but ARB may use unknown elements to decide if a project is in regulatory compliance despite enforcement actions.

CIOMA asks that ARB make further changes to this section to specify that offset credits will not be invalidated if the primary regulatory body (e.g., EPA, OSHA, etc.) does not issue a violation pertaining to the offset project. At a minimum, the open-ended language should be removed.

95792(c) Offset Use Restrictions

"ARB's proposal to expressly limit issuance of ARB offset credits to projects located in the United states or United States territories is based on the rationale that this clarification merely reflects the current protocol development process. ARB's current position contradicts its prior policy decision to expand the geographic scope of the program to allow for future use of offsets from North America subject to the requirements of specific protocols. It is not a clarification. Rather it signals a wholesale reversal of California's offset program policy. This limitation also serves as a deterrent to other jurisdictions seeking to participate in the California market. It is inconsistent with the reality that GHG emissions reduction is a problem to be solved at a global, not a local level and is especially counterproductive in light of California's ongoing efforts to expand program linkages with Canadian provinces."

Mandatory Reporting Regulation Amendments

CIOMA is opposed to changing the Mandatory Reporting Regulation amendments (MRR) report verification deadline to August 1st. We believe that moving the verification deadline from September 1st to August 1st will create a significant burden for both reporting entities and verification bodies. Unfortunately, the staff MRR report states:

“At this time staff is not make [sic] changes to the originally proposed verification deadline of August 1. Staff plans to hold a workshop in early 2017 to further discuss the verification deadline. As such, staff is retaining the amended language, but additional proposed amendments may be issued in a second package of proposed modified amendments, with an additional comment period based on further dialogue with stakeholders.”

We continue to advocate for maintaining the September 1st MRR verification deadline and, if necessary, consider pushing back cap-and-trade deadlines that appear to have flexibility.

However, if ARB feels strongly about moving forward with the August 1st deadline, we would continue to request:

- ARB develops a process to streamline the process for Conflict of Interests reviews for verifiers. For facilities using the same verifiers, not new ones, it seems reasonable that such reviews and approval should only take a day - not two weeks;
- ARB considers efficiencies within ARB staff and verifier activities allowing a compromise verification completion date in recognition of the added scheduling burden to reporting entities;
- That flexibility be provided to obligated parties if reporting dates create problems arising from industry-specific sector needs (such as crop processing or high demand conditions);
- Provide incentives for advanced reporting and verification;
- Alignment of penalties, allowing for verification compliance problems beyond the control of the obligated party; and,
- Recognition of good-faith efforts by obligated parties to provide timely compliance that is otherwise compromised.

CIOMA appreciates the opportunity to submit these comments and looks forward to working with ARB staff in the future. Please contact Samuel Bayless at bayless@cioma.com or (916) 646-5999 with any questions.