

Catherine Reheis-Boyd
President

May 13, 2016

Ms. Rajinder Sahota
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: WSPA comments on Cap & Trade Cost Containment, Post-2020 Cap Setting, and Emissions Allocation

Dear Ms. Sahota:

The Western States Petroleum Association (WSPA) is a non-profit trade association representing companies that explore for, produce, refine, transport and market petroleum, petroleum products, natural gas and other energy supplies in California and four other western states. WSPA appreciates this opportunity to provide comments on the rulemaking process and concepts identified by the Air Resources Board (ARB) during public workshops on March 29, 2016 and April 5, 2016 on cost containment measures for the Cap & Trade program and cap setting and allowance allocation for a post-2020 program. WSPA provides these comments as a program stakeholder but WSPA does not believe that ARB has the authority to extend Cap & Trade to meet emission reduction goals other than those authorized by the Legislature in AB 32.

Cost Containment Issues

WSPA appreciates ARB's stated willingness to consider cost containment proposals beyond those identified during the above-noted workshops. Cost containment becomes even more important after 2030 as ARB considers more stringent targets and the allowance market becomes increasingly constrained. With this direction in mind, WSPA offers the following recommendations to proactively address potential future allowance market volatility and unintended economic impacts.

Price Cap

WSPA supports the recommendation of ARB's Emissions Market Assessment Committee (EMAC) to establish a maximum price at which ARB would sell unlimited additional allowances to avoid possible market volatility and economic dislocation. The EMAC identified this mechanism as the most effective means to address potential allowance supply imbalances.

Industry Assistance

WSPA opposes ARB's proposal to retain current industry assistance provisions, which reduce refining sector allocations by 25% in the third compliance period. This compliance burden is in addition to annual costs to address the 10% "haircut" embedded in the sector benchmark. The market and economic circumstances that gave rise to the industry assistance factor in the first instance – a declining emissions cap and the lack of GHG emission control programs in other jurisdictions - remain essentially unchanged. There is no technical basis for reducing industry assistance and further reductions have no bearing on achievement of the GHG emission reductions required by AB 32. These circumstances warrant extension of the 100% industry assistance factor into the third compliance period.

Offsets

WSPA opposes ARB's proposal to retain existing offset use restrictions. While offset use to date has fallen short of expectations, this circumstance is a result of multiple factors ranging from the inherent complexity of offset provisions to a lack of confidence in the market. ARB is forecasting an offset supply shortage for the third compliance period, expected in part because the allowance market will become more constrained as the cap declines. This condition increases the potential for a supply shortage. ARB has a limited window of opportunity to establish remedies that can be implemented for the third compliance period. It must act now to expand cost containment measures, including offsets.

Allowance Price Containment Reserve (APCR)

WSPA supports modifications to the APCR that would reduce the number of allowances diverted from the market to the APCR and/or return unused allowances to the market for use in future compliance periods. These alternatives would help increase liquidity, mitigate future market price volatility and decrease incentives for market manipulation. WSPA opposes proposals for early retirement of allowances in the APCR. Such action would amount to an unauthorized reduction of the cap. Indiscriminately changing this fundamental component of the Cap & Trade program would create market uncertainty and decrease market confidence and overall participation.

Post-2020 Cap Setting Options

Of the two options ARB presented for post-2020 cap setting, WSPA supports ARB's proposed Option 1. Option 1 is predicated on the 1990 emissions baseline and thus is consistent with the goals and requirements of existing climate law. WSPA opposes Option 2, which would reset the baseline to actual emissions in 2020, because it arbitrarily resets the cap below the 1990 emissions levels. WSPA notes that the Governor's mid-term goal, as described in Executive Order B-30-15, is to reduce GHG emissions by 40% **below 1990 levels** by 2030 (emphasis added). Starting at a lower level would needlessly reduce the volume of allowances in

circulation in an already constrained market. Option 2 would undermine the efficacy of the cost containment features, including banking, in the regulation.

WSPA also opposes ARB's proposal to retire APCR allowances from the cap in proportion to the cap adjustment. The success of any future effort to secure emission reductions beyond those required by AB 32 will depend in part on preserving any compliance margin gained in the early years of the program.

Post-2020 Allowance Allocation Issues

WSPA agrees that ARB should assume responsibility from the California Public Utilities Commission (CPUC) for direct allocation of allowances to industrial entities for purchased or obtained electricity. Refunds to address impacts from electricity cost increases are long overdue for energy intensive covered entities operating in Investor Owned Utility territories. We believe this approach will reduce the need for redundant work by the state, eliminate complexity associated with various sources of electricity and provide for more equitable treatment of industrial facilities. In addition, ARB should serve as the regulatory body in charge of designating and allocating refunds for allowances issued to both investor owned and publicly owned utilities.

WSPA also maintains that ARB should work with USEPA to preserve the current three year compliance periods, which provide additional cost containment and compliance flexibility benefits, for any post-2020 Cap & Trade program.

Rulemaking Process Concerns

In addition to these issues, the attached comments address several concerns with the manner in which ARB is conducting this rulemaking process. In particular, WSPA objects to ARB's proposal to bring a "framework" set of Cap & Trade amendments to the Board for adoption in July, 2016, and relegate critical program design and implementation issues to a series of 15-day packages in the fall 2016 through winter 2016-2017 timeframe. There is no compelling reason for this approach. It needlessly constrains stakeholder input and limits the scope of changes ARB can consider to those that fit within the framework document. The framework approach does not provide for full and fair consideration of all stakeholder concerns that would be afforded by a complete proposal made available in advance of the 45-day public review and comment period. The 15-day process should be used to respond to comments made during the public hearing and in writing, not to define major elements of the regulation. These and related issues are discussed in greater detail in the attached Appendix.

Summary

As the third compliance period approaches, ARB and Cap & Trade-regulated entities are moving into uncharted territory. It is unreasonable to expect that the market behavior observed in the first two years of program implementation will continue as the cap declines and opportunities for

low-cost emission reductions become increasingly scarce. Rather, program design decisions in the current rulemaking must seek to mitigate the high probability of increasing market volatility. This reality demands that ARB expand the scope and functionality of cost containment mechanisms and enact cap setting policies that preserve some headspace in the market to facilitate compliance and stimulate investment in GHG emission reduction projects and technologies.

While WSPA and its members will continue to comment on various ARB staff proposals as necessary to provide technical input and assistance, WSPA does not believe that AB 32 authorizes the Governor or the ARB to establish a greenhouse gas emissions limit that is below the 1990 level and that would be applicable after 2020. Furthermore, pursuant to California Health and Safety Code Section 38551, ARB may not rely on Executive Orders that purport to extend or expand the scope of AB 32.

WSPA appreciates ARB's consideration of our comments and we look forward to your responses. If you have any questions, please contact me at this office, or Tom Umenhofer of my staff at (805) 701-9142 or email tom@wspa.org.

Sincerely,



Cc: Richard Corey - ARB
Edie Chang - ARB
Tom Umenhofer - WSPA