



April 5, 2014

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

Subject: California League of Food Processors Comments on the 15-Day Notice of Public Hearing to Consider Amendments to the California Cap on Greenhouse Gas Emissions and Market-based Compliance Mechanisms

To the Clerk of the Board:

The California League of Food Processors (CLFP) welcomes this opportunity to provide comments to the proposed Amendments to the California Cap on Greenhouse Gas Emissions and Market-based Compliance Mechanisms. Over the year, CLFP and its members have worked diligently with the California Air Resources Board (ARB) and staff to develop acceptable definitions, procedures and methods that reflect existing practices in the food processing industry aimed at the development of accurate and reliable reporting of Greenhouse Gas (GHG) emissions. CLFP appreciates the opportunity to comment on the proposed product-based benchmarks developed for the Food and Beverage Sector (NAICS 311421, 311615, 311423, 311151, 311911, 311313, 312120, and 312130). And CLFP pledges to continuing working with ARB to modify the benchmark.

Pursuant to the release of the Proposed Amendments, CLFP submits the following comments:

I.

Proposed Benchmarks May Require Additional Adjustments and Should Provide Additional Time for Implementation

While in general, the benchmarks meet the requirements faced by single product facilities or facilities with only a few additional products, for food processors with product lines of 100+ products, incorporating the benchmarks in quickly in order to meet the current year deadline presents immediate and possibly insurmountable problems.

Current benchmark a good start, but needs additional refinement.

The differences between food processing operations are as varied and unique as the variety of products that can and are produced. Using cost as the central factor, operations will vary significantly in energy, labor, container, labeling, and inventory control expenses. Theoretically,



it may appear more cost-effective to produce some products, from an energy usage view, at the point of production but process complexity and resultant losses are difficult to quantify and add to production cost.

Production is by necessity dictated by customer and consumer demands and can only be adjusted, to a minimal extent, to address energy efficiency demands. Facilities vary in their ability to schedule long runs of one product or another, due to not only the demands of the customers, but also the quality and variety of the produce. As a result, many facilities are faced with higher production costs, and in some cases increased inefficiencies, in order to meet customer commitments. Some food processors produce dozens of different products from a single evaporation system.

Accuracy requirements do not take into account natural variables.

The proposed benchmarks require facilities to achieve an accuracy of less than 5% error on production reporting. Additionally, reporting facilities are not allowed credit for the baseline inaccuracy of the primary incoming product.

What isn't taken into account in CARB's proposed methodology is the raw product variability that occurs naturally and which each facility must manage in order to maintain product quality and consistency. ARB has set the base at 5.35% as the industry standard for solids and this is generally applicable. However, it should be noted that some facilities have had solids coming in as low as 4.3%. These numbers can be verified by State-run inspection stations.

Additionally, the inability to meet the error factor may be projected across some or all the product lines in a particular facility. This only increases the difficulty in achieving 5% accuracy as now there will be potentially hundreds of different products with different can sizes, ingredients, and concentrations that will need to be fit into the five categories provided by the benchmark. For some facilities, none of the five categories easily describe the vast majority of products produced by canning operations. Some processors have hundreds of products (SKUs).

Many food processing operations produce product to spec. That is, the buyer contracts for products that meet pre-specified requirements. Naturally, seemingly similar products can have a large variance of solids between two different customer contracts.

Given the need for specialized manufacture of formulated products with multiple ingredients, the manufacture and production are by nature, more labor and energy intensive. Given this complexity, parsing the products into the available categories will be difficult and time consuming initially. Additionally, verification by third parties unfamiliar with such processes will be difficult, if not impossible.



The timeline for Incorporation of the proposed benchmark should be flexible enough to accommodate outlier facilities.

There are much simpler methods of allowing companies to grow than the complex and difficult to verify methodology proposed by ARB. Many facilities would support a method that would measure energy use per ton of incoming product.

Barring the development of an additional benchmark, there is a need for a more flexible time line for incorporating the energy accounting methodology articulated in the proposed benchmark categories for paste and canned products.

Currently, all food processing facilities are subject to the energy-based benchmark. While the regulation was updated late last year to require food processors to report production data, the development of the benchmarks lagged behind. Without the guidance necessitated by the benchmark, food processors lack the knowledge to determine what they will be required to report or how to report it. Many are unlikely to have made any changes in either their GHG Monitoring Plan or production tracking without guidance or clear and fully developed rules for reporting.

It has only been in the last few weeks that it was determined that the benchmarks would be ready for release in time for consideration by the Board in its April Board meeting. However, the reporting deadlines will occur three weeks before the Board has the opportunity to vote on the proposed benchmarks.

Given the difficulty for many facilities to implement the benchmarks in the short time remaining before the deadline CLFP proposes the following:

Food processors should be given OPTIONS in application of product-based benchmark.

1. Processors should have option to remain under energy-based benchmark until January 1, 2015.

Many food processing operations may require more time to fully integrate a workable product-based benchmark into their production processes and incorporate it into their GHG Monitoring Plan. Facilities vary in their internal structures as well as their product categories. A food processor may be a large multinational corporation employing thousands of employees or a small family-owned operation with only a few hundred personnel. Some facilities are co-op owned while others employ alternative governance structures unique in the business world. Almost all CLFP members subject to the Cap-and-Trade are seasonal, operating a maximum of 110 days, with employee numbers that fluctuate annually. The point being that some facilities will have the manpower to dedicate significant resources to incorporating the new benchmarks into their compliance procedures whereas some will be hard pressed to do so.



2. Food processors not responsible to delay in developing product-based benchmark.

As early as 2010, ARB was aware that the food processing industry presented a unique and difficult challenge to benchmark. The multitude of products, the varied processes employed in production, the variability associated with seasonal operations and weather/harvest-dependent production cycles all contribute to the difficulty in tackling a product-based benchmark.

Acknowledging these factors, ARB opted to impose the energy-based benchmark on the food processing industry. A year and a half was devoted to negotiations with ARB and to the development of a benchmark that would address the unique requirements of our industry.

However, in late 2011, ARB abruptly, and unilaterally, abandoned the energy-based benchmark effort and decided that food processors would be subject to the product-based methodology. This is the primary basis for the delay in settling the benchmarks at this late date for the food processing industry.

A synopsis of those subsequent efforts on the product-based benchmark development can be found in staff documents filed in this proceeding.¹

3. Giving Food Processors the option of remaining under the thermal benchmark benefits both food processors and ARB.

ARB staff has made it clear that they wish to have the food processing industry under the product-based benchmark in time to determine allocation assistance for 2014. Those processing facilities contemplating possible expansion are also desirous of implementing the product benchmark as soon as practicable. The all food processors subject to these proposed requirements have worked with ARB in trying to meet these deadlines. Some have succeeded. And they should be allowed to do so.

However, other than informally citing the “inconvenience” of having to calculate the industry assistance under both the thermal and product benchmarks, ARB staff has not presented any evidence that providing the option to remain under the thermal benchmark to food processors, for this year only, will significantly harm or alter the Cap-and-Trade program.

¹ See Appendix A: Additions and Amendments to Product-Based Benchmarks in the Cap-and-Trade Regulation, pages 5-14, March 2014.



4. Providing the option to remain under the energy-based benchmark for 2014 only, will allow ARB to finish the benchmark and make necessary changes to Cal e-GGRT to properly align the new definitions with the reporting requirements.

At this time, CLFP understands that some of the products to be reported will require additional fields to be inserted into Cal e-GGRT to allow for reporting. Many of the new definitions will require fine tuning over the coming months as well, in order to accurately reflect the production categories that are being established under the proposed product-based benchmark. Some of the definitions are redundant, describing two or three different products with identical language for each. For food processors, and especially for canning operations, reporting will mean sorting through hundreds of SKUs with a breakdown of product components according to definitional divisions for reporting. In some cases the definition inaccuracies will require changes or editing. Moreover, such “on-the-fly” changes could present verification problems for facilities that will require additional time and effort to correct or defend.

It would be far more efficient to allow those companies that wish to remain under the energy-based benchmark until 2015 to do so. This will provide ARB with the necessary time to finalize the definitions and reporting tool changes and give the facilities with multiple formulated products to incorporate the product-based benchmarks into their GHG Monitoring Plans with a high degree of confidence that future reporting will be accurate.

5. Some facilities need extra time to develop workable methodologies for applying benchmark energy intensity factors to product production.

As noted previously, some facilities, such as paste processors, may have only one main product, with a few additional products that they will need to account for. However, a canning operation can have between 100 up to 300 separate products with multiple formulations that will need to be categorized under the reporting requirement. A failure to properly or fully incorporate the benchmark into product production may result in adverse impacts for a food processor as the result of inaccurate reporting. Just a few include:

- a. Improper application of benchmark could subject food processor to penalties for inaccurate reporting under the certification requirement.
- b. Improper application could result in problems with verification of production data – resulting in costly reviews of records and methodologies.
- c. Timing is bad for incorporation of methodology as it conflicts with ongoing preparations for processing season.



6. Until Product-based Benchmarks are ratified by Board vote, food processors remain subject to energy-based benchmark.

The deadline for reporting 2013 production data for the current year is April 10, 2014. However, the official vote for adopting the proposed benchmarks will not occur until at least April 24, 2014. This presents a problem for both ARB and for food processors wishing to have their upcoming allowance allocations calculated on a product basis.

The best solution is to provide the option to food processors to either adopt the product-based benchmark prior to the authorizing vote, or to remain under the energy-based benchmark until the benchmarks are officially approved and added to the Cap-and-Trade regulation.

Proposed benchmark does not account for non-tomato production lines

The proposed benchmarks fail to take into account non-tomato production at tomato facilities. A number of plants process non-tomato products (chilies, peppers, etc.) that are not utilized in formulated tomato products but are packaged and sold as an actual end product. CARB will need to revisit this issue in order ensure that production data is accurate as well as ensure that each facility will receive its proper allotment of allowances based on its entire production.

Definitions for many products are redundant and should be combined or redefined

Food processors, especially those involved in tomato processing, are concerned with the apparent redundancy in the product definitions and the risk that it will contribute to confusion in reporting under a product-based benchmark. Some food processors have well over 100-plus products that must be broken down per the definitions and assigned categories prior to reporting. Sorting through similar definitions that don't exactly specify the actual product will lead to confusion in how to report as well as delay in completing the report and likely to result in inaccurate reporting. Elimination of the redundant product definitions is preferred and CLFP recommends that CARB staff work with the food processing members to more accurately define the types of products. This will serve to eliminate confusion and potential inaccuracies associated with production data reporting.



II.

Retroactive Application of New Product-based Benchmarks on Production Data Previously Calculated Under the Alternative Thermal-based Methodology Should be Limited to Rectifying Under Allocation of Allowances Only

ARB's intention to retroactively apply the proposed product-base benchmarks to production data originally calculated under the energy-based benchmark should be limited to correcting under allocations to facilities during the initial compliance period. As the result of the retroactive application of the product-based benchmark, some facilities will profit, while others will be forced to materially change position in that they will go from having a surplus of allowances to incurring an additional obligation. ARB should limit the effects of the retroactive application of the proposed product-based benchmark on past energy-based allocations to only providing additional allowances where it is determined that a facility was under allocated allowances.

Facilities under allocated in previous years should be made whole

ARB should make every effort to make whole those facilities that, subject to the energy-based benchmark, were under allocated allowances in previous years. If through the retroactive application of the proposed product-based benchmark additional allowances will be issued, it should be noted that the relative value of the allowances will be greater as a result of the automatic increases in floor prices in the regulation. However, as the under allocation is essentially a loss of use of funds that should have been available to the facilities, the subsequent increase in value due to the passage of time could rightfully be considered "interest" for purposes of this true-up.

However, ARB's intention to withhold or deny present allowances, which would be issued under the current product-based benchmark, as the result of an alleged over allocation when an obligated entity was required to report under the energy-based benchmark, will create a competitive disadvantage and financially harm those facilities that relied on those previous allocations distributed under the energy-based system.

Retroactive application of benchmark should be limited to providing additional allowances under allocated facilities only

A. Benchmarks developed at different times, under different circumstances

Circumstances existing at the time the allowances were issued to facilities subject to the energy-based benchmark have substantially changed over the past two years. A retroactive application of the proposed product-based benchmark will undermine an obligated facility's current position based on assumptions, changed circumstances, market differences, and financial factors relied upon at the time the allowances were issued. For instance, the drought was not in issue in the



decision making processes of processors to the degree it is now. Increased costs due to factors not present two years ago will increase the harm of withholding allowances under current circumstances.

B. Facilities Made Business and Financial Decision Based on Allocations Received.

Companies that received allowances under the energy-based benchmark made forward-looking financial decisions based upon the current value of the allowances issued at that time.

Businesses make financial, market, and capital investment decisions over multiple years – anticipating two, three, or five year investment goals. ARB cannot simply strip away the alleged “over allocations” based on the retroactive application of a present day benchmark without creating financial consequences to the company.

C. No Expectation at the time that a Product-based Benchmark would be Applied in Future resulting in loss of allowances. At the time the allocations were distributed to all the food processors then, and currently, under the Energy-based benchmark, ARB provided no warning or notice that such allocations may be subject to a future true-up as the result of the retroactive application of a future product-based benchmark. In making business decisions, facilities had a right to rely on ARB’s use of the energy-based benchmark in the allocation of the allowances at that time.

D. Present and Past Dollar value of allocations not equivalent. The allowances distributed by ARB subject to the assistance factor have a built in mechanism in the regulation that increases the floor value of the allowance automatically. Allowance value increases by Consumer Price Index plus 5% annually. This means the value of the allowances issued in year t-2 are of a lesser monetary value than those issued in year t. Based upon the relative values of the allowances in years t and t-2, facilities determined by ARB to have been “over allocated” allowances will lose substantially more monetary allowance value than was issued in t-2 as a direct result of the retroactive application of the product-based benchmark.

E. Definition of “true-up” different at time allocations were made. The proposed benchmark provides a changed definition for true-up meant to justify the retroactive application of the proposed product-based benchmark on the energy-based allocations. At the time the allowances were allocated to facilities subject to the energy-based benchmark, a true-up referred only to the timing and amount of the surrender of allowances in a given compliance period. For example, any company that chose to surrender 30% of its allowances for each of the first two years of the three-year compliance period would be subject to a true-up in the final year of 100% plus the additional allowances necessary to meet the total emissions over the entire compliance period.

Given the multiple changed circumstances in both allowance pricing and the market positions of the obligated facilities resulting from the passage of time, facilities had no way of knowing or



acquiring an understanding or foreknowledge necessary to incorporate an allowance loss based on an unforeseen retroactive application by ARB of present day methodologies in determining industry assistance factors. It is patently unfair, and will result in measurable competitive and financial disadvantage to targeted facilities, to strip away allowances based on the proposed true-up provision in the latest proposed regulation changes.

III.

Typo in definitions for Aseptic tomato paste definition

The proposed definition covering Aseptic Tomato Paste reads:

(16) “Aseptic tomato paste” means tomato paste packaged using ~~a system in which the product is sterilized before filling into pre-sterilized packs under aseptic preparation conditions.~~ Aseptic paste is normalized to 31% tomato soluble solids (TSS). Aseptic paste normalized to 31% TSS = (%TSS - 5.28 / (31 - 5.28)).

The last line “Aseptic paste normalized to 31% TSS = (%TSS - 5.28 / (31 - 5.28)) should be corrected to read as follows:

Aseptic paste normalized to 31% NTSS = (%NTSS - 5.28 / (31 - 5.28)).