

August 2, 2013

Honorable Mary D. Nichols, Chair

Steven Cliff, Ph.D  
Chief, Climate Change Program Evaluation Branch

California Air Resources Board  
1001 I Street  
Sacramento, CA 95814

**Re: Comments on July 18 Workshop Regarding Proposed Changes to the California Greenhouse Gas Cap-and-Trade Regulation**

Dear Chair Nichols and Dr. Cliff:

Inergy West Coast LLC (“Inergy”) appreciates the opportunity to comment on the July 18, 2013 Workshop Regarding Proposed Changes to the California Greenhouse Gas Cap-and-Trade Regulation. Inergy’s comments focus on the definition of “product” and related terms and the proposed true-up allowances. As a natural gas liquids processors, Inergy suggests that “product” and related terms should be clearly defined to insure that natural gas processing operations are equitably treated under the Cap-and-Trade Regulation. Additionally, while Inergy supports CARB’s consideration of “true-up” allowances to (1) correct historic allocation that was based on an estimate of production and emissions, (2) provide allowance allocations to new sectors that did not receive initial allocations, and (3) address changes to benchmarks,<sup>1</sup> Inergy is concerned that the proposed true-up provisions, as currently drafted, could cause Inergy to incur costs to satisfy annual compliance obligations in 2013 (and possibly 2014) that it would not otherwise have to incur had it been properly issued allowances for 2013 (and possibly 2014).<sup>2</sup>

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<sup>1</sup> Cap-and-Trade Workshop: Compliance and Information Requirements (June 25, 2013), CARB Presentation, p. 13.

<sup>2</sup> Inergy refers to 2014 here to address the potential for delay in adoption of the revisions to the Cap-and-Trade regulation.

### **“Product” And Related Terms Should Be Defined**

Inergy is a natural gas liquids processor. Inergy understands that its allowances are to be calculated using the product output-based methodology. “Product”, “product output” and “production facility” currently are not defined in the Cap-in-Trade Regulation. Production can vary from industry to industry. Natural gas liquids processing facilities are different from production facilities. For example, Inergy owns a processing, storage, and distribution facility and, therefore, is not the “producer” of the “product”. Inergy typically does not own the “product” it processes, although from time-to-time it may purchase it from a producer and market and resell it. In some cases, Inergy does not process a “product”, but instead stores or ships it for a customer. Given this range of activities, it is extremely difficult for Inergy to determine “product output” for purposes of reporting and the allowance calculation methodology. Accordingly, Inergy recommends that CARB revise the Cap-and Trade Regulation to include clear definitions of relevant terms, including “product”, “product output” and “production facility”.

### **True-Up Allowance Timing Issue Should Be Clarified**

As a natural gas liquids processor, Inergy should have been allocated 2013 allowances. Although Inergy has complied with applicable Cap-and-Trade Regulation and Mandatory Reporting Regulation requirements, it did not receive any 2013 allowances because of issues with the relevant benchmark and reporting requirements. Without a regulatory fix, this means that Inergy would have to incur substantial costs to comply with annual allowance surrender requirements for 2013, even though Inergy should have received free allowances for 2013. In addition to the direct cost implications for Inergy, such an outcome would disadvantage Inergy compared to other entities who received free allowances as a matter of course under the Cap-and-Trade Regulation.

As noted above, while Inergy generally supports the true-up concept, Inergy is concerned that the true-up provisions of the discussion draft regulations, in their current form, would cause Inergy and other similarly situated entities to incur substantial costs to obtain 2013 (and possibly 2014) annual compliance instruments, subject to later reimbursement by true-up allowances.

Discussion draft section 95856(a)(2)(C) provides that to satisfy a compliance obligation, a compliance instrument “must be issued from an allowance budget year within or before the year for which an annual compliance obligation is calculated ... *unless* ... [t]he allowance is eligible for compliance use pursuant to sections 95856(h)(1)(C) and 95856(h)(2)(c).” (Emphasis added.) Sections 95856(h)(1)(C) and 95856(h)(2)(C) contemplate the use of true-up allowances.

Although section 95856(a)(2)(C) implies that 2015 true-up allowances may be used for 2013 (and potentially 2014) annual compliance obligations, such that an entity that should have received free 2013 allowances but did not would not have to incur costs to purchase 2013 (and potentially 2014) allowances for annual compliance obligations, discussion draft section 95856(h)(1)(C) appears inconsistent with this concept. Discussion draft section 95856(h)(1)(C) specifies the order in which compliance instruments surrendered to meet **annual** compliance obligations will be retired. Third in order are “[t]he current calendar year’s vintage allowances and **allowances allocated just before the annual surrender deadline up to the True-up allowance amount** ... if an entity was eligible to receive true-up allowances ... .” (Section 95856(h)(1)(C), emphasis added.)

Based on information provided at the July 18 Workshop, it is Inergy’s understanding that the true-up allowances, which are anticipated to be issued in 2015, may be used to satisfy 2013 and 2014 annual compliance obligations. The language in the current discussion draft indicating that only allowances “allocated just before the annual surrender deadline up to the True-up allowance amount” can be retired to meet annual compliance obligations creates uncertainty as to whether an entity must purchase 2013 and 2014 allowances and wait for reimbursement by 2015 true-up allowances, or if the 2015 true-up allowances are sufficient to meet the 2013 and 2014 annual compliance obligations.

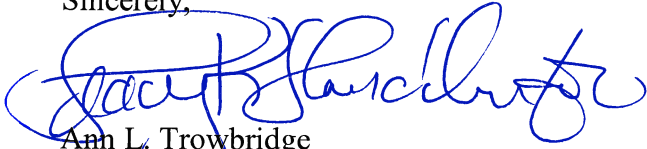
Inergy understands that it would be difficult at this time for ARB to issue 2013 and 2014 vintage allowances to enable entities in Inergy’s situation to satisfy annual compliance obligations in the first compliance period. However, this issue has the potential to have a significant economic impact on such entities as they may need to purchase allowances for 2013 (and possibly 2014) annual obligations, even though they should have received free allowances. Although they may be reimbursed later through the true-up allowance mechanism, it is not clear why they should be required to bear a significant cost burden up front. Not only does this have direct economic implications for the affected facilities, but it also creates an uneven competitive playing field.

Properly crafted true-up provisions could resolve this concern. Inergy requests that CARB allow Inergy and other similarly situated entities to use 2015 allowances to meet 2013 (and possibly 2014) annual compliance obligations, and to modify or clarify section 95856(h)(1)(C) consistent with that approach.

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Inergy appreciates CARB's consideration of these comments.

Sincerely,



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