



September 19, 2016

Rajinder Sahota
Branch Chief
California Cap-and-Trade Program
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Proposed Amendments to California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulations

Dear Ms. Sahota:

I am writing on behalf of Air Liquide Large Industries U.S. LP (“Air Liquide”) in response to CARB’s August 2, 2016 proposal to amend the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulations (“draft Regulations”).

Air Liquide is the world’s leader in industrial and medical gases. Air Liquide and its affiliated companies operate twenty facilities and employ nearly 2,000 people in California. Air Liquide’s California operations include two hydrogen production facilities that supply hydrogen to refineries in El Segundo and Rodeo.

Air Liquide generally supports CARB’s proposed rulemaking. Air Liquide submits this letter to highlight the complexity of the changes that CARB proposes to the assistance factors and to request that CARB provide adequate time and factual information regarding any proposed changes in the Cap-and-Trade assistance factors. Specifically, Air Liquide requests that:

1. CARB should provide much more than the minimum 15-day notice period for any changes in assistance factors. In particular, Air Liquide objects to CARB’s proposal to announce the assistance factor applicable to industrial gas manufacturing sectors in a later regulatory amendment with a 15-day comment period.
2. When announcing proposed changes to proposed assistance factors, CARB should provide the data and rationale supporting any such change so that affected industries may examine them and provide comments based on a full analysis of the relevant data.

In CARB's August 2, 2016 draft Regulation, CARB does not provide new assistance factors for any industrial sectors but states that it "may provide industry specific [assistance factors] in a 15-day comment period." (Initial Statement of Reasons at 40.) Air Liquide assumes that by this statement CARB does not mean that proposed revisions will be published with only the minimum 15-day comment period but instead intends to provide more notice and opportunity for public comment. But to the extent that CARB may intend to provide only a 15-day notice period, Air Liquide does not believe that such a comment period is adequate for affected industries to analyze or comment on a change in assistance factors. A change in assistance factors may have a dramatic impact on the economics of an entire industry sector, and should not be undertaken without an adequate period for analysis and fully informed public comment. By law, an agency may amend proposed regulations after the 45-day comment period has passed only where the change is "(1) nonsubstantial or solely grammatical in nature, or (2) sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action." Calif. Gov't Code § 11346.8(c). The 15-day process should be used to respond to comments made during the public comment period or during public hearings, not to define major elements of the regulation. A new or revised assistance factor would certainly not be "nonsubstantial," nor is it "sufficiently related" to the placeholder text provided in the current draft to provide notice to stakeholders as to what assistance factor CARB would ultimately promulgate. Air Liquide and other stakeholders will require more than 15 days to adequately review a proposed assistance factor.

CARB has indicated that any revised assistance factors proposed as part of a 15-day comment period will be implemented in the fourth compliance period (post-2020), rather than the third compliance period (post-2018), as the agency had initially intended. (Initial Statement of Reasons, Appendix E, at 2.) Given the extended timeframe, there is no compelling reason for CARB to rush to revise assistance factors without an extended public comment period.

It is also of key importance that CARB provide all of the data on which CARB bases any changes in assistance factors. CARB has provided substantial information in Appendix E to the draft Regulation, but to the extent that CARB relies on additional information in determining a proposed assistance factor, that information should be published for public comment. Stakeholders cannot meaningfully comment on a hypothetical change in an assistance factor without CARB's disclosure of that assistance factor and the information on which it is based.

In the draft Regulation, CARB proposes changes to the product-based benchmarks only for certain industrial sectors, and not for the hydrogen production sector, but notes that it will be developing revised benchmarks for all sectors in future rulemakings. When CARB does propose changes to the benchmarks applicable to the industrial gas manufacturing sector, it is critical that CARB provide Air Liquide and other industrial gas manufacturing stakeholders an extended review and comment period. To reach a decision on the current benchmark, CARB worked with Air Liquide and other stakeholders for many months before the final benchmark was promulgated. For any future change in the benchmark applicable to the industrial gas manufacturing sector, regulated parties will need more than 15 or 45 days to analyze the data on which a proposed change is based and provide meaningful comments and suggested revisions to CARB.

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Air Liquide appreciates CARB's demonstrated willingness to engage stakeholders, including Air Liquide, and to address their comments and concerns in proposed regulations. Air Liquide also appreciates the opportunity to provide comments on the draft Regulation and looks forward to further discussions with CARB on the proposed revisions to assistance factors.

Very truly yours,



Dwayne Phillips

Director

Hydrogen/Syngas On-Sites Business Unit

Air Liquide Large Industries U.S. LP

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