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Ms. Edie Chang
Deputy Executive Officer
Air Resources Board
1001 I Street,
Sacramento, CA 95814

RE: Update to AB 32 Scoping Plan

Dear Ms. Chang:

As required under AB32, the California Air Resources Board (ARB) is updating the AB 32 Scoping Plan (Update). The Western States Petroleum Association (WSPA), representing 27 companies that explore for, develop, refine, market and transport petroleum, petroleum products and natural gas, views this update as a critically important opportunity for the State for three reasons: i) it is an opportunity to incorporate new scientific, economic and technical studies that have been commissioned by stakeholders and ARB alike since passage of AB 32 in 2006; ii) ARB can use these amendments to change aspects of the Scoping Plan that need changing as a result of experience gained in the State, in the U.S. and elsewhere; and iii) it is a chance for ARB and interested stakeholders to identify elements that need to be postponed or need further study prior to implementation.

We note that this update, required every 5 years, is being prepared in response AB 32 requirements (Sections 38561(a) and (h): "*the state board shall prepare and approve a scoping plan, as that term is understood by the state board, for achieving the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions from sources or categories of sources of greenhouse gases by 2020*." Hence, it seems entirely appropriate to think seriously about key factors, objectives and any unresolved issues to achieve the 2020 goal.

A comprehensive review of the Scoping Plan measures to achieve the 2020 goal as required by AB 32 is critically important in 2013 because it gives ARB the opportunity to make a course correction prior

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to 2015 to see if the State's requirements to meet the AB 32 emission reduction goals can be accomplished with the existing programs as they are today. For example, in 2015 a number of measures will take effect including transportation fuels coming under the cap and trade program and ramping up the LCFS. The impacts of these and other measures must be evaluated to determine whether the costs and risks associated with these are necessary to achieve the program goals given their impact on the economy of California.

Key Issues that Must be Included in Scoping Plan Update

We believe that the update provides a key opportunity for ARB and stakeholders to: i) Document the current State GHG inventory and the prospects for projected emissions under the current measures to meet the 1990 emissions level before 2020[1]; ii) Assess the emissions reduction effectiveness of all the 2010 Scoping Plan Measures, and iii) Update the Scoping Plan in response to external factors. For example, ARB could take this opportunity to update the Business as Usual (BAU) forecast to recognize the long economic downturn that began in 2008.

While we understand ARB feels it is important to plan beyond the AB 32 2020 timeframe, the statute clearly states the immediate objective before ARB: "*The state board shall after one or more public workshops, with public notice, and an opportunity for all interested parties to comment, determine what the state wide greenhouse gas emissions level was in 1990, and approve in a public hearing, a statewide greenhouse gas emissions limit that is equivalent to that level, to be achieved by 2020. In order to ensure the most accurate determination feasible, the state board shall evaluate the best available scientific, technological, and economic information on greenhouse gas emissions to determine the 1990 level of greenhouse gas emissions*"[Section 38550] . "The state board shall update its plan for achieving the maximum technologically feasible and cost-effective reductions of greenhouse gas emissions at least once every five years."[Section 38561(h)]

This language clearly mandates the State to achieve 1990 levels by 2020 and, indeed, maintain those emission reduction measures. However, there clearly is not an additional mandate to go beyond the 1990 level. [2] In this update, ARB must follow AB 32's mandate to determine the appropriate cost effective reductions that focus on what needs to be done to achieve the 2020 goal. Given the uncertainty of looking beyond current emission reduction targets, a look at the 2050 is important, but that is a separate effort that must be reviewed on its own and in a different venue.

<u>Review status of State GHG Inventory and Progress Toward 1990 levels by 2020</u>

[1] In other words, "How close we are to the GHG emissions target?" and "When do you expect the goal to be achieved?"

[2] AB 32 Section 38551 maintains the emissions limit until repealed and that it continue in existence. However, there is no evidence that this section was intended to do anything but ensure controls that achieved those levels <u>continued</u>. Moreover, we note that, Section 38551 (c) requires that ARB must return to the Governor and legislature prior to any additional regulatory action by the words *The State Board shall make recommendations to the Governor and the Legislature on how to continue reductions of greenhouse gas emissions beyond 2020."*

GHG emissions have been dramatically reduced since passage of AB 32 in 2006. ARB has stated in several public forums that the State is already very close to, or will achieve, the 2020 goals within the next year. The data currently available to ARB is for 2011 and therefore does not afford a view of the current conditions. At a minimum, such an analysis should document emission reductions that have been achieved based on an actual emissions inventory and progress toward the 2020 targets. ARB needs to determine current levels and revise projected emission reductions needed to "attain" program emission reduction targets.

Documentation of progress toward targeted emission reductions has significant policy implications. Especially if the legislature or Governor wish to continue to impose even greater costs and programs that would be required to achieve the aspirations included in the Executive Orders from Governor Schwarzenegger (S-01-07) and Governor Brown (B-16-12).

This assessment would also inform ARB and stakeholders how close the State is to achieving the targeted1990 levels, allowing ARB the ability to reassess the current AB32 program elements individually to determine what adjustments are needed based on what is "technologically feasible" and cost-effective (see below).

Update the Plan in response to recent factors – Impact of 2008 economic downturn

ARB must update its assumptions and estimates associated with its Business as Usual (BAU) determination. In light of the significant adverse impact imposed by the economic downturn that began in 2008, many of the economic, commercial, and emissions-related, assumptions are simply not correct. Hence, ARB should revisit its assumptions on rate of growth and investigate whether a "step change" in emissions reductions has occurred due to the economic downturn. At a minimum, ARB would need to amend its BAU determination to reflect conditions since 2008.

Assess the emissions reduction effectiveness of all the 2010 Scoping Plan Measures

ARB should re-assess the need for Scoping Plan measures in the context of meeting the 1990 GHG goal and in light of the current inventory and revised BAU. For example, because of the challenges and risks associated with the availability of low carbon fuels, the economic impacts of the LCFS will become increasingly obvious over the next five years. ARB should assess the technical feasibility and the economic and cost-effectiveness of that measure. This analysis would help the State and stakeholders understand whether the statutory mandates could be achieved **without** imposition of fuels under the cap or the LCFS and whether compliance requirements associated with the two measures are even feasible within the timeframe provided.

AB 32 directs the ARB that reduction measures described in the Scoping Plan and the update must be cost effective. The agency discussion at the workshop did not mention any cost effectiveness analysis or an updated economic analysis. In order to evaluate the cost effectiveness of existing measures, and maintain that cost effectiveness going forward, the update should include an updated economic analysis of all measures adopted under the Scoping Plan.

WSPA recommends that a third party economic analysis be conducted to evaluate the economic impacts focusing on new requirements coming into effect in 2015 compared to the actual emission reductions that are needed today to meet the 2020 goal.

Address recent improvements to industry Assistance factors

The ARB Board's 2011 adopting resolution (11-32) required the staff to address some key issues that were provided in testimony leading to Board adoption.

> *BE IT FURTHER RESOLVED that the Board directs the Executive Officer to continue to review information concerning the emissions intensity trade exposure, and in-State competition of industries in California, and to recommend to the Board changes to the leakage risk determinations and allowance allocation approach, if needed, prior to the initial allocation of allowances for the first or second compliance period as appropriate, for industries identified in Table 8-1 of the cap-and-trade regulation, including refineries and glass manufacturers.*
>
> *BE IT FURTHER RESOLVED that the Board directs the Executive Officer to continue to work with stakeholders to further develop the allowance allocation approach for the petroleum refining sector and associated activities in the second and third compliance periods. This evaluation should include additional analysis of the Carbon Weighted Tone approach and treatment of hydrogen production, coke calcining, and other activities that may operate under a variety of ownership structures.*

In light of recent revisions to the Cap and Trade Regulations proposed by Staff (July 15), this update to the Scoping Plan provides a great opportunity to continue this review and demonstrate how well ARB has progressed in implementing Board direction. For example, the recent proposal to increase the industry assistance factors in the second and third compliance period should be noted as a significant and beneficial proposal that resulted from the Board's direction to review the risks of trade exposure.

Address the Implications of California "going it alone" – Linkage opportunities have not progressed as expected

While ARB has worked hard in developing many elements of their program, including the Cap &Trade program, it was envisioned from the beginning that there would be other entities, including neighboring states that would play an important role in supporting the operation of the C&T program. Perhaps more importantly, some of the State's program elements were adopted in response to anticipated partnership with other entities. However, except for the Canadian Province of Quebec and its limited GHG inventory, no other entities have yet formalized their relationship with the California effort nor have wide-spread trading among or between those trading partners and stakeholders occurred.

Given this shortcoming, ARB should re-assess what necessary revisions to the State's C&T program (i.e., eliminate holding limits, enhanced offsets and other cost containment mechanisms) are needed to ensure the program becomes a successful model not only for California but for other entities that are looking to address climate change issues.

Limitation in Scope of Update

This update should not be used as an opportunity to expand GHG emission reduction planning efforts beyond 2020 or establish a new emissions reduction goal in 2050. We recognize the agency's interest in ensuring that the update to the Scoping Plan is consistent with Executive Orders issued by Governor Brown and Governor Schwarzenegger. However the ARB should not confuse the legislative and regulatory requirements of the statute with the aspirational goals expressed in Executive Orders. This update to the Scoping Plan must concentrate its plans and programs on statutory requirements of AB 32. Goals suggested in Executive Orders are only relevant after the legislature acts to incorporate those goals into law.

Similarly, this update should not be the vehicle for California to incorporate the 2012 Vision for Clean Air Policy because AB 32 does not authorize ARB to develop or implement measures for emission reductions that would occur after or beyond 2020. As we noted in our December 2012 letter, the vision is overly broad and reflects "aspirations in emission reductions" – aspirations that need to be evaluated separately from this update to the Scoping Plan.

Thank you for the opportunity to comment and I look forward to discussing this with you in the future.

Regards,

Cc: Richard Corey
Mike Wang

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