

September 19, 2016

VIA ELECTRONIC SUBMISSION

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

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

The Wonderful Company LLC (“Wonderful”), on behalf of Wonderful Pistachios and Almonds LLC (“WPA”), appreciates the opportunity to provide comments to the California Air Resources Board (“ARB”) regarding the 2016 proposed amendments to the California Cap on Greenhouse Gas Emissions (“Cap-and-Trade Program”) and Market-Based Compliance Mechanisms Regulations (hereinafter “Proposed Regulations”). We have reviewed the Proposed Regulations to the Cap-and-Trade Program and offer the following comments.

1. Roasted Nuts and Peanut Butter Manufacturing (NAICS 311911) Should Remain Under the Product-Based Benchmarking Category

ARB has tentatively proposed to eliminate tree nut manufacturing from the product-based benchmarking category. Instead, manufacturers in this NAICS code will be subject to energy-based benchmarking. In the *Initial Statement of Reasons*, ARB is proposing to change the product-based benchmark for this category based on the following reasons: (1) emissions in these sectors are highly variable making it challenging to accurately predict the energy required to roast nuts; and (2) there are no longer any covered entities conducting activities that fall within this category. We are opposed to the elimination of product-based benchmarking for tree nuts because ARB has failed to provide valid legal or factual rationale for doing so. Therefore, we request that the product-based benchmark for tree nuts be retained. If ARB needs additional technical information to further refine the previously approved benchmarks, WPA is committed to providing ARB that information.

As a fundamental issue, it is inappropriate for ARB to completely eliminate the product-based benchmarks that WPA spent over a year developing in collaboration with ARB, and that were adopted in 2014. Regulated entities need regulatory certainty. It is unfair for ARB to propose such a significant change to its approach a mere two years after it initially adopted the product-based benchmarks.

A. WPA Will Be Back in the Cap-and-Trade Program for 2016

In terms of ARB's factual rationale, while it is true that there are no covered entities currently subject to the Cap-and-Trade Program utilizing the product-based benchmark for roasted nuts, the 2016 crop will put WPA back in the Cap-and-Trade Program. The pistachio crop, like many other agricultural commodities that are impacted by weather, is variable. Last year, the industry produced 275 M lbs, while this year the estimated volume is a record 750-800 M lbs. To date, WPA has already processed 300 M lbs of pistachios at the same Lost Hills facility that was previously covered by the Cap-and-Trade Program. Greenhouse gas (GHG) emissions for nut processing facilities are closely correlated with pistachio and almond harvest volumes, which are directly influenced by climate, a factor outside of WPA's control. Due to extended drought conditions and other weather related issues, including insufficient chilling hours during the winter, 2013, 2014, and 2015 harvest volumes were down, and consequently GHG emissions at the WPA Lost Hills facility stayed below the Cap-and-Trade Program applicability threshold. But, based on a record harvest for 2016, WPA will be back in the Program next year, so elimination on the basis that there are no longer covered entities is not factually justified.

B. Variability of Emissions and Moisture Content is Inherent in Nut Processing and Previously Acknowledged by ARB

With regard to the variability in emissions, like many other agricultural products, the climatic and soil condition under which pistachios and almonds are grown, largely influence the moisture content of these products. As the climate and soil conditions change year to year, the moisture content of the product changes variability of moisture content of the raw pistachios and almonds is an inherent characteristic of tree nuts, which has always existed. During the 2013 rulemaking process, ARB was provided with a great deal of information regarding the harvest production, storage, treatment processes, and fuel consumption related to the processing of pistachios and almonds, and this information was used by ARB to develop the appropriate product-based benchmarks for pistachios and almonds, respectively. The harvest methodology and the inherent variability of moisture content in WPA's raw pistachios and almonds did not change since the 2013 rulemaking. It is therefore neither appropriate nor fair for ARB to propose elimination of the 311911 NAICS code benchmarks because the water content of raw nuts varies year-to-year.

2. If Necessary, ARB Should Refine the Product-Based Benchmark, Rather Than Eliminate It

ARB asserts that product-based benchmarking is the preferred approach in order to minimize leakage. However, ARB's proposal to eliminate product-based benchmarks for pistachio and almond products is inconsistent with that approach and the intent of AB 32. As such, we strongly recommend that ARB consider refining the product-based benchmarks for pistachios and almonds, as opposed to elimination of the category. Such an approach is similar to ARB's proposal with respect to calcium ammonium nitrate solution and nitric acid production (NAICS code 325311), where emissions are also highly variable. Wonderful recommends that

ARB bear in mind the following when considering the product-based benchmark calculation for this category:

- The initial benchmarks were derived using 2010 and 2011 data. The product-based benchmarks should be updated using data years 2010-2015 because: (1) ARB has Mandatory Reporting Regulation data to ensure the rigorousness of the data quality (2010 through 2015 data are verified); and (2) efficiency tends to improve over time, such that using these data years for nut products ensures that efficiency improvements are taken into account in an equitable manner.
- Because WPA is the only covered entity under the Cap-and-Trade program, apply ARB's benchmark stringency with "90% of Average" or "Best-in-Class" value, using the 2010-2015 data from WPA.

If ARB requires additional information to further refine the product-based benchmark for roasted nuts, including developing refined benchmarks for each process, WPA would be happy to work with ARB staff to provide that information.

3. Covered Entities Should Not Be Required to Pay Back Allocation Allowances Immediately

ARB has proposed to modify provisions related to the return of allowances by entities that were allocated free allowances and subsequently did not incur a compliance obligation or applied to exit the Cap-and-Trade Program. We acknowledge that the proposed changes are set to take effect for budget year 2018 and forward, but believe this is a critical issue, especially for entities in the agricultural sector that have variable GHG emissions, and therefore could come in and out of the Cap-and-Trade Program.

We recognize that ARB is proposing to apply this new retirement provision only to entities with energy-based benchmarks, but we cannot support ARB employing this method in any case where an entity's operations are not year round and highly variable year over year. This proposed amendment is particularly troubling for covered entities in the agricultural sector where seasonality, light and alternating crops (such is the case with tree nuts), and forces outside of the manufacturers control (i.e., drought and other climate conditions) impact whether an entity remains a covered entity under the Cap-and-Trade Program. We understand ARB's intention with regard to entities that exit the Cap-and-Trade Program permanently, but it is unfair for ARB to arbitrarily penalize covered entities that come in and out of the Program based on conditions beyond their control. To this end, we strongly urge ARB to reconsider this proposed amendment and allow retention of such allowances for a period of time, such as 5 years, to allow entities to retain such credits for future compliance obligations when they re-enter the Cap-and Trade Program.

In conclusion, it is extremely frustrating that ARB has proposed complete elimination of the product-based benchmarks for roasted nuts that we worked, along with ARB staff, for so long to develop and implement – a mere two years ago. ARB has not provided sufficient justification for the proposed elimination, as described above. If ARB needs further information

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in order to refine the benchmark, WPA is happy to provide any information, including more recent data to justify the approach previously adopted by ARB. But it seems patently unfair to not be accorded the ability to utilize a product-based benchmark just because we are dealing with an agricultural product that is highly variable because of Mother Nature.

Thank you for your consideration of these comments. We would be happy to discuss at your convenience.

Sincerely,

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke at the end.

Melissa Poole
Senior Counsel/Director of Government Affairs