

Vulcan

Materials Company

Western Division

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Kevin Kennedy, Ph.D.
Assistant Executive Officer
Office of Climate Change
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Subject: Preliminary Draft Regulation For A California Cap-And-Trade Program

Dear Dr. Kennedy:

Vulcan Materials Company, Western Division (Vulcan) appreciates this opportunity to provide comments on ARB's Preliminary Draft Regulation For A California Cap-And-Trade Program (PDR) in accordance with the Global Warming Solutions Act of 2006 (AB 32). Vulcan views its business product lines and sustainability program in California as integral to achieving the objectives of AB 32. In short, Vulcan, like many other companies with extensive California operations, can be a part of the AB 32 solution. How large a part depends on the extent to which the regulatory framework provides opportunities to generate, verify and use GHG emissions offsets as compliance instruments and voluntarily.

Vulcan Materials Company, a member of the S&P 500 index, is the nation's foremost producer of construction aggregates. In California, we have 38 facilities and are one of the top producers of ready mix concrete and asphalt paving materials. The Company's Western Division was the first construction aggregates manufacturing company to join the California Climate Action Registry and was named "Climate Action Leader" by the Registry.

Vulcan has the greatest interest in the following issues raised in the PDR: auction concepts, allocation mechanisms, linkage to other trading or offset programs, and the creation and use of offsets. The manner in which ARB approaches and resolves these issues will greatly impact the strength and success (or lack thereof) of the cap and trade program and the overall implementation of AB 32. Vulcan's comments are founded on equity principles, program success in reducing GHGs, and avoiding the potential for business and consequential job leakage from the state. Most importantly, our comments and proposed ideas are rooted in the original intent of the legislature in adopting AB 32.

As this process evolves and regulatory text is developed later this year, Vulcan intends to provide additional input to assist ARB in the development of this very important regulation. Specific comments are presented below and referenced to applicable sections of the PDR.

Subarticle 9 (Auction Design and Mechanisms for Distributing Auction Proceeds) and Subarticle 10 (Free Allocation Mechanisms)

Vulcan believes that the best approach to establish a robust trading program and avoid the potential for further degradation in the State's ailing economy that would result from leakage as a consequence of a cap and trade regulation, requires the initial allocation of allowances to be freely distributed among the capped sectors, with a gradual phase-in of auctioning for some limited portion of the allowances. A free initial allocation makes the most sense as one way of priming the system and generating capped industry sectors' buy-in, without placing any additional financial burden on businesses which currently are otherwise struggling in a very weak economy, and for which financial recovery remains uncertain.

Clearly, the distribution of free allowances requires an equitable and balanced approach to ensure that each of the capped sectors receive allowances that are proportional to their respective emission contributions. Along these lines, we support the PDR options (at § 96040) of relaxing the quantitative usage limits on offsets and expanding the list of acceptable offset project types beyond what is currently envisioned in the PDR. Further, we suggest that the PDR include specific categories of acceptable offset project types. Defining categorical project types from which offsets can be generated will add clarity for project developers and investors, and facilitate more efficient verification and ultimate use of offsets credits as compliance instruments in the program.

Subarticle 12 (Linkage to External Trading or Offset Crediting Systems)

Linkage to external trading or offset credit systems should be considered in the context of program needs for covered entities certainty and program stability. Further, linkage to other systems, to the extent it occurs at all, must be based on a balanced and thorough evaluation of these other cap and trade programs, allowance/offset prices, available supply quantities and/or the carbon credit quality.

California- and domestically-generated offsets which meet California cap and trade program criteria should be encouraged and incentivized to the maximum extent feasible. While foreign or international offsets could be used as compliance instruments, the program must be designed and implemented to give deference and enhanced allocation value to California and domestic offsets. One way to achieve this objective is to allow for the use of international offsets, but only with an applied discount. Additionally, there must be mechanisms in place to assure that international offsets are verified and have the same integrity level as those that are generated from California- or domestic-based projects. It is also important ensure that offsets generated internationally achieve ancillary air quality co-benefits and recognize and incorporate the regulatory and transactional costs associated with policing, inspecting, monitoring and verifying foreign-based reductions.

Further, by encouraging California- and domestic-based offsets, ARB will explicitly recognize and promote the legislative directive of AB 32 as codified in the California Health and Safety Code § 38501:

Continuing California’s “tradition of environmental leadership by [remaining] at the forefront of national and international efforts to reduce emissions of greenhouse gases”;

Positioning California’s “economy, technology centers, financial institutions, and businesses to benefit from national and international efforts to reduce emissions of greenhouse gases” and providing the “opportunity for the state to take a global economic and technological leadership role in reducing emissions of greenhouse gases”; and

Having ARB “design emissions reduction measures to meet the statewide emissions limits for greenhouse gases established pursuant to this division in a manner that minimizes costs and maximizes benefits for California’s economy, improves and modernizes California’s energy infrastructure and maintains electric system reliability, maximizes additional environmental and economic co-benefits for California, and complements the state’s efforts to improve air quality.”

Moreover, by focusing on California-based offsets, the program is on firmer legal ground by avoiding having to enter into memorandums of understanding or agreements with other states or foreign governments which may be subject to challenge under Article I, Section 10 of the U.S. Constitution.¹

Subarticle 13 (Offset Credits)

Vulcan believes that generation and use of California- and domestic-based GHG offsets should be promoted and encouraged to the maximum extent feasible. The PDR, at § 95970, proposes that covered facilities be limited to surrendering only up to 4% of offsets at the end of a compliance period to meet applicable compliance obligations. While a quantitative usage limit might make sense in certain instances where prescriptive regulatory requirements are applied to a finite sector of the economy, the statewide reduction mandate established under AB 32 is so aggressive (about 30% from business as usual in 10 years and 80% in 40 years), such usage limits are more likely to be counter-productive to both near- and long-term program goals.²

There should not be any limit as to the percentage of California offsets that can be used to meet compliance obligations and there should be clear, concise, and static performance criteria which, once met, allow the certification and use of specified offsets. Domestic- and California-based offsets which meet the requirements of real, additional, quantifiable, permanent, verifiable and enforceable (hereinafter “integrity criteria”) should be widely available to meet covered entities’ Surrender Obligations.

Mechanisms that will lead to rapid approval of GHG reduction protocols and offset credit approval should be actively investigated and incorporated into a final cap and trade rule. This should include an approval streamlining process for specified offsets. Moreover, credits approved under identified programs should automatically be creditable in California for covered entities’ compliance obligations.


¹ In relevant part, section 10 reads, “No state shall enter into any treaty, alliance, or confederation... No state shall, without the consent of Congress... enter into any agreement or compact with another state, or with a foreign power”.

² Clarifying that the reduction limit should be defined relative to initial emission levels (e.g., 2012 levels) does not go far enough.

Regulatory agencies have decades worth of experience with new source review emissions trading and offsets and other market-based trading mechanisms. Clearly, the responsible agency must have the utmost confidence in the integrity of emission reductions or avoidance mechanisms used for trading currency. Most large and many medium sized businesses also have experience in generating, verifying, certifying and using air emission credits. Experience makes clear that having well defined rules, not subject to varying policy interpretations over time, create the best environment for harnessing the needed entrepreneurial and innovative spirit for successful implementation of AB 32.³ We encourage development of fair, simple, clear and static requirements for generating offsets.

Vulcan very much appreciates your and ARB's consideration of these comments and commends you and ARB staff for your efforts thus far. Should you have any questions, please do not hesitate to contact me or Ms. Angela Driscoll at (323) 474-3232.

Sincerely,



Brian G. Anderson, P.G.

Director, Environment, Regulatory Affairs &
Sustainable Development

cc: Linda Adams, CALEPA
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James Goldstene, California Air Resources Board
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³ Cal. Health & Safety Code § 38501 (e) states, "More importantly, investing in the development of innovative and pioneering technologies will assist California in achieving the 2020 statewide limit on emissions of greenhouse gases."