

January 11, 2010

Mr. Kevin Kennedy
Assistant Executive Officer
California Air Resources Board
Submitted online at <http://www.arb.ca.gov/cc/capandtrade/comments.htm>

RE: California Cap-and-Trade Program – Preliminary Draft Regulation (PDR)

Dear Mr. Kennedy:

The California Wastewater Climate Change Group's (CWCCG) mission is to address climate change policies, initiatives, and challenges through a unified voice advocating for California wastewater community perspectives. Together, CWCCG treats over 90% of the municipal wastewater in California, including beneficial use of products such as biosolids and biogas. We very much appreciate the effort CARB has made to provide an open process for stakeholder engagement, and in particular the time staff has taken to meet with the wastewater sector and to brief us in advance of the PDR release.

This letter reaffirms and elaborates on some of the verbal comments I provided at the workshop held on December 14, 2009. We present our highest priority issues first, and then provide input on additional concepts in the PDR. Our key issues are as follows:

- We support exclusion of fugitive emissions and biomass combustion emissions from *both* stationary and mobile sources from any surrender obligations under the program.
- We approve of the definition of biomass which cross references the CEC Renewable Energy Program; Overall Program Guidebook, with some minor additions.
- We believe that the overall conditions, caveats and requirements that the PDR imposes on offsets generation and use are so restrictive that they, in effect, remove offsets from being part of any compliance consideration.
- We continue to reiterate our request that the municipal wastewater sector be permanently excluded from the cap and trade program.

We address each of these points in more detail below.

Support for Exclusion of Fugitive Emissions and Biomass Emissions from Surrender Obligations

Consistent with the discussion that takes place on Page 15 of the Overview in Section 95950, we strongly support the exclusion of most fugitive emissions and biomass fuel combustion emissions from stationary sources. Wastewater agencies in California beneficially reuse biomass-based byproducts from the wastewater treatment process to generate renewable energy. Indeed, the heat and energy that wastewater agencies generate using digester gas-fueled cogeneration engines, for example, is a key part of the California Energy Commission's strategy for meeting AB 32 goals. Therefore, we strongly support the proposal to exclude biomass emissions from surrender obligations, irrespective of where they are combusted, and believe this exclusion is vital to continued efforts to increase renewable energy, low-carbon fuel supplies and cogeneration in California.

In addition to that, we feel this exclusion should also be extended to biomass fuel combustion emissions from mobile sources to account for our sector's plans to generate waste-derived alternative fuels for vehicles. Whether CARB decides to regulate transportation fuels on the delivery side or the combustion side, CWCCG recommends that biofuels derived from very low carbon sources such as digester or

landfill gas, or from biosolids, have no surrender obligation. As CARB points out, this approach would be consistent with the emissions accounting framework proposed for biomass derived fuels combusted at stationary sources. In addition, this approach would encourage the production of these extremely low carbon footprint biofuels, a much needed commodity for industries with compliance obligations under the LCFS.

Of the two definitions presented in the PDR, we support the definition in the CEC Guidebook because of its explicit recognition of biosolids. However, we encourage CARB to also include biogas in the exclusion, and we ask that biogas be defined to explicitly include digester and landfill gas.

Exemption of fugitive emissions is important to us because of the physical size of our typical wastewater treatment plants and the exorbitant costs involved in capturing any emissions and treating the very low concentrations effectively.

Treatment of Offsets Generation and Use Is Much Too Restrictive

The PDR contains page after page of conditions and requirements governing the generation and use of offset credits. These include the long list of criteria on Page 63 that requires, among many other things, an analysis of the “public health, welfare, social, economic, or energy effects” as well as analysis of “activity-shifting and market-shifting leakage”, the 5-year minimum crediting period in Section 96240, etc. These requirements are inappropriate and prohibitive for the small offset projects that many municipalities, local governments, and small businesses may wish to undertake to reduce their emissions and generate revenue. The offset provisions in the PDR are in urgent need of great editing if CARB truly wants to facilitate offsets as a compliance tool.

Request that “Covered Entities” Specifically Exclude Municipal Wastewater

The CWCCG maintains that the municipal wastewater sector should be specifically excluded from being a covered entity under Section 95820. Granted, while fewer agencies would be pulled into the program at current thresholds assuming the biomass exclusion is carried forward, we remain concerned that the possibility of future inclusion of municipal wastewater under a cap sets an inappropriate precedent.

The basis for this request is detailed in the attached CWCCG issue paper entitled “Municipal Wastewater Perspective on a California Greenhouse Gas Cap and Trade Program.” This issue paper advances several compelling reasons why our sector should be excluded from a Cap and Trade Program:

- **Municipal wastewater agencies have limited ability to curtail their operations (in terms of volume or quality) due to the health and safety services they provide and the strict water quality regulations under which they operate.** In fact, as population increases and water quality regulations become more stringent, wastewater agencies must increase service levels, treating more wastewater using more advanced treatment techniques.
- **Municipal wastewater agencies have budget cycles, purchasing processes, and related limitations that are incompatible with market-based compliance systems.** Greenhouse gas and other air pollutant allowance markets in California and in Europe have exhibited the profound price volatility that would be difficult, and in some cases, impossible for CWCCG members to efficiently respond to.
- **Wastewater is a “must manage” product of society that, for public health and safety reasons, has long been considered an essential public service.** By way of example and precedent, the South Coast Air Quality Management District’s Rule 1302 defines “essential public services” as including publicly owned or operated sewage treatment facilities.

We request that if an exclusion is not granted, CARB strongly consider providing non-auction allowances to municipal wastewater agencies facing compliance obligations.

Additional Comments

Expand Use of Offsets

In the PDR, CARB proposes to limit offsets for surrender obligations to 4% of the obligation. We encourage CARB to consider higher percentages. CARB should be incentivizing everyone in California to contribute to greenhouse gas reduction goals. By limiting the use of offsets, the financial incentive for entities outside the cap to reduce greenhouse gases is significantly reduced. We encourage CARB to broaden the use of offsets, thereby providing incentives for wastewater agencies, local governments and smaller businesses to implement innovative greenhouse gas reduction projects.

Maintain 2015 Timeline for Addressing Broad Scope Emissions

In response to CARB's Discussion of Concept regarding moving the "broad scope" of the program up to 2012, we would like to discourage this acceleration. We believe we need to walk before we run. We believe that CARB already will have its hands full implementing the narrow scope program in that timeframe, and we are concerned that implications under the broad scope for facilities using natural gas have yet to be defined. We suggest that CARB stick with the 2015 date to allow adequate time for fleshing out the compliance obligations under broad scope.

Reporting and Verification Should be Required Every 3rd Year

In the PDR, CARB is considering requiring both mandatory reporting and verification on an annual basis for capped sources, instead of every 3rd year. This additional reporting and verification adds additional costs to public agencies with little demonstrated benefit. We encourage CARB to stick with the three year compliance cycle for all reporting and verification requirements.

Requiring Six Years of Data for Entities to Get Out of the Cap is Exorbitant

The PDR states that if a covered entity reduces its emissions, it still has a surrender obligation under the cap until its reported emissions are below the threshold for six consecutive years. This length of time in which a facility would still have to participate in the cap and trade program even though they have sufficiently reduced emissions seems exorbitant and would act as a deterrent to reducing emissions. We encourage CARB to shorten this demonstration burden to at most one compliance period (three years).

Thank you again for the opportunity to provide written comments on the PDR. Please contact me if you have any questions at (510) 206-3820 or jkepke@ch2m.com. We would welcome the opportunity to meet with you to further discuss the wastewater community's position on cap and trade.

Sincerely,



Jackie Kepke, P.E.
Program Manager
California Wastewater Climate Change Group

Attachments: "Municipal Wastewater Perspective on a California Greenhouse Gas Cap and Trade Program."