January 11, 2010

Ms. Lucille Van Ommering
California Air Resources Board, Office of Climate Change
1001 I Street
Sacramento, CA 95814

RE: ARB Cap and Trade Workshop December 14, 2009

Dear Ms. Van Ommering:

The Western States Goods Movement Alliance (WSGMA) submits these comments on behalf of the undersigned concerning both the Workshop to Discuss the Preliminary Draft Regulation for a California Cap-and-Trade Program held on December 14, 2009 and the Preliminary Draft Regulation**.**

WSGMA represents a coalition of trade sensitive transportation entities and supply chain providers in California. The threats to in-state goods movement are serious as bordering states/countries attempt to capture services of competing ports of entry for large container ships. <u>We oppose placing goods movement related transportation under a declining cap.</u> The goods movement sector cannot survive a compilation of Scoping Plan regulations that attempt to:

1) Increase utility rates 30-45%
2) Assess utility providers with an $82 million allowance liability
3) Increase in state diesel fuel prices 40-60 cents per gallon
4) Assess in state refining with a $150 million allowance liability
5) Limit offsets to 4% thereby disallowing utility and diesel fuel providers reduction in compliance costs
6) Regulate trailers for aerodynamic efficiencies

During the workshop, you requested that we provide copies of comments submitted regarding our opposition to the Low Carbon Fuel Standard (LCFS). Three sets of comments reflect our position on trade sensitive goods movement filed 1) 12/10/08 – Scoping Plan comment log display #450, 2) 4/22/09 – Early Action AB 32 and Low Carbon Fuel Standard comment log display #225 and 3) 4/22/09 – IWLA Comments on LCFS – comment log display #210. Thank you for the opportunity to comment.

Sincerely,

Stephanie Williams, Executive Director, Western States Goods Movement Alliance
Joel Anderson, President & CEO International Warehousing and Logistics Association
Miguel Silva, President, West State Alliance, Oakland Port
Michael Lightman, President, Harbor Truckers for Sustainable Future, LA/Long Beach Port
Richard Arzinger, President, Distribution Manager's Association & General Manager, McLane Company
William Butler, President & CEO, Webber Distribution
Robert A. Curry Sr., President, California Cartage Company

Cc: California Assembly and Senate
Mary Nichols, Executive Director, CARB
Sam Wade, CARB

Comments of Western States Goods Movement Alliance (WSGMA) and their affiliated organizations on CARB's "Cap & Trade Preliminary Draft Regulation: Preliminary Draft Cap-and-Trade Regulation" (Cap and Trade)

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- Regulate trailers for aerodynamic efficiencies

Our detailed comments:

1. **CARB's Scoping Plan has adopted three new regulations, in isolation, impacting fuel prices, electricity prices and vehicle prices.**

The CARB Scoping Plan lays out a path for goods movement that proposes to fundamentally change fuels, vehicles and commercial building utility rates through a series of regulations that took place in 2008-2009. The cumulative impact of these regulations on California's goods movement sector will create job loss, distribution center relocation and increase miles traveled by heavy duty trucks into California from bordering states. The environmental impact is an increase in Greenhouse Gas (GHG) emissions.

Taken cumulatively, these three cost centers pose serious competitive issues for California based facilities. The previously adopted scoping plan measures include:

- Mandating a new California-only diesel fuel reformulation to meet a declining low carbon fuel standard.
- Increase the renewable portfolio standards from 20% to 33% causing utility costs to increase for warehouses and distribution centers
- Require warehouses and distribution centers who maintain fleets in California to retrofit or purchase "Smart Way" trailers to operate.

Nevada distribution centers are in competition to serve Bay Area ports. Arizona distribution centers are fiercely competing to serve Southern California Ports. Sharp increases in utility rates, fuel prices and vehicles will collectively tip the competitive edge of in-state facilities and make California unattractive to international shippers.

The cumulative impact of the measures adopted in the Scoping Plan will create job leakage to bordering states, decreased service for California goods through California ports and significantly increase greenhouse gas emissions in the Western States due to distorted freight patterns that increase miles traveled in multiple sectors aimed at avoiding California price spikes.

2. **In state goods movement is a low margin, trade sensitive business with no entry barriers to the market. CARB's Scoping Plan and Cap and Trade regulations do not accurately reflect the leakage potential and likelihood for increasing GHG emissions through relocation of facilities, fuel purchases and changes in international trade patterns.**

The trade sensitive nature of the goods movement supply chain is well documented. AB 1269 (Grandaunt, 1997) was drafted by the Board of Equalization and passed by California's legislature to level the playing field for California business negatively impacted by the introduction of higher priced CARB diesel fuel. AB 1269 made the sales tax on diesel fuel a use tax instead of a transaction tax so California carriers would receive a refund of the tax when burning miles out of state and most importantly, requires fleets that buy out-of state fuel and compete with instate carriers for California freight and storage contracts to pay the additional California sales tax.

The magnitude of AB 32 on the goods movement sector will not find such a remedy to offset costs in vehicles, fuels and facility operational costs. The trade sensitive nature of the goods movement system must be carefully studied to eliminate the large scale threat of leakage by not just one regulation, but a compilation of many regulations adopted under the Scoping Plan.

3. **Placing a declining cap on transportation has a double impact on the reduction of GHG emissions when coupled with the Low Carbon Fuel Standard. Reducing in-state vehicle miles traveled is the only option to comply with both regulations.**

Considering the impacts of higher fuel prices, higher electricity rates and the procurement of new trailers, even the consideration of placing transportation under a declining cap is inconceivable.

Goods movement is a low margin business with no entry barriers to the market. Goods movement costs will be increased by placing the inelastic commodities (diesel fuel and electricity) under a declining cap. Utilities under a declining cap face allowances and a state only auction. (There are no legally authorized participants in the WCI to date). A t legislative hearing conducted by Senator Paley January 7, 2010 discussed AB 32 and exposed the allowance price for LADWP to exceed $82 million.

Refineries under a declining cap face similar allowance liability which collective news reports claim stretch to $150 million per refinery in the state. Transfers of wealth from refineries and utilities to the government for redistribution will place the goods movement sector in crisis.

Fuel bills are paid within 30 days if a company has good credit, COD of they do not. Utility bills are due upon receipt. Transportation under the cap is double counting GHG emission reduction and an inconceivable suggestion that will harm the goods movement sector through leakage of businesses out of the state.

4. **Expand offsets from 4% to at least 25% to create funding for real reductions in GHG emissions through facility energy efficiency improvements and renewable energy treatments that lower operational costs**.

We recommend that the plan focus on the most cost effective CO2 reduction strategies first, and that requirements that are not technologically feasible or not cost effective be pushed back towards the a compliance path near 2020. The goods movement sector is not a covered source under Cap and Trade, although the trickle down from covered sources will dramatically increase their prices to comply with AB 32 regulations therefore impacting this trade sensitive sector. Providing an offset option for a facility to make costly improvements funded by the offset mechanism will lower operating costs for both the covered source and the host facility. Utilizing warehouse facilities as offset candidates will provide real, quantifiable and permanent GHG reductions and level the playing field for California's trade sensitive goods movement sector.

Starting with the Renewable Portfolio Standard (RPS), our warehouse/distribution facility utility prices will sharply increase at a rate faster than energy efficiency measures can be procured. With the appropriate lead time and incentives funded through an offset mechanism, the industry can adjust with energy efficiency measures and renewable energy treatments to offset cost increases. If allowances and corresponding auctions are utilized in California, utilities represent price increases of 30-45%. Increasing in-state offsets at goods movement facilities provide immediate GHG emissions reductions and make California companies more competitive. A warehouse/distribution offset mechanism is superior in GHG reduction to both the LCFS and placing transportation under the cap while eliminating leakage.

5. **Eliminate the Low Carbon Fuel Standard as it applies to diesel fuel for the goods movement sector.**

The Low Carbon Fuel Standard has evolved as a competitor to food sources at a cost much higher than anticipated in the initial rulemaking. We support the adoption of a Low Carbon Fuel Standard when the technology and recipe are commercially viable and the regulation is adopted by all of the Western States. Imbalances in regional fuel prices in the competitive transportation sector have the negative consequences of causing leakage.

The initial Governor's Executive Order calling for low carbon fuel was applied only to passenger vehicles. Why CARB has decided to incorporate a goods movement fuel into the plan is unclear. We support the original intent of including passenger vehicle fuels that are technologically feasible and commercially viable. Low carbon diesel fuel is technologically infeasible based on recent compliance paths released and far from commercially available.

We oppose unnecessary cost factors placed on fuel providers that allow an alternative compliance path (variance tax). Either the fuel exists and is ready for large scale commercialization or it is not, taxes do not reduce the carbon footprint of the supply chain. Alternative compliance fees are a hide the ball strategy that masks the real price increases.