

August 11, 2011

TO: The Honorable Mary Nichols, Chair

 California Air Resources Board

FR: John Larrea, Governmental Affairs

 California League of Food Processors (CLFP)

RE: Comments on Proposed Amendments to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions

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**Changes to Mandatory Reporting Rules (MRR), (Section 95103)**

CARB has proposed to change both the Reporting and Verification time deadlines to April 1 and September 1 respectively. This change may significantly impact food processors as the reporting requirement now falls in the middle of the processing season. Such further time constraints also creates additional pressures on regulated food processors, especially given ARB is proposing additional reporting requirements that are above and beyond what is required under the EPA 40 CFR MRR program. Given the 24-7 operations required once the harvest has commenced, it is critically important that facilities are given sufficient time to work on developing their reports and to work with their verifiers to obtain required positive or qualified positive verifications.

CLFP members will need time to prepare their MRR reports, and this change eliminates three months of time making it even more difficult for facilities to work with their verifiers to obtain the required verification statements. The reasons for this change (compressing the timelines due to need for time to true-up for the pending Cap & Trade program) are clear, but taking time away at the expense of the very regulated parties who are responsible for ensuring accurate reports is inherently unfair.

Given these reasons, CLFP recommends CARB re-set the reporting and verification timelines back to the original dates of June 1 and December 1.

Article 2, Sub article 1, PROPOSED AMENDMENTS TO THE MANDATING REPORTING OF GREENHOUSE GAS EMISSIONS, PROPOSED 15 DAY MODIFICATIONS

**Section 95112 Electricity generation and Cogeneration Units**

**Backpressure Steam Generators**

Under the current proposed modifications to section, Staff needs to be aware of the distinctions provided for backpressure steam generation. In food processing facilities, in particular tomato processing facilities, electricity produced in many industrial processing facilities is simply a byproduct of the process.  A modern more efficient processing facility does not burn additional fuel to produce electricity, but captures energy that would otherwise be lost while supporting facility operations.  This is the case with a backpressure steam turbine generator.   According to the Department of Energy (DOE), “In the backpressure turbine configuration, the turbine does not consume steam.  Instead, it simply reduces the pressure and energy content of steam that is subsequently exhausted into the process header.  In essence, the turbo-generator serves the same steam function as a pressure-reducing valve (PRV) – it reduces steam pressure- but uses the pressure drop to produce highly valued electricity in addition to the low-pressure steam.”

With a backpressure turbine configuration, all of the energy produced by the turbine comes from reducing steam pressure, not from the generation of more steam.  Instead, it simply reduces the pressure and energy content of steam that is subsequently exhausted into the process header.  In essence, the back pressure turbine-generator serves the same steam function as a pressure-reducing valve (PRV) – it reduces steam pressure- but uses the pressure drop to produce highly valued electricity in addition to the low-pressure steam.”  Staff should recognize, as is the case with CALIFORNIA CAP ON GREENHOUSE GAS EMISSIONS AND MARKET-BASED COMPLIANCE MECHANISM, no fuel is combusted by these types of units, and no fuel will be reported.

CLFP requests that the CARB modify the proposed regulatory changes to Section 95891 to reflect the above.

**Monitoring and Reporting Requirements Above Federal EPA 40 CFR Program**

There are several areas ARB has identified and specifically required additional monitoring, record keeping, data collection procedures, including more stringent meter calibration requirements that go above and beyond what is currently required under the Federal EPA Mandatory Reporting program. CLFP is concerned that CARB has not fully vetted the impacts on facilities through a cost analysis. The impacts of the additional requirements will be cumulative on the food processors, as well as impacting the individual companies. Additionally, CLFP believes such an analysis could show excessively high costs for very little additional accuracy or benefit from the more rigorous requirements.

Despite the cap-and-trade being a California-only endeavor which will only raise costs for all Californians at time of economic downturn and stress; nevertheless, CARB should avoid California regulations that diverge from federal standards. These additional requirements will add on to the burdens on California businesses that make them less competitive and more at risk.

CLFP urges CARB to provide the necessary analysis to support the proposition that California MRR requirements should be more stringent then the Federal EPA MRR program. In addition, CLFP requests, pursuant to the necessary cost impact analysis, there should be an analysis of what, if any, difference in overall emission estimates will result in more stringent requirements compared to the emission estimates based on the Federal EPA MRR reporting program.

**Penalty Provisions – Section 95107 (b) & (c)**

CLFP requests CARB to further clarify and improve the penalty enforcement provisions to make them more fair and balanced.

Subsection (b) & (c) in Section 95107, as written, provides CARB the authority to assess penalties for any GHG ton or data measure or collection failure, as a separate penalty, despite the fact that such a failure is within the acceptable range of accuracy for verification purposes (plus or minus 5% accuracy level). It does not make sense that CARB should be able to assess penalties for “any” ton of GHG emissions that were found to not be reported when the amount of GHG tons are well within and below the level of accuracy required by the MRR and verification process.

CLFP requests CARB revise Subparts (b) & (c) to reflect that the penalties would be imposed if, and only if, it was determined that the amount of emissions facility underreported exceeded the + 5% accuracy level and only for the amount above 5%.

If CARB is concerned that reporters may intentionally under-report their GHG emissions, they should include specific language in the penalty section that would address that concern, and not have an open ended condition (Subsections (b) & (c)), that can be used to penalize those who are working hard to comply with all aspects of the AB32 reporting and verification program.

**No Per-ton Penalties**

Additionally, CLFP objects to penalties being imposed on a “per ton” basis given the huge amount of GHG emissions involved in the AB32 program. Even a modest mistake could result in a massive fine completely out of proportion to the nature of the “violation”, especially if such mistakes are within the 5% verification accuracy level. Instead, the penalty should be based on a specific incident violation, and not on a per ton basis, similar to how other air pollution penalty programs are structured.

At an absolute minimum, CARB should modify the “per ton” penalty to a more appropriate value such as a “10,000 ton” penalty metric, simply because of the huge number of GHG emissions associated with the AB32 program.

CLFP also requests that CARB clarify during the period when the facility is working with their verifier on their report, any corrections, edits, clarifications, etc., would not be subject to any penalties or violations during this period. Any penalties that could be applicable should be after the verification deadline date.

**Create a Dispute Resolution Process**

The proposed rule gives the Executive Officer authority to impose penalties with no avenue for appeal short of the California court system. CLFP urges CARB to develop a dispute resolution process that will provide parties an opportunity to resolve disagreements that involve regulatory interpretation and requirements, including enforcement actions, in lieu of engaging in expensive and time consuming litigation.

Thank you for considering our comments. Should you have any questions or need anything further, please feel free to contact John Larrea at (916) 640-8150.