

COALITION FOR SUSTAINABLE CEMENT MANUFACTURING & ENVIRONMENT
1029 J Street, Suite 300, Sacramento, CA 95814

September 26, 2011

Ms. Mary Nichols, Chairman
California Air Resources Board
1001 "I" Street
Sacramento, California 95812

**Subject: Comments on the ARB Revised AB32 Mandatory Reporting Regulations Issued
September 12, 2011**

Dear Ms. Nichols:

The purpose of this letter is to provide comments on the California Air Resources Board (ARB) Draft Revised AB32 mandatory reporting (MR) regulations issued September 12, 2011 (specific sections identified below), on behalf of CSCME.

Issue #1: Forest-derived wood waste requires an identification number (95103(j)(2)):

Section 95103(j)(2) under calculating emissions from biomass-derived fuels requires that:
"When reporting use of forest derived wood and wood waste identified in ..., the reporting entity must report...the corresponding identification number under which the wood was removed."

The CSCME comment letter dated August 10, 2011, asked that ARB withdraw or modify the requirement to provide an identification number for forest-derived wood and wood waste. The Southern California wood waste brokers used by the cement companies in that location provide a mixed wood waste stream containing some forestry waste, which is mainly but not exclusively urban forestry waste. Because the local wood waste brokers cannot account for the exact origin of the wood waste that they provide, they cannot comply with the ARB rule requirements as currently written. Nor can the wood waste brokers exclude forestry waste, because forestry waste is often combined with other kinds of waste (such as urban forestry waste with construction wood waste, in case of a demolition including tree removal or something like that). Therefore, CSCME re-affirms its original comment (Item I) that wood waste brokers cannot comply with 95103(j)(2) as currently written, and this could result in cement plants no longer being able to use wood waste as a biomass stream in their plants.

To promote the use of biomass-derived fuels we recommend that ARB identify a more practical alternative to track forest-derived wood waste given to middlemen, for use as fuel.

CSCME believes that forest-derived wood and wood waste is a relatively small share of total wood waste used at cement plants and would suggest that maybe some kind of exception language like the following could be added to the end of 95103(j)(2):

“Except in cases where the forest derived wood and wood waste is provided in combination with construction or other wood waste, where the forest derived wood and wood waste represents 25% or less of the total wood waste in each shipment, based on operator observations at the time of shipment delivery.”

Issue #2: Review of missing data substitution (95131(b)(13)(D)):

CSCME would like to point out that the language in 95131(b)(13)(D) will result in a non-conformance at cement plants whenever the CEMS availability falls below 95% (because the CEMS data corresponds to 99% or more of the facility direct emissions), regardless of whether the 40CFR75 missing data procedures are being followed for the CEMS, implying that a non-conformance could end up being a common occurrence and also implying that there is little benefit to following 40CFR75 missing data procedures. CSCME proposes that the language be changed from 5% to 20% in case of following 40CFR75 missing data procedures, by adding the following language to the end of this section:

“except in cases where CEMS are used for the single data element and 40CFR75 missing data procedures for CEMS are being correctly applied, where the verifier will note a non-conformance only if more than 20% of the unit’s emissions are being calculated using missing data requirements.”

Issue #3: Review of product data (95131(b)(14)):

Please add the following sentence to the end of this section:

“The use of inventory/stock measurements in calculations for product data will not be considered a data substitution.”

Issue #4: Standards traceable to national government body (95103(k)(5)):

Section 95103(k)(5) currently requires:

“All standards used for calibration must be traceable to the National Institute of Standards and Technology or other similar national government body responsible for measurement standards.”

Given that truck/rail scales used for product in California are regulated by the California Division of Measurement Standards (under the California Department of Food and Agriculture, not a federal body), CSCME has requested that the word “national” be deleted in front of “government body”, resulting in the following language:

“All standards used for calibration must be traceable to the National Institute of Standards and Technology or other similar government body responsible for measurement standards.”

CSCME has no control over which government body regulates truck/rail scales, and believes that the proposed ARB rule language is necessary to be consistent with the current practices of the state government and would also be more inclusive in case there is a change in the regulatory body in the future.

Issue #5: Accuracy requirement when using inventory/stock measurements (95103(k)(11)):

Introduction:

CSCME has previously provided three rounds of comments to ARB on the issue of accuracy requirements for product data, since the publication of the July 2011 MR rule revisions. (The term “product” in the MR rules refers to “output” as used in benchmarking in the AB32 cap & trade rules.) Although ARB has made some progress in this area, CSCME continues to have significant concerns about the current language, specifically this portion of the language:

CURRENT LANGUAGE IN 95103(k)(11):

“When using an inventory measurement, stock measurement or tank drop measurement method to calculate volumes and masses, the method must be accurate to +/-5% for the time periods required by this article, including annually for single product data components. Techniques used to quantify amounts stored at the beginning and end of these time periods are not subject to the calibration requirements of this section. Uncertainties in beginning and end amounts are subject to verifier review for material misstatement under section 95131(b)(12) of this article. If any devices used to measure inputs and outputs do not meet the requirements of paragraphs (1)-(10) above, the verifier must account for this uncertainty when evaluating material misstatements. Reported values must be calculated using the following equations:

Fuel consumed (volume or mass) = (inputs during time period – outputs during time period) + (amount stored at beginning of time period) – (amount stored at end of time period)

Product produced (volume or mass) = (outputs during time period – inputs during time period) + (amount stored at end of time period) – (amount stored at beginning of time period)”

In 95131(b)(12)(A), the equation for material misstatement states that percent error is calculated by dividing the sum of discrepancies, omissions, and misreporting by the total product data.

Please note that, in the case of the cement industry, this language is being applied to data for “products”, which are actually intermediates in the cement manufacturing process, not the ultimate product, which is cement. This is because of the cement benchmarking method approved by ARB, which is different from benchmarking methods in other sectors. CSCME concerns about this language relate to the inability of the verifier to quantify uncertainty relating to a potential discrepancy in product quantities derived from a combination of truck/rail

scales, inventory/stock measurements, and associated calculations (as explained below) and the likely inconsistency in verifier review for material misstatement. Due to the complexity and uncertainty in the verification process for the language that ARB has included in 95103(k)(11), this language will result in cement plants being in jeopardy every year for a finding of material misstatement (not resulting from omissions or misreporting) in spite of consistently and correctly following standard procedures used for accounting purposes and used in 2009 benchmarking.

CSCME proposes the following language changes relating to 95103(k) provisions (see box).

Changes relating to 95103(k) provisions:

95110(d): Insert the following at the end of the first paragraph:

“Monthly clinker production data provided to comply with 98.84(d) is not subject to 95103(k) requirements.”

95103(k), first paragraph:

- Insert after “must meet the requirements of paragraphs (k)(1)-(10) below for calibration and measurement device accuracy”, “with the exception as noted in paragraph (11) below.”
- Insert immediately after that: “Monthly clinker production data provided to comply with 98.84(d) is not subject to 95103(k) requirements.”

PROPOSED REPLACEMENT LANGUAGE FOR 95103(k)(11)--Replace with the following:

When using an inventory measurement, stock measurement or tank drop measurement method to calculate volumes and masses, the method consisting of a combination of truck/rail scale measurements, inventory/stock measurements and associated calculations must be accurate to +/-5% for total annual product data required by this article. Techniques used to quantify amounts stored at the beginning and end of these time periods are not subject to the calibration requirements of this section. Uncertainties in total annual product quantities (based on the method consisting of a combination of truck/rail scale and inventory/stock measurements and associated calculations) are subject to verifier review for material misstatement under section 95131(b)(12) of this article. When using inventory or stock measurements in conjunction with truck/rail scales and associated calculation methods to calculate total annual product quantities, where product quantities are as defined in sections 95110 through 95123, if any calculation methods used for inputs and outputs do not meet the requirements of paragraphs (1)-(10) above, the calculation methods will be reviewed by the verifier to ensure that they meet appropriate accuracy standards for such methods.

[NOTE THAT EQUATIONS HAVE BEEN INTENTIONALLY DELETED—see below]

If ARB will not delete these equations, then the following language needs to be added before the equations:

“Reported values must be calculated using the following equations, where these equations are adapted for the details of each product type per site-specific conditions”

Please note that CSCME strongly suggest striking from the above language the generic equations (intended to represent equations previously submitted and approved by ARB) due to the fact that their use in the verification process would cause confusion and, when considering the suggested revisions to 95103(k)(11), is unnecessary. CSCME has major reservations about these equations being included in the regulation, unless ARB will provide detailed guidance to verifiers about how to apply these equations to specific sectors. These equations are very generic in nature and could be misapplied by verifiers without sufficient guidance from ARB. The verifier will not know how to implement the equations or evaluate for material misstatement, unless ARB provides guidance.

The distinction between the CSCME proposed language and the current language used by ARB is as follows:

Only the end result, namely the total annual product quantities, which are the numbers used in the denominator of the intensity calculation (relating to previous benchmarking and future allowance allocation) under the AB32 cap and trade rule, is subject to evaluation for material misstatement, rather than each component of the denominator, in agreement with application of 95103(k) requirements to product data in other sectors.

For measurement of individual components of the denominator, the verifier is tasked with reviewing the calculation methods and comparing with appropriate accuracy standards, such as those required by Generally Accepted Accounting Principles, rather than with a material misstatement standard that is not well defined and is difficult to apply in this instance.

Background:

The cement process involves solid material handling in very large quantities, and does not fit under the 95103(k) approach developed for liquid and gas measurements. Measuring cement product throughput requires the use of inventory/stock methods such as stockpile and silo product volume measurements, as well as truck/rail scale measurement subject to the California Division of Measurement Standards (under the California Department of Food and Agriculture). Under the cement benchmarking method as approved by ARB, the data used for intensity calculations includes two terms in the output value, which is “adjusted clinker and mineral additives produced”(the denominator of the intensity calculation), as shown on page 16 of the Appendix B of the cap-and-trade regulation, July 2011, which is defined as follows:

$$\text{Output for cement manufacturing} = \frac{\text{adjusted clinker and mineral additives produced}}{\text{Clinker produced} \times [1 + (\text{limestone and gypsum consumed})/(\text{clinker consumed})]}$$

The term “total annual product quantities” in the 95103(k)(11) proposed language above refers to output for cement manufacturing, as specified in the above equation.

The terms in the output value are derived as follows:

- Clinker produced is derived from a calculation method using a combination of cement sold (truck/rail scales), inventory/stock measurements, and associated calculations.
- Gypsum and limestone consumed are derived from a calculation method using a combination of purchases (truck/rail scale measurements), inventory/stock measurements, and associated calculations. In cases where gypsum or limestone is not purchased from off-site, only inventory/stock measurements and associated calculations are used.

Please note that, in the case of the cement industry, the 95103(k) language is being applied to data for “products”, which are actually intermediates in the cement manufacturing process, not the ultimate product, which is cement. This is because of the cement benchmarking method approved by ARB, which is different from benchmarking methods in other sectors.

The denominator of the cement emission intensity calculation (the data used for allowance allocation) is the sum of the above three. Because the limestone quantities, and the gypsum quantities if the gypsum is obtained from on-site, cannot be tied to truck/rail scale measurements, they are inherently less accurate than cement product measurements, which are directly related to truck/rail scale measurements. As a result, it is possible that verifiers could reach a finding of material misstatement (in the absence of omissions or misreporting) for limestone and gypsum, but are much less likely to reach a finding of material misstatement (in the absence of omissions or misreporting) for the denominator as a whole (which is the sum of the three measurements).

The approach for product measurements as proposed by CSCME, as described above, is consistent with the 2009 benchmarking and is the standard method used for accounting purposes, as followed for many years at cement plants throughout the United States and the world.

Concerns about current language:

To the extent that there is a finding of material misstatement (not resulting from omissions or misreporting), associated with standard product measurement procedures used in the cement industry (for whatever reason, which the cement industry cannot predict, given the potential for inconsistency and subjectivity of the material misstatement determination by the verifier), the affected cement facility would in effect be penalized for something that is common practice and outside its control. To wit:

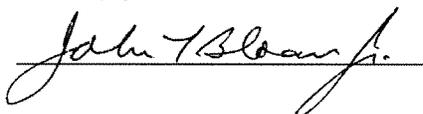
- 1) The data used for allowance allocation would be inconsistent with product data calculated in the ordinary course of the business based on standard industry practice and generally accepted accounting principles designed to insure accuracy in financial reporting.
- 2) The data used for allowance allocation would be inconsistent with 2009 data used in establishing the industry benchmark, which used normal industry measurement practices that were verified by ARB.

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Therefore, we strongly urge ARB to reconsider its current wording in 95103(k)(11) and to use the wording proposed by CSCME instead, as listed above (new language shown in box), as well as make the other changes shown in the same box and the other changes for Issues #1, 2, 3, and 4. For clarity, see also the attached redline/strikeout version of 95103(k)(11).

Please let us know if you have any questions and if this change is acceptable to ARB. We appreciate the opportunity to provide this request for AB32 MR rule change to ARB, and to continue to work with ARB on AB32 MR rule development.

Sincerely yours,



John T. Bloom, Jr.
Chairman, Executive Committee, Coalition for Sustainable Cement Manufacturing & Environment
Vice President & Chief Economist, U.S. Operations, Cemex

Attachment: Redline/strikeout version of 95103(k)(11)

CC:

Edie Chang, California Air Resources Board
Steven Cliff, California Air Resources Board
Robert Fletcher, California Air Resources Board
James Goldstene, California Air Resources Board
Doug Thompson, California Air Resources Board

CSCME Letter Attachment, September 23, 2011—Redline/strikeout version of 95103(k)(11):

“When using an inventory measurement, stock measurement or tank drop measurement method to calculate volumes and masses, the method consisting of a combination of truck/rail scale measurements, inventory/stock measurements, and associated calculations must be accurate to +/-5% for total annual product data required by this article, including annually for single product data components. Techniques used to quantify amounts stored at the beginning and end of these time periods are not subject to the calibration requirements of this section.

Deleted: the time periods

Uncertainties in total annual product quantities (based on the method consisting of a combination of truck/rail scale and inventory/stock measurements and associated calculations) are subject to verifier review for material misstatement under section 95131(b)(12) of this article.

Deleted: beginning and end amounts

When using inventory or stock measurements in conjunction with truck/rail scales and associated calculation methods to calculate total annual product quantities, if any calculation methods used for inputs and outputs do not meet the requirements of paragraphs (1)-(10) above, the calculation methods will be reviewed by the verifier to ensure that they meet appropriate accuracy standards for such methods” .

Deleted: I

Deleted: devices used to measure

Deleted: must account for this uncertainty when evaluating material misstatements

Deleted: Reported values must be calculated using the following equations:¶

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Fuel consumed (volume or mass) =
(inputs during time period – outputs during time period) + (amount stored at beginning of time period) – (amount stored at end of time period)¶

¶
Product produced (volume or mass) =
(outputs during time period – inputs during time period) + (amount stored at end of time period) – (amount stored at beginning of time period)”