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Clerk of the Board
California Air Resources Board
1001 I Street
Sacramento, California 95814

Subject: Comments of Praxair, Inc. on July 25, 2011 of Revisions to the Mandatory Reporting Regulation

Dear Clerk:

Praxair, Inc. ("Praxair") submits these comments to the California Air Resources Board ("CARB") in response to the July 25, 2011 public notice of modified text to CARB's Mandatory Reporting Regulation ("MRR"). Praxair offers these comments in conjunction with comments Praxair will be submitting on the July 27, 2011 version of the Cap-and-trade Regulation. With respect to the MRR, the provisions defining CO2 suppliers should be clarified. Praxair was concerned that all entities involved in the industrial CO2 gas supply chain would be required to report their operations, and potentially be subject to a direct compliance obligation under the cap-and-trade regulation. Praxair appreciates staff's informal clarification that regulating all entities in the supply chain was not staff's intent. As discussed below, Praxair requests CARB modify Section 95102(a)(59) to remove entities that are not engaged in producing CO2 from reporting under the MRR, and achieve greater consistency with the U.S. EPA reporting regulations.

Section 95102(a)(59) defines Carbon dioxide supplier to include:

- (a) facilities with production process units located in the State of California that capture a CO2 stream for purposes of supplying CO2 for commercial applications or that capture the CO2 stream in order to utilize it for geologic sequestration where capture refers to the initial separation and removal of CO2 from a manufacturing process or any other process,
- (b) facilities with CO2 production wells located in the State of California that extract or produce a CO2 stream for purposes of supplying CO2 for commercial applications or that extract a CO2 stream in order to utilize it for geologic sequestration, and
- (c) importers (into the State of California) and exporters (out of the State of California) of bulk CO2.

This provision of the MRR is similar to the US EPA definition of CO2 suppliers, but differs in one significant respect: CARB's definition does not include the language in 40 C.F.R. Section 98.420(b), which clarifies that the definition of CO2 supplier is focused on upstream supply and excludes entities that purchase raw CO2 gas from producers.

Praxair appreciates staff's recent informal clarification on this issue. Praxair was concerned that without clarification, multiple entities along the same supply chain would be subject to the regulation (i.e. "pancaking" the compliance obligation). Praxair was concerned that pancaking the compliance obligation would be counterproductive to CARB's GHG emission reduction goals. Praxair exports CO2 outside of California, and without staff's clarification, Praxair may have a compliance obligation despite the fact that it is not the original supplier. The effect of this export would be a double counting of the CO2 molecules and thus a double compliance obligation – the first obligation falling on the producer and the second obligation falling on the supplier. This result would place Praxair at a competitive economic disadvantage, with respect to product CO2 being produced in California, with CO2 that is sourced from other states' markets, resulting in leakage.

Another real life example of leakage that can occur if exports are required to have allowances is as follows. A few years ago Praxair was involved with a promising CO2 reduction project in which CO2 recycled from a refinery was shipped out-of-state to a customer that previously generated their own CO2 from an on-site lime kiln operation. By changing from CO2 production to purchase of recycled and purified refinery off-gas, this project resulted in a "net" CO2 emissions reduction. If under the Proposed Rule this exported CO2 would now be subject to a compliance burden, there is a strong likelihood that the economics of this transaction will erode, and the customer will revert to producing their own CO2. Thus, the "pancaked" compliance obligation would not only increase costs to CO2 suppliers, there would also be emissions leakage or emissions benefits that are no longer cost-effective to undertake.

To effectuate staff's intent, ensure consistency with the US EPA's reporting requirements and ensure that the cap-and-trade compliance obligation is not "pancaked" on multiple entities for the same activity, Praxair requests CARB include the following language from 40 C.F.R Section 98.420(b) in Section 95102(a)(59) of the MRR. The following language contains the same language as 40 C.F.R Section 98.420(b), as well as additional clarifications which are identified in underline text. CARB should add the following language to Section 95102(a)(59):

(b) This source category is focused on upstream supply. It does not cover:

(1) Storage of CO2 above ground or in geologic formations.

(2) Use of CO2 in enhanced oil and gas recovery.

(3) Transportation or distribution of CO2, unless such transport or distribution involves the import or export of bulk CO2.

(4) Purification, compression, or processing of CO2.

(5) Capture of CO₂ from a production process unit at an upstream facility under separate ownership and control;

(6) On-site use of CO₂ captured on site.

Praxair appreciates the opportunity to provide these comments.

Respectfully submitted,



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