

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

August 10, 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  
July 7, 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 July 7, 2011 (specific sections identified below).

**Applicability:**

**Item A—95101(f)Exclusions**--Please add the following item (9):  
95101(f)(9) Fugitive methane emissions from coal storage

**Cement Provisions**

**Item B--Section 95110**, Cement production:

1. Please add to 95110(c)(3) a reference to "as required by 98.83(d)", as is shown in 95110(c)(2), after "raw material consumption or monthly clinker production", given that these sections will only apply where this data is required under federal standards.
2. Please add the following sentence to 95110(d): "For all items listed below, the measurements will be based on the same procedures as are used for accounting purposes (which are audited per Financial Accounting Standards Board [FASB] guidelines), and, where these procedures are used, these items will be exempt from 95103(k) requirements. Missing data procedures for the items listed below will be best available estimates based on information used for accounting purposes. Verification of data for the items below will consist of checking that the data conforms to procedures used for accounting purposes."

This change is based on FAQ#60 (May 2011) for the old AB32 MR regulation, given that these measurements could be based on kiln feed weigh feeders, clinker weigh feeders, truck/rail weight tickets, physical inventory measurements, or other procedures used for accounting purposes. FAQ #60 (May 2011) states that "It is reasonable to expect that truck weight tickets would meet the fuel measurement accuracy requirements of the reporting regulation [such as those in 95103(k)], since they are the basis of a commercial transaction similar to gas revenue meters." Because these weigh scales are government-regulated and the other procedures meet financial accounting requirements, the associated data should be acceptable under AB32 MR.

Please also include in future guidance documents a statement that the truck and rail scale calibration procedures inherent in approvals obtained from the California Department of weights and measures, meet all accuracy requirements under 95103(k), where applicable. Further information on state regulations of cement plant truck scales can be provided upon request.

3. Please modify 95110(d)(3): Replace “Annual quantity of limestone and gypsum consumed for blending (short tons)” with “Annual quantity of limestone, gypsum (including both natural and synthetic gypsum), and other clinker substitutes consumed for blending (short tons)”

**Stationary fuel combustion sources**

**Item C--Section 95115(e)(2), procedures for partially biogenic fuels--**Please add the following sentence:

“For specific cases where fuel biogenic fraction data has been consistent based on a minimum of one year of monthly data, ARB will consider removing the mandate for ongoing sampling and providing a default value instead, upon receiving a documented request from affected entities.”

This is because previous testing has shown these values to be very consistent over time.

**Item D—Section 95115(g), fuel use for CEMS units—**Please add the following sentence:

“Fuel use monitoring devices for units covered under this paragraph are exempt from the provisions of 95103(k)”

**Product data provisions:**

**Item E--Section 95103(k)—Measurement accuracy requirement:**

Section 95103(k) has been extended to apply to feedstock monitoring, weigh scales, and many other types of monitoring devices.

1. Section 95103(k), measurement accuracy requirements, states that it does not apply to “stationary fuel combustion units that use the CEMS methodologies in 40CFR75”. These words should be replaced with the following:

“stationary fuel combustion units that measure CO<sub>2</sub> emissions in accordance with 40CFR98(a)(4).”

This will then extend this inapplicability statement (as likely intended by ARB) to units with either 40CFR75 or 40CFR60 CEMS.

2. Please add the following to the end of the sentence in 95103(k):  
“...must meet the requirements of paragraphs (k)(1)-(10) below for calibration and measurement device accuracy, except where exempted in the sector-specific sections 95110 through 95123 or as indicated below.”

**Missing data provisions:**

**Item F—Section 95131(b)(14)(A)—Review of missing data substitution:**

Please add the following sentence:

4. “For automated missing data procedures implemented in a CEMS data acquisition system (DAS), the verification will consist of checking the program logic documentation provided by the DAS vendor. For items where reporting and missing data substitution is based on procedures used for accounting purposes, verification will consist of checking that the data conforms to procedures used for accounting purposes.”

**Item G--Section 95131(b)(14)(D)—Review of missing data substitution:**

Section 95131(b)(14)(D) specifies that “if greater than 20 percent of any single data element used to calculate emissions are missing or any combination of data elements that would result in more than 5% of a facility’s emissions being calculated using missing data requirements, the verifier will note, at a minimum, a non-conformance as part of the verification statement”. In the case of a cement plant with a single cement kiln, the statement “or any combination of data elements that would result in more than 5% of a facility’s emissions being calculated using missing data requirements” essentially converts to “if greater than 5% of any single data element are missing” (because the kiln represents most of the facility’s emissions) which greatly increases the applicability of this statement in the case of cement plants with single kilns. The selection of the 5% standard, relative to the 20% standard, appears to be arbitrary. In addition, the statement “at a minimum” is not clear. Therefore, we are asking that ARB delete the portions of (D) “or any combination of data elements that would result in more than 5% of a facility’s emissions being calculated using missing data requirements” and “at a minimum”, to avoid making this provision inconsistent with (A), (B), and (C) in this section.

**Item H--Section 95131(b)(14)(E)—**This section states that “the verifier must confirm that missing data substitutions were not used for product data”. This statement implies that it is not possible to use missing data for product data, which does not seem to make sense. For example, in the normal course of business operations, companies sometimes have to use estimates when calculating product quantities (minor revisions for a variety of reasons, such as staff error, weather circumstances preventing readings from being taken, etc.), and these estimates follow standard business practices and are acceptable for financial statements. We request that this language be changed to say:

“The verifier must confirm that missing data substitutions used for product data, if any, conformed to standard business practices used for accounting purposes.”

**Biomass-derived fuel provisions:**

**Item I--95103(j)(2)** —Forest-derived wood and wood waste requires an identification number to show that it meets the requirements of 95852.2. Please note that this requirement will have the practical effect of eliminating all wood supply delivered through middlemen, which is the current supply route for most cement plants (especially in Southern California), because middlemen do not have the ability to segregate and track individual lots of wood waste. Therefore, due to this requirement, cement plants may no longer be able to use forest-derived wood waste as a biomass-derived fuel without a compliance obligation under AB32 cap & trade. To promote the

use of biomass-derived fuels and to avoid giving an advantage to larger operations in a quasi-monopolistic situation, we recommend that ARB identify a more practical alternative to track forest-derived wood waste given to middlemen, for use as fuel in other locations.

**Item J--95103(k) for biomass derived fuels**—Please modify the exclusion for “devices that are solely used to measure parameters used to calculate emissions without a compliance obligation” as follows “devices that are solely used to measure qualifying biomass-derived fuel throughput and other parameters used to calculate emissions without a compliance obligation”.

**Item K--Section 95131(i), initial paragraph**—This section states that “in the absence of certification of the biomass-derived fuel by an accredited certifier of biomass-derived fuels, the verification body is subject to the requirements of sub-article 4 of this article as modified below when verifying biomass-derived fuel”. Please define “accredited certifier of biomass-derived fuels” in the regulation, and explain in the supporting documents how this option will work and be made available to all facilities.

**Item L—Section 95131(i)(1)(A)**--Changes in biomass emissions affect whether a less intensive verification can be chosen in the second and third years. Full verification applies (in the second and third years of the compliance period, when it would not otherwise be required) when there has been a change in the entity (supplying biomass-derived fuel) immediately upstream in the chain of title or there has been an increase of more than 25% in the volume of fuel from the entity immediately upstream in the chain of title. Please modify this language as follows, given that biomass-derived fuel measurements are completely independent of other measurements, and hence changes in biomass-derived fuels should not trigger verification of unrelated measurements, and that full verification of biomass-derived fuel calculations should not be required for a 25% throughput increase except at the discretion of the verification body (just as 95130(a)(1) leaves this to the discretion of the verification body in case of 25 percent changes in total reported GHG emissions):

“In addition to the full verification requirements in sections 95130(a)(1)(A)-(D), a full verification of biomass-derived fuel calculations is also required when there has been a change in the entity upstream in the chain of title. The verification body must provide information on the causes of the emission changes and justification in the verification report if a full verification of biomass-derived fuel calculations was not conducted in instances where there has been an increase of more than 25% in the volume of fuel from the entity immediately upstream in the chain of title.”

**Item M—Section 95131(i)(1)(D)(3)**—Please define in later guidance documents what documentation will be needed to support the contention in 95852.1 (cap & trade rule) that “no party may sell, trade, give away, claim or otherwise dispose of any of the carbon credits [or other instruments] attributed to the fuel production that would prevent the resulting combustion from not having a compliance obligation”. In general, guidance is needed on verification procedures for biomass-derived fuels involving supplier checks, given that this is outside the direct control of the receiving facility.

**Item N--Enforcement Provisions -- Section 95107** -- ARB's revision to Section 95107(f) requires it to "consider all relevant circumstances, including the criteria in Health and Safety Code section 42403(b)" in determining any penalty amount for violation of the reporting requirements. This minor clarification is appropriate, because it highlights the need for CARB to consider circumstances in determining a penalty amount. Factors mentioned in HSC § 42403(b) include the extent of any harm caused, the nature and persistence of a violation, the frequency of past violations, and the financial burden to the defendant. Explicit reference to consideration of such factors helps ensure consistency of the AB 32 program with other environmental programs and should help to decrease the likelihood that severe penalties will be imposed for inadvertent reporting errors. Moreover, the modifications to clarify that certain violations will not be considered daily violations are also important to help limit unreasonably punitive violation assessments. Nevertheless, several other provisions of Section 95107 remain problematic because they are too severe, excessively vague, and duplicative of existing authority.

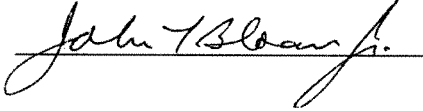
1. Sections 95107(c) and (d) are excessively vague -- Section 95107(c) defines "[e]ach failure to measure, collect, record or preserve" required information as a separate violation. This provision could be interpreted as treating measuring, collecting, recording, and preserving as separate violations -- in which case a single error could result in four violations. This provision should be modified to clarify that a single error results in a single violation. Section 95107(d) allows the Executive Officer to "revoke or modify any Executive Order issued pursuant to this article as a sanction for a violation of this article." Absent further guidelines to ensure CARB's actions in revoking or modifying an Executive Order are proportionate and relevant to the magnitude of a violation, actions taken under this provision would likely be arbitrary and capricious.

2. Sections 95107(e) and (g) are unnecessary because they are duplicative of existing authority -- Section 95107(e) defines the violation of any condition of an Executive Order that is issued pursuant to this article as a separate violation. This provision is unnecessary, because Executive Orders typically specify the consequences of a violation of the Order. Moreover, "condition(s)" may not be connected, such that treating multiple conditions as separate violations could give CARB more than "one bite at the apple" for what should be considered a single violation. Section 95107(g) states that any violation of this article may be enjoined pursuant to Health and Safety Code section 41513. This provision is unnecessary because it duplicates existing authority.

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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,

A handwritten signature in black ink, reading "John T. Bloom, Jr.", written over a horizontal line.

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

CC:

*Edie Chang, California Air Resources Board*  
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