



December 8, 2008

Mary Nichols, Chair
California Air Resources Board
1001 I Street
Sacramento, CA 95814
<http://www.arb.ca.gov/lispub/comm/bclist.php>

Re: AB 32 Proposed Scoping Plan

Dear Chairwoman Nichols and Honorable Board Members:

The following comments are submitted on behalf of the Environmental Defense Center (EDC), a public interest law firm headquartered in Santa Barbara, California.¹ The EDC protects and enhances the environment through education, advocacy and legal action. EDC has a long history of enforcing laws and promoting policy to improve air quality, and recently has become a leader in the effort to address greenhouse gas emissions and to reduce impacts associated with such emissions, including climate change and ocean acidification.

The EDC supports the goals embedded in AB 32, and seeks to ensure that such goals are met in a timely, effective and equitable manner. We support measures that require in-state reductions and focus on actual emissions reductions rather than offsets. In general, we find that the Proposed Scoping Plan places too much reliance on cap and trade, and not enough emphasis on regulations that will ensure timely, effective emission reductions. The Proposed Scoping Plan should be revised to focus on regulations first, as a means to develop clear and enforceable reductions, and then look to cap and trade or other market mechanisms to fill any gaps and provide further incentives.

The following sets forth our specific concerns regarding the Proposed Scoping Plan and accompanying environmental review.

¹ The EDC is also represented in a comment letter submitted by Earthjustice. This letter is intended to supplement the Earthjustice letter.

Cap and Trade

We recognize that AB 32 allows market-based measures to help effectuate GHG emission reductions; however, such measures must “result in the same greenhouse gas emission reduction, over the same time period, as direct compliance with a greenhouse gas emission limit or emission reduction measure adopted by the state board pursuant to this division.” Health & Safety Code §38505(k)(2). Many of the market based components of the Proposed Scoping Plan, including cap and trade, do not ensure the same GHG emission reduction as regulations would require.

In addition, cap and trade conflicts with AB 32’s requirements for reductions in “statewide greenhouse gas emissions,” and for “real, permanent, quantifiable, verifiable, and enforceable” emissions reductions.

According to the Proposed Scoping Plan, 49% of the cumulative reductions may come from a cap and trade program with the WCI partner states and Canada. Only 51% of the reductions have to come from within California. Health & Safety Code §38550 provides that the state must “determine what the statewide greenhouse gas emission level was in 1990, and approve in a public hearing, a *statewide greenhouse gas emissions limit* that is equivalent to that level, to be achieved by 2020.” (Emphasis added.) “Statewide greenhouse gas emissions” are defined as “*the total annual emissions of greenhouse gases in the state*, including all emissions of greenhouse gases from the generation of electricity delivered to and consumed in California, accounting for transmission and distribution line losses, whether the electricity is generated in state or imported. Statewide emissions shall be expressed in tons of carbon dioxide equivalents.” Health and Safety Code §38505(m), emphasis added.

As such, we believe that relying on the WCI violates the requirement in AB 32 that limits greenhouse gas emissions *in the state*. The Proposed Scoping Plan must be revised to analyze the feasibility of achieving higher in state reductions. As noted in the Earthjustice letter submitted on our behalf, the Proposed Scoping Plan fails to include the *maximum* technologically feasible and cost-effective emission reductions, even to the point of excluding measures included in the Draft Plan, and instead relies on the 2020 emissions target as the ceiling for reductions.

Relying on out of state emission reduction programs also violates Health & Safety Code § 38562(d)(1), which requires that any greenhouse gas emission reductions are “real, permanent, quantifiable, verifiable, and enforceable by the state board.” Cap and trade programs, especially if extended out of state, are inherently problematic due to the lack of adequate monitoring, additionality, verification, enforcement, accounting, and public disclosure.

Finally, cap and trade programs result in unintended consequences, including impacts relating to air quality, public health, and environmental justice. Health & Safety

Code §38570 requires that the state consider the potential for impacts of market-based mechanisms on communities that are already adversely impacted by air pollution.

As stated above, the Proposed Scoping Plan should focus on regulatory approaches first, and then add cap and trade as an additional strategy based on incentives. To the extent cap and trade is included in the Plan (and again, only after regulatory approaches are exhausted), trades should be limited in polluted areas to avoid environmental justice, air quality and public health concerns.

Reliance on Non-Mandatory Programs and Strategies

The Proposed Scoping Plan relies on many programs that are not mandatory; hence, it is not realistic or appropriate to rely on such programs to either meet the mandatory goals of AB 32 or satisfy CEQA requirements for ensuring adequate, effective mitigation of impacts.

For example, the Plan relies on SB 375 to reduce greenhouse gas emissions, despite the fact that SB 375 is premised on incentives and encouragement rather than mandates. As such, the Plan overstates the effect of SB 375 in curbing greenhouse gas emissions.

The Plan also relies on trading, auctions and other “market mechanisms” that, while laudable in advancing business interest, do not assure additional, verifiable emissions reductions, in violation of Health and Safety Code §38562(d)(1).

Environmental Review

The CEQA Functional Equivalent Document (FED) for the Scoping Plan must address the issues raised above. Of special concern are the impacts associated with cap and trade. The FED fails to analyze how emission reductions under a cap and trade program would be quantified to ensure additionality, verifiability, and enforceability. The FED must also analyze what impacts would result from cap and trade, including impacts relating to air quality, public health and environmental justice. In doing so, the FED must analyze the full life cycle impacts associated with cap and trade.

The FED gives short shrift to Alternative 4, which would replace cap and trade with source-specific regulatory requirements. The FED states that impacts from this Alternative would be similar to the proposed action, despite the fact that regulation-based emission reductions would result in relatively minimal impacts whereas cap and trade may result in significant air quality, public health and environmental justice impacts. The FED also states that emission reductions from this Alternative are unknown, when in fact there are additional measures that could be included in the Proposed Scoping Plan, as noted in the letter submitted by Earthjustice.

In conclusion, the Proposed Scoping Plan represents a good start, but must be revised to be consistent with AB 32’s mandates for real, enforceable reductions in

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statewide greenhouse gas emissions. The Plan must be revised to include more regulatory programs that will ensure maximum verifiable reductions.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Krop". The signature is written in a cursive, somewhat stylized font.

Linda Krop,
Chief Counsel