

Comments on the AB 32 Proposed Scoping Plan
Submitted by Ken Johnson on December 8, 2008

Re: ARB Counsel Jenne's statement at the November 21, 2008 Board meeting

At the November 21, 2008 Board meeting, I posed the following question concerning ARB's Proposed Scoping Plan (transcript page 11):

... Suppose that the statute had been written with the word "maximum" omitted from that language ["maximum technologically feasible and cost effective emission reductions"] ... Is there anything in what you've proposed that is significantly different from what it would be if the word "maximum" were omitted ...?

ARB staff (Counsel Jenne) responded as follows (transcript page 25):

... Regarding Mr. Johnson's question, which was really about statutory interpretation, we designed the plan to achieve the 2020 target by using the most cost-effective measures we could identify. If we are able, as we learn more, to identify additional measures that are within the same range of cost effectiveness, and they're technologically feasible, the Board would be required to adopt such measures to fulfill the statutory mandate in AB 32 to adopt the maximum technologically feasible and cost-effective measures.

We would also note that the plan already provides for that in some degree. We have a margin of safety in the plan to achieve additional reductions beyond the 2020 target to make sure we actually get there.

As evidenced by this response, the statutory interpretation adopted by staff obfuscates the meaning of AB 32, and contravenes the clear legislative intent, by disassociating the adjective "maximum" from the noun "reductions" and by predicating staff's interpretation of "cost-effective" on a predetermined emission "target".

The first paragraph of the response paraphrases the statute, but substitutes "measures" for "greenhouse gas emission reductions." It is not clear what quantity is being maximized in this context. "Maximum" appears syntactically to qualify "measures," but "maximum measures" does not make sense semantically. The reference to "most cost-effective measures" suggests that staff reads the word "maximum" as applying to "feasible and cost-effective" in the above context and in the statute (as in "maximally feasible and cost-effective"). But that does not make grammatical sense because "maximum" is not an adverb. In any case, there appears to be no recognition that in the context of the statute "maximum" qualifies "reductions."

The second paragraph of the response mentions "reductions" but omits the qualifier "maximum." The "additional reductions" amount to about one percent of the

2020 emission limit, and this small overshoot is only intended to accommodate regulatory uncertainty – not to maximize reductions.

My question was actually not about statutory interpretation; it was about whether the qualifier “maximum” has affected the plan in any significant way (irrespective of how the word is interpreted). The staff response did not directly answer the question, but staff’s assertion that the plan was designed merely to “achieve the 2020 target” indicates that the maximum-reduction requirement of AB 32 has not affected reduction levels under the plan, contrary to the clear legislative intent.