



Western States Petroleum Association
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Catherine H. Reheis-Boyd

Chief Operating Officer and Chief of Staff

August 1, 2008

Ms. Mary Nichols
Chair, California Air Resources Board
1001 I Street
Sacramento, CA 95814

Subject: **AB 32 Implementation – Draft Scoping Plan**

Dear Ms. Nichols:

The Western States Petroleum Association (WSPA) is pleased to submit the following comments on the Draft Scoping Plan, which was released June 26, 2008. WSPA is a non-profit trade association representing twenty-six companies that explore for, produce, refine, transport and market petroleum, petroleum products and natural gas in six western states – California, Arizona, Nevada, Oregon, Washington and Hawaii. WSPA members with operations in California and other western states will all be impacted by the implementation of AB 32.

WSPA has been actively involved with the California Air Resources Board (CARB) in developing a plan for the implementation of AB 32 since its adoption. Our work with CARB on the inventory and reporting requirements is an outstanding example of how the public process can facilitate regulations as they take effect.

WSPA participated in all the workshops around the state and listened intently as CARB described the State's proposed policy and legal framework for a California program. We understand that CARB expects the State program to link regional and national efforts to not only achieve the goals of AB 32 but to also lead the world to a less carbon intensive future. We believe that California cannot "go-it-alone" and success requires linkage with other programs.

WSPA is concerned, however, with the lack of specifics or detail in the Draft Scoping Plan (Draft Plan) as well as a lack of discussion describing concepts that the Final Plan would include. For example, the Draft Plan:

- Makes scant mention of an actual trading market. The Draft Plan envisions a lesser role in reducing emissions than command and control despite the fact that market systems are known to result in more cost-effective emission reductions than command and control. Limiting market-based reductions to approximately 20% of the necessary reductions will increase the cost of compliance to business and industry and inevitably increase the costs of energy and consumer goods to Californians.

CARB should revisit the Draft Plan's emphasis on command and control and instead look toward an enhanced role for market-based mechanisms that may help reduce the costs of state programs. Market mechanisms have been successful throughout the world, and there is every reason to believe that they would be successful in helping implement AB 32 in the most cost-effective manner as required by statute.

- Makes limited use of offsets. The Final Plan should recognize the need for offsets and develop options to encourage and enhance availability rather than limiting them. While the Draft Scoping Plan appears to recognize that offsets provide opportunities for the most cost-effective reductions and can reduce compliance costs, the use of offsets appears to be limited. Recent reports have shown that by limiting the availability of offsets as suggested by Draft Plan, the state could lose more than 300,000 jobs and decrease the GSP by as much as 1%.¹

Based on our experience with criteria pollutants, which rightly or wrongly has formed the basis of Plan elements, the Final Plan should emphasize the need for flexibility and creativity and the critical role that offsets will play. In fact, the shortage of offsets is a key issue in the South Coast – an issue that the SCAQMD is working to address. To ensure that California reduces GHG emissions to 1990 levels by 2020 in a cost-effective manner as required by the statute, CARB must ensure that the uses of offsets are not restricted

- Confuses the issue by defining the concept of co-benefits. Simply achieving the required emission reductions will be a challenge. The Draft Plan's attempts to make certain elements more attractive by adding a "co-benefit" instead adds yet another layer of regulation and economic burden.

Given that GHG control is a global challenge that will require unprecedented effort, adding a co-benefit factor to somehow make controls appear more cost-effective or practical is unwise and ultimately misleading.

- Makes use of potential auction revenue - or any revenue – that is as yet undefined. Even if one accepts that auctions will occur, at least three issues are not addressed: i) how would the auctions be handled and how would market forces influence auction behavior? ii) how would funds from the auctions be administered and where would they be used? and, iii) assuming auctions resulted in funds that could be used to generate GHG emission reductions, how would those reductions be manifested in the market (auctions or fee assessment) next year?

¹"The Role of Offsets in Enhancing the Cost-Effectiveness of AB 32," CRA International, April 23, 2008.

- Contains little mention of Carbon Capture and Sequestration (CCS). This approach could yield great environmental and economic benefits. The Final Plan should mention and analyze CCS opportunities. Further we urge that the Final Scoping Plan promote research, development and demonstration of CCS in California and the same type of implementation streamlining that is required for energy efficiency and CHP projects.

There are some critical elements that need to be examined.

California must get it right – the need for public input

WSPA recognizes that achieving the goals of AB 32 is an unprecedented, complex and difficult undertaking. We had expected to see more details in the Plan. Hopefully, the fact that it is not more detailed means there will be much more dialogue and inclusion of stakeholder input as we bring issues into sharper focus between now and October when the complete and final plan is due.

It is critically important that we get this right the first time, including creating measures to make adjustments as needed. California cannot afford an experiment that will be costly for California's families already struggling in the current economy.

Core Principles

AB 32 requires that CARB prepare and approve a "Plan" for achieving, by 2020, the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions from sources or categories of sources of GHGs. If the State is serious about succeeding in meeting the very ambitious AB 32 goals, we will need to remain focused on some core principles. Those principles include:

- ensuring California's program is in harmony with whatever new federal climate program is ultimately adopted as well as with current federal and California legal requirements;
- regulations and required technologies that are technologically feasible and well-supported in the record;
- programs that are honestly and rigorously-evaluated in the record and demonstrated to be cost-effective
- programs that promote innovation;
- utilizing the best available science, economics and technical analysis in designing the program, as required by AB 32 and other applicable California and federal laws; and,
- Utilizing market-based mechanisms, such as a well-designed cap and trade program that are a significant part of the ultimate program.

We urge CARB to embrace the above principles and ensure they are followed where required by state and federal law.

Workable Cap and Trade (C/T) Program

A well-designed cap and trade instrument must include the following elements:

- minimize auctions; CARB should not initially use auctioning as this will create an uneven playing field, which is a disadvantage to industries within California and requires additional legislative authority;
- is designed to be compatible with and linked to future regional and the federal programs without undercutting California's competitiveness;
- a robust offsets program that links regional, federal and international markets without geographic or quantity limitations;
- a broad market-based program that minimizes direct regulation through command and control and instead emphasizes a Cap and Trade system; and,
- where application of command and control is necessary for addressing carbon market failures, i) the measures are technologically feasible and cost-effective as required by AB 32; ii) the cost-effectiveness evaluation and criteria are separate from any co-benefit issues; and iii) the measures meet the requirements of the Health & Safety Code, California Administrative Procedures Act, CEQA, and other California and federal requirements that may apply to particular topics like fuels regulation.

We urge that CARB embrace the above elements to ensure a well-designed cap and trade program in the Final Scoping Plan.

An Efficient and Cost Effective Program

Throughout the process, WSPA has engaged constructively with CARB to ensure the successful implementation of AB 32 in accordance both with its terms and with all other applicable California and federal laws. WSPA also has consistently stated that successful implementation requires adoption of an efficient and cost-effective program.

On June 17, 2008, we submitted a comment letter on CARB's white paper and approach to making cost-effectiveness determinations. We highlighted that proper evaluation of cost-effectiveness is critical to the successful implementation of AB 32 and that the proper cost-effectiveness analysis must include the impacts of leakage and the use of offsets to minimize leakage.

Our June 17 letter also urged CARB staff to remain **very cautious in allowing its cost-effectiveness determinations to be influenced by estimates of co-benefits from reductions in "co-pollutants."** We believe the comments in our letter are still very relevant and important as you move to the Final Scoping Plan. We urge you to review and appropriately incorporate our cost-effectiveness and co-benefit comments into the Final Scoping Plan as it appears that those comments were not considered in the Draft Plan.

Treatment of Combined Heat and Power

The draft Scoping Plan seems to embrace energy efficiency and combined heat and power (CHP). Implementation of the many measures proposed by AB 32, including energy efficiency

and CHP will often require modification projects at facilities. To enable timely compliance with requirements developed under AB32, CARB must:

- address and include provisions in the final plan to remove the economic and regulatory barriers and hurdles;
- provide CEQA guidance and permit streamlining guidance in the final Scoping Plan;
- ensure that any program that may implement local government targets does not duplicate, overlap, inhibit or conflict with the industrial sector program; and
- address development of ARB enforcement/compliance provisions such as breakdown and variance provisions.

Without these “enablers”, GHG reductions and compliance with requirements developed under AB32 may be unnecessarily delayed.

Use of Fees/Revenues

The draft Scoping Plan includes a significant discussion on fees and use of revenues from those fees. We believe AB 32, however, does not appear to authorize CARB to impose “carbon fees” beyond those necessary to cover the administrative costs of the program. Therefore, use of a carbon fee as discussed in the draft Scoping Plan requires additional legislative authority for CARB to assess and for CARB to allocate/distribute funds generated by such fees.

Carbon Capture and Sequestration (CCS)

The plan does not include a discussion of carbon capture and sequestration (CCS). We believe CCS can play a critical role in achieving GHG emissions to meet the 2050 target. We urge CARB to include in the final Scoping Plan development of protocols and a regulatory framework for a workable CCS program (as is required by AB 32 – H&SC §38561(f)) in the near term.

Further, we urge that the Final Scoping Plan promote research, development and demonstration of CCS in California and the same type of implementation streamlining that is required for energy efficiency and Combined Heat and Power (CHP) projects.

Transportation Fuels Inside the Cap and Low Carbon Fuels Standard (LCFS)

The Draft Scoping Plan envisions the Low Carbon Fuel Standard (LCFS) as a major contributor to achieving the AB 32 emission reduction goal. CARB is also evaluating inclusion of transportation fuels in the cap and trade scheme by 2020.

The LCFS in and of itself is a major undertaking requiring the use of breakthrough innovations that have not yet been developed. We urge CARB to carefully assess the pros and cons of including transportation fuels under the cap and trade instrument. The Final Scoping Plan must not inhibit industry’s ability to provide adequate, reliable and affordable supplies of energy.

5-Year Review and Update

As required by AB 32, CARB statements at the June 26 Board Hearing highlighted the mandatory five-year review and update. We believe this review and update is a critical AB 32 requirement allowing all of us to ensure we are on the right track and to make any needed course

corrections. CARB should maximize this opportunity by clearly articulating in the scoping plan the proposed set of decision-making criteria that will be used to assess program success. Of critical importance are economic impacts, technology assessments, cost effectiveness surveys and other such analyses.

There is nothing in the Draft Scoping Plan regarding tracking mechanisms or early indicators that will identify and disclose the effect of the plan on energy supply and its impact on the economy. We urge that the Final Scoping Plan incorporate such tracking mechanisms or early indicators that will allow for CARB to identify needed course corrections on an ongoing basis - the five year review is the minimum required by AB 32.

AB 32 also requires that in preparing the Scoping Plan, CARB must address certain areas. This includes consulting with all state agencies with jurisdiction over GHG sources (such as the PUC and the Energy Commission); considering relevant information from other states, localities and nations; evaluating total potential costs and total potential economic and noneconomic benefits; taking into account the relative contribution of each source or source category to statewide GHG emissions, taking into account the potential for adverse effects on small businesses; recommending a de minimis threshold; and, identifying opportunities for emission reductions measures from all verifiable and enforceable voluntary actions (including, but not limited to carbon sequestration projects and best management practices).

We urge that the Final Scoping Plan address these AB 32 requirements particularly in the area of assuring supply of energy to the economy.

Ultimately, California consumers will judge the program's success. California will still need adequate, reliable and affordable supplies of energy, including electricity, heat and transportation fuels. CARB needs to ensure that goal can be achieved as we move into a lower carbon world.

Thank you for considering our views and comments. If you have any questions, please contact me at (916) 498-7752.

Sincerely,

A handwritten signature in black ink, appearing to read "Catherine A. Bryd". The signature is fluid and cursive, with the first name "Catherine" and last name "Bryd" being more legible than the middle initial "A".

cc: Mike Scheible
Chuck Shulock
Bob Fletcher