State of California
AIR RESOURCES BOARD

Resolution 09-36

September 25, 2009

Agenda Item No.: 09-6-5

WHEREAS, the Legislature has enacted the California Global Warming Solutions Act of 2006 (AB 32; Health and Safety Code section 38500 et seq.), which declares that global warming poses a serious threat to the economic well-being, public health, natural resources and environment of California, and creates a comprehensive multi-year program to reduce greenhouse gas emissions that cause global warming;

WHEREAS, section 38510 of the Health and Safety Code designates the Air Resources Board (ARB or Board) as the State agency charged with monitoring and regulating sources of greenhouse gas emissions in order to reduce these emissions;

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize ARB to adopt standards, rules, and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, section 38597 of the Health and Safety Code authorizes the Board to adopt by regulation a schedule of fees to be paid by the sources of greenhouse gas emissions;

WHEREAS, section 38597 of the Health and Safety Code requires that the fees be deposited into the Air Pollution Control Fund and would be available, upon appropriation by the Legislature, for purposes of carrying out AB 32;

WHEREAS, section 38561(a) of the Health and Safety Code directed the Board on or before January 1, 2009, to prepare and approve a Scoping Plan for achieving the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions by 2020;

WHEREAS, on December 11, 2008, the Board unanimously voted for the Climate Change Scoping Plan;

WHEREAS, on May 7, 2009, the Executive Officer approved the Functionally Equivalent Document prepared for the Climate Change Scoping Plan in accordance with the California Environmental Quality Act;

WHEREAS, ARB's approved Climate Change Scoping Plan identifies the proposed AB 32 Cost of Implementation Fee regulation as necessary to implement AB 32;

WHEREAS, for the 2007/2008 fiscal year, expenditures by ARB and the California Environmental Protection Agency (Cal/EPA) for AB 32 implementation were supported by loans. ARB received a loan of approximately $15.2 million from the Motor Vehicle Account (MVA) through the approved Budget and Cal/EPA received a loan of approximately $300,000 (SB 77, Chapter 171, Statues of 2007; and SB 78, Chapter 172, Statues of 2007);

WHEREAS, for the 2008/2009 fiscal year, the expenditures by ARB and Cal/EPA were covered through a $32 million loan from the Beverage Container Beverage Recycling Fund (BRCF). The loan was approved with repayments spelled out within the Budget Act (AB 1781, Chapter 268, statutes of 2008);

WHEREAS, for the 2009/2010 fiscal year, the Budget Act (SBX3 1, Chapter 1, Statutes of 2009) approved a $35 million loan from the BCRF for ARB and Cal/EPA expenditures;

WHEREAS, the revenues from the fee will support AB 32 program implementation activities undertaken by ARB, Cal/EPA and other state agencies that have legislatively approved positions that are directly linked to AB 32 and repayment of loans;

WHEREAS, section 38530 of the Health and Safety Code directed ARB, on or before January 1, 2008, to adopt regulations to require the reporting and verification of statewide greenhouse gas emissions;

WHEREAS, on December 6, 2007, the Board voted to approve the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (Mandatory Reporting Regulation);

WHEREAS, Resolution 07-54 directed staff to return to the Board as needed to amend the Mandatory Reporting Regulation to include additional emission sources, update emission estimation methods, or provide other enhancements to the regulation;

WHEREAS, the Mandatory Reporting Regulation is set forth in sections 95100 – 95133, title 17, California Code of Regulations (CCR) and became effective on January 2, 2009;

WHEREAS, ARB has developed an electronic tool to facilitate electronic reporting of greenhouse gas emissions, including data needed to determine the proposed fee;

WHEREAS, the proposed amendment to the Mandatory Reporting Regulation would require the use of the California Greenhouse Gas Reporting Tool for reporting of greenhouse gas emissions and data supporting the proposed fee; and

WHEREAS, the Board has considered the impact of the proposed regulations on the economy of the State and the potential for adverse economic impacts on California business enterprises and individuals;

WHEREAS, the California Environmental Quality Act and Board regulations require that no project that may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, a public hearing and other administrative proceedings have been held in accordance with the provisions of chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code; and,

WHEREAS, the Board finds that:

> The reporting requirements of the proposed regulations which apply to businesses are necessary for the health, safety, and welfare of the people of the State;
>
> No reasonable alternative considered or that has otherwise been identified and brought to the attention of ARB would be more effective in carrying out the purpose for which the regulations are proposed, or be as effective and less burdensome to affected private persons and businesses than the proposed regulations; and
>
> The proposed regulations will not result in any significant adverse environmental impacts.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the adoption of sections 95200, 95201, 95202, 95203, 95204, 95205, 95206, 95207, and amendments to section 95104, title 17, CCR, as set forth in Attachment A, with the modifications set forth in Attachment B hereto, and the additional modifications relating to the Greenhouse Gas Reporting Tool that the Board identified at the September 25, 2009, public hearing.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to take final action to adopt the regulations set forth in Attachment A, with the modifications set forth in Attachment B and such other conforming modifications as may be appropriate, after making the modified regulatory language and any additional supporting documents and information available to the public for a period of 15 days, provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make modifications as appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if the Executive Officer determines that this is warranted.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to continue to evaluate ways to fund the State costs of AB 32, such as including additional sources of greenhouse gases, auctions or other mechanisms, and return to the Board as necessary and appropriate with proposed amendments to the AB 32 Cost of Implementation Fee regulation.

I hereby certify that the above is a true and correct copy of Resolution 09-36, as adopted by the Air Resources Board.

Monica Vejar

Monica Vejar, Clerk of the Board

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September 25, 2009

Identification of Attachments to the Board Resolution

Attachment A: Proposed Regulation for the AB 32 Cost of Implementation Fee and Proposed Amendments to the Existing Regulation for the Mandatory Reporting of Greenhouse Gas Emissions, as set forth in Appendix A to the Initial Statement of Reasons, released May 8, 2009.

Attachment B: Staff's Suggested Modifications to the Original Proposal (Distributed at the September 25, 2009 Board hearing)