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Re: Development of mandatory reporting requirements under AB32

Dear Mr. Bode and Mr. Thompson,

Please accept the following comments on the reporting regulation. They are a line by line assessment of the regulation. In addition, we have submitted a comment letter of general concerns signed jointly with NRDC. Please accept these as a pair.

Thank you,

Line item comments of the reporting regulation

Scope and coverage

1. Page 2 – Why is SIC 8299 (schools) exempt from the regulation? Although the regulation will be changed to NAICS codes, this code doesn't seem to encompass all schools other than colleges. This classification covers establishments primarily engaged in offering educational courses and services not elsewhere classified. Included in this industry are music schools, drama schools, language schools, short-term examination preparatory schools, student exchange programs, curriculum development, and vocational counseling, except rehabilitation counseling. (13 facilities in CEIDARS)
2. Page 2 – Why is SIC 8069 (hospitals) exempt from regulation? This only encompasses specialty hospitals. Establishments in this industry provide hospital services for patients who have usually already seen a physician at a general hospital or medical office. Although the regulation will change to NAICS codes, this code doesn't seem to encompass all hospitals.

Definitions (95102)

3. Page 4 – Cement plants definition is vague – how many plants does this definition return? "Engaged" in cement manufacturing could include a number of cement plants outside the standard 11. For example, 2000 census found 31 sites and CEIDARS

- database using SIC code 3241 finds 12. Do you need to do all 3 to be qualified (mine, quarry and calcine)? Perhaps an SIC code would be better?
4. Page 5 – “Common operational control” should be defined
 5. Page 6 – “Conflict of interest” definition includes a reference to occasions where a verifier’s objectivity “might be otherwise compromised”. What does this mean?
 6. Page 6 – “Day” is not defined. Is this a calendar day or business day? This is important for issues associated with enforcement on late reporting because violations accrue on a daily basis.
 7. Page 9 – “Less intensive verification activities needs to be better defined” If major facility modifications occurred at a facility, will a less intensive verification be allowed under an outdated sampling plan? There seems to be no provision for this.
 8. Page 13 – The definition of “renewable energy” includes wood and not biomass. Is this the intent? If so, why?
 9. Page 13 - “Source” – does this definition make any problems since it allows for one or multiple point sources to be included?
 10. Page 15 – “Verification opinion” includes a requirement that the verification process checklist items be completed. However, there is no other mention of such a checklist other than a sampling plan. This terminology should be changed.
 11. Page 15 – “Verifier” – since it is either the firm or an employee within the firm, and the 6 year time limit applies to “verifiers,” does this mean that a regulated company could never switch firms as long as it switched verifiers within the firms (as long as COI) is not triggered? Was that the intent? If so, this should be examined further.

General requirements

12. Page 16 – Will biomass be reported within a separate report or will it be a separate section of the same report? The structure of the regulation makes it look like an entirely separate report. This should be clarified.
13. Page 16 – Will process emissions and fugitives be reported within a separate report or will it be a separate section of the same report? The structure of the regulation makes it look like an entirely separate report. This should be clarified.
14. Page 17 – Stationary sources that are altered and will combust substantially less than 25,000 MT CO₂ can request an exemption. What is “substantially less” mean? This should be clarified.
15. Page 18 (c)(2) – Does the < 10 MW apply both to electric generation whether or not it is owned by a retail provider? This should be clarified.
16. Page 18 – Cement plants are subject to triennial verification, whereas refineries, hydrogen plants and stationary combustion at oil and gas extraction sites are annual. We object to this, see above.
17. Page 18 – Do minor cement plant permit modifications trigger the new verification requirement? Such as addition of a standby generator or a parts washer? This should be clarified.
18. Page 18 – Stationary combustion must have one of the years 2009, 2010, 2011 verified, then triennial after that. However, facilities must begin reporting in 2009. This means that they will report for 2 years before any verification. This is not in line with CCAR

and should be modified. Plants should get their emissions reports verified their first year of reporting.

Confidentiality

19. Facility emissions data will be partitioned by the source type. Where feasible, all emissions should be disaggregated to the individual source and not source type.
20. What level of access to certification reports / summaries submitted to CARB by the emissions verification team will be provided?
 - a. Chapter 10 of the WBCSD states that the scope of the verification work should be made available to the public to increase transparency, so then should the verification opinion associated with the report (for consistency purposes).
21. CARB indicated in the reporting workshop that not all process and activity data will be confidential. Rather, CARB has internal policies to review whether activity data is confidential and if it is not, the data can be released. Where are these policies?

Enforcement

22. What constitutes “false reporting”? No definition is present. This should be clarified.
23. If a report with false information is received, the regulation says it is a violation for each day received. Is this correct? Since this is not based on the number of pollutant parameters falsely reported or the severity of the falsity (misstatement), this doesn't treat the bad actors from the really bad actors in terms of amount of violations? Is this as intended? This should be clarified.
24. Late submittals get a violation for each day they are late. Is this calendar day or business day, or operating day? Day is not defined.

Cement Plant Emissions

25. Page 23 – Calculating emissions from alternative fuel use references the emissions factors for the specific fuels, however, no factor is available for tires. The regulations should be amended to include an emissions factor for tires?
26. Page 26 – The efficiency metric is in section (c) but lists 95110(b)(3) in the body of the section. Needs to be changed.
27. Page 26 - Efficiency metric calculation: Are all of the denominator factors added on a 1:1 ratio to displace clinker, or do some replace clinker at an alternate volumetric (or mass) ratio? This should be examined.
28. Page 26 – Efficiency metric policy: European cement plants advocate for inclusion into the EU ETS based on an efficiency metric and their ability to meet or beat it. Since only one year's worth of reporting will occur prior to development of the market system, there may be a push by the industry in the next year to raise the efficiency metric by importing less materials or by using less substitutes or CKD, thus showing they should get a higher benchmark to meet. CARB should be cautious on this issue and may need to average efficiency metrics over a number of years before using them to develop performance benchmarks against which industry performance is measured.
29. Page 50 - The carbon content of the fuel combusted at these sites (coal), must be recorded monthly. Shouldn't this be more frequent than this? The technical workgroup

for cement referenced 40 CFR part 75 as requiring weekly measurements of carbon content. This should be examined.

Electric Generating Sector

30. We support the proposal from CARB on reporting for this sector at this time. However, as indicated in the workshops, the reporting regulation may need to be modified as details on point of regulation are further fleshed out.

Power Cogeneration facilities

31. The protocol makes no mention of wasted heat and allocates the full thermal emissions to the receiving entity. CARB should at least mention this and may want to consider allowing the thermal load recipient to calculate the waste heat, thereby providing for a division or reallocation back to the generator. This would send a market signal back to the generator that they should look for more uses of their thermal loads. This should be examined.

Refineries

32. Indirect energy usage (steam/heat, electricity) is going to be reported. However, it would be helpful if refineries also had to report indirect emissions associated with the energy stocks they import (hydrogen, oil and gas). This would create a full emissions profile of the industry. This should be examined.
33. Page 39 – Process venting of CH₄ and N₂O should be calculated in terms of CO₂E. Also, it says emissions which are calculated by other methods are exempt. Is that other methods within the mandatory reporting regulation or by other methods from other agencies?
34. To date, there has been no reference to calibration of non-CEM monitors or response to non-CEM inoperative monitors. Is this there or is it embedded into other CARB regulations on inoperative monitors that are incorporated by reference or implication
 - a. Example: What happens when a flare carbon content monitor goes down? Does the facility use the default factors for the periods of the inoperation?
 - b. Example: What happens when a fuel flow meter goes inoperative and a daily emissions calculation is unable to be made?
 - c. There has been significant discussion focused on revenue meters in terms of accuracy and confidence. Should these issues be pointed out in either the monitoring and verification plan or in a separate section since they are not included in the refinery specific section?
35. Flares: How and where is CARB going to find a default emissions factor for refineries that flare but do not report to the local APCD's? This should be discussed.
36. The regulations require fuel gas sampling points to be “free of bias” and leaves it up to the emissions verification personnel to determine this. Since placement of fuel sampling lines is a very tricky issue and requires refinery engineers to verify, there should be a provision for determining what free of bias means and how to determine. Something like “approval from a local APCD that the point is free of bias” would be helpful.

Hydrogen Plants

37. The carbon fraction of feed stocks is required every 8 hours, whereas other sections require it daily. Since hydrogen plants are likely to have the data every 8 hours anyway, making them determine it for the purposes of the regulation will increase data accuracy and should be pursued.
38. The regulations require fuel sampling points to be “free of bias” and leaves it up to the emissions verification personnel to determine this. Since placement of fuel sampling lines is a very tricky issue and requires refinery engineers to verify, there should be a provision for determining what free of bias means and how to determine. Something like “approval from a local APCD that the point is free of bias” would be helpful.

Oil and Natural Gas Facilities – 95115 (b)

39. We are very supportive of including these facilities under their own reporting category.
40. Fugitive emissions from these facilities should be taken into account and calculated. The rule development process should begin ASAP because the facilities are some of the largest emitters of fugitives in the state.
41. Page 50 - The carbon content of the fuel combusted at these sites (in some cases coal), must be recorded monthly. Shouldn't this be more frequent than this when coal is combusted? The technical workgroup for cement referenced 40 CFR part 75 as requiring weekly measurements of carbon content (though that section referenced this subpart as well and comments regarding suggested changes are there as well)
42. Page 50 – referencing the ASTM method for coal does not give an understanding of what is entailed in determining the emissions. The guidance document produced next year should clearly define what this method is.

Use of CEM's

43. See note 34 above
44. Page 52 – The reference is to “metric tons” and should be changed to “metric tonnes” for consistency

Verification

45. Page 56 – The required change of verifiers is six years. This is consistent with CCAR but may still be too long. In addition, the definition of verifiers as stated above does not require changing firms, just people. Is this correct? This should be clarified in the staff report.
46. Generally – Under CCAR, the data is not viewable by the registry staff until it is verified. Under the CARB approach, the data is sent to CARB, then reviewed. If there are inaccuracies found, there is no requirement to send in updated data. Is this the case? This should be clarified.
47. Page 57 – CARB has an oversight process outside of the COI process, but it is not explained. Merely, the section says that operators and verifiers may be subject to verification. ARB should add that this oversight should be able to be done by ARB or its designee's. See comments in accompanying letter, page 6.

48. Page 59 – A facility sampling plan shall include an “uncertainty risk assessment” that looks at various areas including data monitoring, data sampling, data processing, calculations, reporting and management. However, the risk assessment output is not defined. Is this the same as the WBCSD risk assessment factors? Also, the following questions exist:
 - a. Is it likelihood of any uncertainty or material uncertainty?
 - b. Is it for every data collection and sampling device?
 - c. Is this where the revenue meters should come into play?
49. Page 60 (c)(2) – The regulation should state whether the verification team should or should not inform the facility / operator of the issues that prevent a positive verification opinion. The regulation should also state whether the verification team report should identify those issues or any other issues that the facility should take into account in future verifications to improve their reporting.
50. Page 60 – Plants can petition for a determination by CARB that their data is accurate. However, this can only be done after a negative determination by the verifier. Is this what is intended? This should be assessed.
51. Page 60 – Facilities only have to send in updated data if required by CARB. There should be a requirement to send in revised estimates.
52. Page 61 – Section 95132 (b) – the part says ARB shall approve all applications for persons... While this may be ok as a starting point in the regulation, CARB should retain the flexibility to make the certification requirements for third party verifiers more stringent over time. This wording looks to foreclose that option by removing CARB discretion as to whether someone meets the requirements to become a verifier. This should be clarified.
53. Page 62 – Section 95132(b)(2)(C) “Environmental data auditor” needs to be defined to give specificity to this requirements. This term seems more loose than the alternative experience requirement of “developing GHG or emissions related inventories.” Is this what CARB had in mind? Is this the avenue for local APCD employees? CARB should state that specifically if that was the intent.
54. Page 64 – Do all verifiers have to go through the verification screening every 3 years? Does this include all of the application requirements and training requirements? This should be clarified.
55. Page 68 – CARB should identify examples of other circumstances that could result in a conflict of interest (e.g. family relationship, business partnerships, etc.)
56. Scope of work: World Business Council Special Guidelines recommends that companies should make the scope of work publicly available to enhance the transparency of the audit. The scope must define what the level of scrutiny and objective of the verification is, how the results will be used, and the threshold for materiality.
57. Use of verification findings – The WBCSD states that a verification team may require adjustments be made to the facility data prior to signing off on it. Verifiers may, depending on the scope of the work, may issue a verification report that includes recommendations for future improvements. Is this what CARB recommends or is it a pass – no pass system? This should be clarified.

Once again, thank you for your time and consideration on these matters.

Sincerely,

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