

September 5, 2007

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Chairperson
California Air Resources Board
1001 "I" Street
Sacramento, CA 95812

Richard Bode
Chief, Emissions Inventory Branch
California Air Resources Board
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Re: Development of mandatory reporting requirements under AB32

Dear Chair Nichols and Mr. Bode,

Please accept this letter as public comment from the undersigned group of environmental advocacy organizations on the preliminary draft of the mandatory reporting regulation for greenhouse gases (dated 8/10/07). This regulation sets the stage for moving forward through the AB32 implementation process and ultimately for meeting the 2020 emissions limit. We appreciate the opportunity to comment on this draft language and look forward to continuing to work with California Air Resources Board (CARB) staff throughout this process.

It is imperative that the mandatory reporting regulation be developed with full regard to its potential consequences and policy signals. We commend CARB staff for their attention to this task in writing the draft regulation and we applaud CARB staff for developing the proposed regulations through a transparent public process under significant time constraints this year. While our organizations support most of what is contained in the draft regulation, we focus these comments on suggestions for improvements and further refinements both within the regulation and the upcoming staff report.

Various environmental groups have participated in discussions involving development of the draft reporting regulation. During this process, many of us have filed comments previously regarding individual aspects of the regulation. Each group continues to support its previous comments and urges CARB to consider and adopt those comments in this regulation or in a future amendment.

The following is a brief overview of the comments discussed in this letter:

- Coverage and scope of the regulation
 - Fugitive emissions from oil and gas exploration and natural gas pipelines should be addressed;

- CARB should lower the stationary source reporting threshold in the next phase;
 - Reporting from landfills should be examined in depth; and
 - CARB should require reporting of mobile emissions from fleets by entities subject to the stationary source reporting requirement.
- Emissions data, reporting and verification issues
 - Disaggregation of emissions data to the facility level is necessary;
 - Efficiency and emissions metrics should be developed for each sector;
 - We support independent 3rd party verification as long as specific criteria are met;
 - The frequency of emissions report verification should be increased;
 - CARB should clarify the standards for confidentiality of emissions reporting data; and
 - A framework for release of emissions reports for public review must be developed.
 - CARB should provide a timeline for future amendments and additions to the reporting regulations.

In the staff report accompanying the proposed regulations, we urge CARB staff to provide an updated estimate of the fraction of statewide emissions that will be covered by the proposed regulation, together with a timeline describing how the reporting program will expand over time to include all significant sources of emissions and to cover the vast majority of statewide emissions. In particular, we urge CARB to explicitly indicate how emissions from the transportation sector and the natural gas sector will be incorporated into the program.

Coverage of the reporting regulation

Fugitive emissions from oil and gas exploration and natural gas pipelines should be addressed

We recommend that CARB develop comprehensive reporting regulations for the oil and gas industry in California that include both combustion emissions and fugitive emissions. Failure to require reporting of fugitive emissions from these sources leaves some of the lowest hanging fruit for emissions reductions off of the table.

Although accuracy and precision in emissions estimations is desired, CARB has the ability today to require facilities to make conservative estimates based on easily identified data (eg. miles of pipeline and volume of liquid / gas transferred). These estimates would have the effect of placing the burden on the facilities to provide more accurate accounting. While we understand that CARB is working on such a regulation, we emphasize its importance and urge that it be developed as soon as possible. Further, we ask that CARB address this emissions source in the staff report to provide a clear indication of the pathway to including this important source of emissions.

CARB should lower the stationary source reporting threshold in the next phase

We urge CARB to commit to reducing the threshold for stationary source reporting to 10,000 metric tons CO₂ per year. This would capture all natural gas users above approximately 2 million therms per year. Further, even though the emissions coverage rate for stationary sources would only be increased by 2%, this increase could substantially increase the coverage of plants located within inner cities and in low income areas. In addition, reducing the reporting threshold would bring the California system in line with approaches being discussed at the federal level (e.g. the Lieberman-Warner bill currently in the U.S. Congress proposes a reporting threshold of 10,000 metric tons) as well as the recommendations of the Market Advisory committee (see page 29 of the Market Advisory Report issued June 30, 2007).

As stated in previous comments, many large industrial consumers of natural gas would not be included in CARB's proposed mandatory reporting requirement for stationary sources with a threshold of 25,000 metric tons of carbon dioxide (CO₂) per year. These large users are likely to be manufacturers, food producers, and large commercial complexes that have the capacity to report their own emissions. Requiring these sources to report is likely to spur them to implement emissions reductions programs sooner than they would if utilities were to report on their behalf. We urge CARB to identify stationary sources with emissions between 10,000 and 25,000 MT and notify those entities of their emissions and the need to make reductions, as well as of impending reporting requirements. In addition, we ask that CARB provide to stakeholders a breakdown of the sectors and locations of facilities that would be affected.

Reporting from landfills should be examined in depth

During the regulatory development process CARB staff indicated that data gaps and imprecise models make it infeasible to accurately estimate landfill fugitive emissions at present. However, CARB staff has acknowledged that modeling data can be improved and has identified specific types of data needed to do it. Despite the potential for development of an accurate modelling approach, no landfill data reporting (other than for power generation) is proposed. Therefore, we ask that CARB reexamine the type of activity data needed from landfills to improve the current models and work with the CIWMB to develop a more advanced emissions model for landfill fugitive emissions. Further, we urge CARB to discuss this issue in the staff report and to commit to develop a mandatory reporting requirement for landfills in 2008.

Require reporting of mobile emissions from fleets by entities subject to the stationary source reporting requirement

As California develops a comprehensive system to measure and account for greenhouse gas emissions, mobile source emissions must be taken into account. CARB has not placed any mobile source emissions within the draft reporting regulation even though the California Climate Action Registry has procedures for businesses to measure and report fleet emissions. Although we understand the resource constraints placed on CARB due to the short timeline for developing the draft regulation, we feel that fleet emission reporting requirements should be developed and adopted as soon as possible.

We strongly support the development of fleet emission reporting for two reasons. First, taking mobile emissions into account substantially expands the emissions footprint covered by mandatory reporting. The wider scope brings more awareness to the global warming pollution problem and serves as an informational tool as well as a measurement tool. Second, fleet emissions represent an area of reductions that can be achieved with today's technology and therefore can serve as a significant part of the solution to meeting the AB32 targets.

Therefore, we urge CARB to begin to address the issue of mobile emissions in the staff report and to develop reporting standards for fleets for adoption in 2008.

Emissions report and data development

Disaggregation of emissions data to the facility level is necessary

We support the CARB proposed regulation to require the disaggregation of emissions data down to the facility level. This level of detail in emissions reporting is important to allow verification of emissions reports by independent third party auditors and California government agencies. By requiring businesses to report at the facility level rather than solely at the entity level, the emissions report becomes more understandable by the general public.

Efficiency metrics should be developed for each sector

We support the proposed adoption of an efficiency metric for the cement sector. Reporting of an emissions rate per unit of production is useful in determining which facilities are the most efficient and provides a gauge for potential emissions reductions. Further, such metrics allows multiple facilities to be compared against one another as well as against performance benchmarks to assess progress toward emissions reduction goals.

We believe it would be helpful to develop individual efficiency metrics for additional sectors covered by the mandatory reporting requirements including refineries, stationary sources, and landfills. Development of efficiency metrics will require careful attention to differences in production across facilities. However, we strongly suggest that such metrics be discussed in the staff report and developed within the next year because of their value in the scoping plan process. With such metrics, CARB staff would be one large step closer to evaluating the best mechanisms for emissions reductions.

Emissions Data Verification Issues

We support independent 3rd party verification as long as specific criteria are met

We strongly support the adoption of a 3rd party verification requirement. This approach is consistent with other GHG programs like the California Climate Action Registry and the EU-ETS. If developed with adequate safeguards and oversight, 3rd party review can provide certainty

and consistency within both the emissions verification process and emissions reporting process as a whole. Further, such a system can overcome the complexity of emissions reporting for complicated industries (e.g. power industry) by making sure experienced auditors perform data checks.

Although we generally support 3rd party verification, our support requires that such a system contain stringent standards and oversight to provide confidence in the integrity of the data that is reported. These safeguards must result in transparency of the emissions reporting and verification process. Currently, the draft regulation does not provide a sufficient level of oversight and confidence in the emissions reporting and verification process. As a starting point, our support requires that the 3rd party verification system include each of the following confidence assurance mechanisms. We urge CARB to incorporate these items both into the current draft regulation and any future implementing regulations. Further, we ask that CARB provide a thorough and thoughtful discussion of these issues in the staff report.

1. Disaggregation of facility data: The emissions reporting system must disaggregate the emissions data to the facility level. Currently, the draft reporting regulation provides this.
2. Oversight of 3rd party auditors: The 3rd party emissions verification system must have oversight by CARB. The current draft does not discuss this in much detail and we urge further development. This oversight process will be exceptionally valuable at the outset of the emissions reporting system as less sophisticated 3rd party auditing teams attempt to comply with the regulation. Such oversight should include the following:
 - It must occur on a regular basis and provide a clear signal to emission verifiers of the standards to which they are held.
 - It must cover both the emissions reporting process as well as the verification process.
 - It should include review of the verification reports, facility checks, and accompanying verifiers on audits.
 - It must include an enforcement mechanism to deter cheating
3. Oversight of emissions reports: Entity reporting must also have oversight by CARB. The current draft does not discuss this in much detail and we urge further development. This oversight will be especially valuable at the outset of the emissions reporting system as less sophisticated businesses attempt to comply with the regulation by reporting their emissions. Such oversight should include the following:
 - It must occur on a regular basis and provide a signal to reporting businesses of the standards to which they are held.
 - it should include a full review of the emissions reports and verification reports, as well as facility site visits, outreach and accompanying verifiers on audits.
 - It must provide an enforcement mechanism to deter cheating

- It should incorporate local Air Pollution Control District participation in the oversight and emissions review process since their local knowledge of plants and processes will be extremely valuable in determining accuracy and completeness.
4. The 3rd party verification system must include comprehensive environmental data accounting principles and standards. The current draft does not discuss this in much detail and we urge further development. Such standards will provide guidance for verification teams as well as create criteria and performance metrics against which certification activities can be gauged. Such standards should accomplish the following:
- The standards must go beyond the traditional conflict of interest provisions and must impose liability on emissions verifiers for misrepresentations as well as mishandling and manipulation of data.
 - The training and certification program must establish consistent methods for how to audit and verify emissions reports and underlying data.

The frequency of emissions report verification should be increased

We urge CARB to reevaluate the frequency of review of emissions reports to increase accuracy and transparency of the reporting system. Although the draft mandatory reporting regulation requires all affected entities to report emissions on an annual basis, not all entities must have their emission data reviewed and verified on an annual basis. For those reporting on a triennial schedule, it is unclear from the draft if 3rd party verification that discovers inaccuracies in the interim years will result in modification or disapproval of that year's emissions report. This is especially problematic for the cement industry and for very large stationary sources not covered by other reporting requirements because of the volume of GHG and co-pollutant emissions.

According to statements of emissions verifiers, these industries are just as likely to develop inaccuracies in their emissions reports as other entities. Further, with the reporting regulation allowing two less intensive reviews to follow a thorough initial site assessment, the imposition of annual verification should not cause facilities to incur substantial cost or time commitments. In addition, annual verification is required in the EU-ETS and under the CCAR process. Therefore, we ask CARB to require annual verification of emissions reports from all facilities in California.

In the alternative, if CARB does not choose to require annual review for all entities, it is important that verification in a triennial review be required to assess data accuracy for the interim years. If inaccuracies are discovered, facilities must be required to modify their emissions reports. Failure to correct errors in interim year's reports will decrease the integrity of the mandatory reporting system in California and will undermine the purpose of the regulation as a whole. Therefore, we urge CARB to adopt an annual verification requirement for all facilities or, at a minimum, require that triennial verification include review and correction of interim year's emissions reports.

CARB should clarify the standards for confidentiality of emissions reporting data

The proposed regulations identify two components of the emissions reports that would be public information and allows reporting entities to designate all additional information as confidential. However, at the August 15 workshop, CARB staff indicated that existing procedures would be used to determine the validity of the designation of confidentiality. We ask CARB to 1) clearly identify the standards and procedures that will be used to determine what information could be designated as confidential; and 2) assess whether the existing CARB process for designating data as confidential and for challenging that designation are adequate to create effective transparency of the reporting process. Such transparency is essential to the development and implementation of market based approaches to emissions reductions.

In addition to providing clarification of the confidentiality standards, we request that CARB expand the level of automatic public access to facility data and verification reports. Currently, the components of the reports that will automatically be made public are direct greenhouse gas emissions by source type at the facility level, emissions by greenhouse gas type, and energy use; and sector-specific performance metrics. We feel this is too narrow a scope.

Specifically, we ask that CARB clearly identify the components of emissions reports that can be made public without breaching confidentiality and to provide public access to that data. In particular, we recommend that CARB require public reporting of facility-specific performance metrics for those sectors for which performance metrics are adopted. Finally, we ask that CARB review the guidelines recommended by the World Business Council on Sustainable Development and provide open access to verification report information. We feel that increasing the level of access provided to the public will improve transparency and integrity of the system as a whole.

Release of emissions reports for public review

Currently, CARB has not developed a timetable for public release of emissions or verification reports. The date and method of release (e.g. all at once, when submitted, after verification report is submitted, or after report is submitted) is critical to the process of comparing whether the state and businesses affected by the reporting regulation are meeting emissions reduction targets. In general, the process for emissions reports should strike a balance between the benefits of timeliness and an orderly process. Improper release or leakage of reports to the public can result in dramatic negative consequences as witnessed in Europe in 2006. Therefore, we ask CARB to develop a plan for release of emissions reports that allows for public review of data as early as possible while minimizing confusion and errors. If this plan is not developed in this reporting regulation, we ask that CARB provide a thorough discussion in the staff report and commit to developing a plan using a public process during 2008 (prior to the submittal of the first emissions reports).

CARB should provide a timeline for future amendments

In meetings and workshops to date, CARB staff have discussed future potential modifications to the reporting requirements to continue to improve the regulations and to meet the needs of the various policy tools the state will use to reduce GHG emissions. These tools range from market mechanisms to emissions reduction mandates using specified technology. To maintain public confidence that CARB is continually working to improve the mandatory reporting regulation, and to provide affected entities with a clear understanding of how their reporting requirements may evolve over time, we recommend that CARB provide a timeline and criteria for future amendments and additions to the reporting regulations.

In conclusion, we appreciate your time and hard work throughout the year in developing the draft regulations. Thank you for considering our comments and suggestions as you finalize the recommended GHG emissions reporting.

Sincerely,

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