



AB 32 Implementation Group

Working Toward Greenhouse Gas Emission Reductions
And Enhancing California's Competitiveness

September 26, 2011

To: Mary Nichols, Chair
California Air Resources Board

Fr: The AB 32 Implementation Group

Re: CARB's Mandatory Reporting 2nd 15-Day Rulemaking Package

The AB 32 Implementation Group (AB 32 IG) is a coalition of business and taxpayer groups working for the effective implementation of AB 32. Our goal, has been, and continues to be to serve as a constructive voice in the implementation of AB 32 and ensure that the greenhouse gas emission reductions required by the statute are achieved while maintaining the competitiveness of California's businesses and protecting the interests of consumers and workers.

As we come closer to the deadline for submitting the rule to the Office of Administrative Law, we want to express our concern about the 15-day comment process and the need for further rule changes and updates next year. The rule is extremely complex and it will have a large impact on the California economy. In that regard, we would request the California Air Resources Board (CARB) include in the Final Statement of Reasons (FSOR) a schedule by which workshops and needed revisions will occur so the public can schedule and provide feedback in order for the staff to hear and incorporate reasonable changes to the rule.

PENALTY PROVISIONS:

As we previously conveyed, we appreciate CARB taking into account the concerns we highlighted in our August 11, 2011 letter and making some modifications to the penalty provisions in both the Mandatory Reporting and Cap-and-Trade regulations and the additional edits in the 15-day rulemaking packages.

However, there are crucial areas within the Mandatory Reporting Regulation (MRR) that we believe must be addressed in order to clarify the proposed regulation. Below please find suggested language revisions to Section 95107(c) and (d).

MRR ENFORCEMENT – SECTION 95107

Recommended revisions to (c):

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While we understand the proposed revisions to Section (c), we believe additional clarification is needed and recommend CARB incorporate the following revisions:

Each metric ton of CO₂e emitted but not reported as required by this article is a separate violation. CARB ~~will not~~ may initiate enforcement action under this subparagraph ~~until~~ alleging that emissions were under-reported in an emissions data report only after any applicable verification deadline for the pertinent report and if ARB determines that there is a recurring pattern of under-reporting.

Request for Clarification in Section (d):

As we discussed, while the proposed revisions are helpful and we appreciate CARB listening to our concerns, we would ask that CARB state in the FSOR for Section (d), that for enforcement purposes, the MRR rule must be read as a whole, and a violation does not occur when an operator complies with an alternative provision applicable under the circumstances. For example, information will be considered to be measured, collected, recorded and preserved “in the manner required by this article” and no violation will occur when an operator complies with the pertinent missing data substitution or interim data collection procedures specified in section 95129.

Further, we believe that the Mandatory Reporting and Cap-and-Trade regulations must recognize the period when a facility is working in good faith with its verifier to obtain a positive or qualified positive emissions report prior to the verification deadline date, and should not be subject to penalties under Section 95107.

VERIFICATION TIMELINE PROVISIONS:

And although the 2nd-15-day rulemaking package did modify the submittal deadline date, the AB 32 IG continues to recommend that the verification statement due date in section 95103 be revised from September 1 to October 1 to allow facilities 30 extra days to deal with the complexities of getting the emission report verified.

CONCLUSION:

The IG requests CARB address these concerns as you move forward with the Mandatory Reporting requirements in regard to the implementation of AB 32. Should you have any questions or need anything further from us, please feel free to contact Shelly Sullivan at (916) 858-8686.

cc:

Mr Virgil Welch
Mr. James Goldstene
Mr. Richard Bode
Mr. Doug Thompson

Ms. Ellen Peter
Mr. Will Brieger
Ms. Edie Chang
Mr. Bob Fletcher