



AB 32 Implementation Group

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

May 16, 2011

To: Mary Nichols, Chair, California Air Resources Board

FR: AB 32 Implementation Group

RE: CARB Cap-and-Trade Mandatory Reporting Penalties and
Dispute Resolution Policies

Submitted via email: mnichols@arb.ca.gov

The AB 32 Implementation Group (AB 32 IG) is a coalition of business and taxpayer groups working for effective implementation of AB 32. Our goal is to be a constructive voice in the implementation of AB 32 to ensure that the greenhouse gas emission reductions required by the statute are achieved in the most cost-effective manner, to allow California businesses to maintain their competitiveness against worldwide competitors while protecting the interests of consumers and workers.

As the California Air Resources Board (CARB) moves closer to the full implementation of all regulations under AB 32 there are enforcement policy issues that the AB 32 IG believes have not been adequately addressed:

CAP-AND-TRADE/MANDATORY REPORTING REGULATION PENALTIES

Currently the focal point of AB 32 implementation is a cap-and-trade program anchored on the mandatory reporting regulation. Unfortunately, as presently written the penalty provisions of the joint cap-and-trade and mandatory reporting programs can lead to excessively onerous and duplicative layering of penalties for regulated entities. The AB 32 IG believes that the potential penalties under these programs should be consistent with potential penalties under the current Health & Safety Code penalty provisions, to assure that regulated entities will not be subject to a layering and double-penalty situation with regard to these cap-and-trade and mandatory reporting penalties.

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This layering and potential doubling of penalties is further exacerbated by the fact that facilities will be reporting potentially thousands, if not hundreds of thousands of data points under the mandatory reporting rule -- all of which potentially could be subject to thousands of dollars in daily penalties for small or immaterial errors. Under the current penalty structure those penalties could potentially be doubled, resulting in penalty exposure of up to hundreds of millions of dollars.

THE ABSENCE OF A DISPUTE RESOLUTION PROGRAM

Currently the cap-and-trade and mandatory reporting regulations give CARB's Executive Officer sole authority on program implementation, including determining whether regulated parties have complied with regulations and to determine penalties. Absent costly and time consuming litigation, there is currently no independent administrative option for stationary source facilities to challenge the Executive Officer's decisions that could not be resolved.

The AB 32 IG believes the Executive Officer should not have the final decision on such a comprehensive program as AB 32, and instead it would be in both CARB's and the regulated industry's best interest that a formal, autonomous dispute resolution process should be established in order to provide independent decision making with equity for all parties involved in any dispute.

This program should use an unbiased mechanism to resolve disputes, variances and penalty disagreements with the Executive Officer. Without such a program issues that could be resolved relatively quickly could become time-consuming litigation which could hinder the goals of AB 32

We hope you will address these concerns as you move forward in the implementation of AB 32. Should you have any questions or need anything further from us, please feel free to contact us at (916) 858-8686.

cc: Ellen Peter, Chief Counsel, CARB
James Goldstene, Executive Officer, CARB
Paul Jacobs, Chief, Mobile Source Enforcement