



August 11, 2011

To: Mary Nichols, Chair
California Air Resources Board

Fr: The AB 32 Implementation Group

Re: CARB's Mandatory Reporting 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.

PENALTY PROVISIONS:

First, we appreciate the California Air Resources Board (CARB) taking into account the concerns we highlighted in our May 16, 2011 letter and making some modifications to the penalty provisions in both the Mandatory Reporting and Cap-and-Trade regulations. The revisions recognize in the Cap-and-Trade regulation emissions that were under reported, but do not exceed a positive verification report accuracy level of 5%, would not be subject to a penalty, we support this change. However, this same recognition of a positive verification is not recognized in the Mandatory Reporting regulation (MRR), and the enforcement provisions allow CARB the authority to assess a per ton penalty on "Each metric ton of CO₂e emitted but not reported" regardless of the fact the facility obtained a positive or qualified positive verification.

The AB 32 IG requests CARB revise Section 95107(b) whereby a penalty would not be imposed if the amount of emissions that were not reported were determined to be below the 5% accuracy verification requirement in the MRR, unless CARB determined the facility submitted false information. If CARB made such a determination, we recommend incorporating the same language CARB included in the Cap-and-Trade regulation, Section 96014 (c)(1-3) entitled "Violations", which

states it is a violation if it is determined the facility falsified, concealed or covered up by "...any trick, scheme or device a material fact," including any false, fictitious or fraudulent statements or made or used any false writing or document knowing it contained false, fictitious or fraudulent statements.

The AB 32 IG also believes a per ton penalty is too severe considering the fact that many facilities will be reporting hundreds of thousands if not millions of tons of GHG emissions, and therefore recommends the penalty structure be amended to move to a per 1000 ton penalty scheme.

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:

Finally, the AB 32 IG recommends 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

You should 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 Peters
Mr. Will Brieger
Ms. Edie Chang
Mr. Bob Fletcher