

DRAFT EJAC Cap and Trade Resolution
October 2024

WHEREAS, the California Air Resources Board's (CARB) charge to coordinate the regulation of greenhouse gases (GHGs) under the Global Warming Solutions Act (AB 32, Núñez, 2006) also requires CARB to complement the state's efforts to achieve and maintain national and state ambient air quality standards and to reduce toxic air contaminants; and

WHEREAS, the cap-and-trade market permits polluters to trade allowances and purchase offsets without regard for the geographic location of their facilities emitting greenhouse gases, despite the location of an emitting facility having a significant, direct, and cumulative co-pollutant impact on certain communities and not others; and

WHEREAS, the legislature has instructed CARB to prioritize direct emissions reductions when designing policies to reach the state's climate goals (AB 197, E. Garcia, 2016); and

WHEREAS, Health and Safety Code Sec 28562 requires CARB to ensure that activities "do not disproportionately impact low-income communities," and

WHEREAS, AB 32 directs CARB to convene an Environmental Justice Advisory Committee (EJAC) to advise it on development of the Scoping Plan and any other pertinent matter related to implementation of that legislation; and

WHEREAS, the California Office of Environmental Health Hazard Assessment (OEHHA) report *Benefits and Impacts of Greenhouse Gas Limits on Disadvantaged Communities* (2022) found that Covered Facilities (the stationary sources whose greenhouse gas emissions are regulated by the cap-and-trade program) are three times more likely to be located in or near communities already disproportionately burdened by environmental, socioeconomic, and health issues, based on CalEnviroScreen data (also known as "High CES score" or "Disadvantaged Communities") and high percentage communities of color; that 71% of refineries, 61% other combustion sources, 57% of cogeneration sources, and 49% of electricity generation sources were located in Disadvantaged Communities; and that there has been a *net increase* in greenhouse gases and PM2.5 between 2012 - 2018 in the Disadvantaged Communities with refineries and hydrogen plants; and

WHEREAS, AB 398 (E. Garcia, 2017) § 38592.5 (a)(1) designated the cap-and-trade program to be "the rule for petroleum refineries and oil and gas production facilities to achieve their greenhouse gas emissions reductions," which chilled regional efforts to directly regulate refinery greenhouse gases; and

WHEREAS, in stark contrast, the electricity sector, which is also significantly and directly regulated by the Renewable Portfolio Standard, has seen net decreases in emissions in environmental justice communities. Notably, the electricity sector is also responsible for the largest share of greenhouse gas emission reductions statewide; and

WHEREAS, the Legislative Analyst's Office 2023 assessment of the 2022 Scoping Plan update shows that we are not on track to reach the 2030 GHG reduction targets and that the plan lacks specificity, including around the role and expected reductions from the cap-and-trade program;

WHEREAS, the San Joaquin Valley and South Coast air basins are still in non-attainment and continue to struggle to achieve health protective air quality standards, with disparately impacted environmental justice communities bearing the brunt; and

WHEREAS, Assembly Bill 398 in 2017 directed CARB to provide more free allowances to polluting industries than CARB's own studies indicated are necessary to protect against the risk of emissions leakage, enriching the oil industry in particular, depriving the state of additional revenue, and further limiting the cap-and-trade program's ability to reduce pollution in line with statutory requirements;

WHEREAS, multiple, independent peer-reviewed studies have documented serious problems with the carbon offsets program that suggest it is failing to achieve statutory standards, and even market participants are openly admitting that they are getting paid for avoiding timber harvests they are legally prevented from making, but CARB staff are not proposing to make changes to the program;

WHEREAS, the supply of hundreds of millions of low-quality carbon offset credits defers pollution reductions and further weakens the cap-and-trade program's ability to reduce emissions as required by state law;

WHEREAS, in 2017 when the Legislature decided to reauthorize the cap-and-trade program with AB 398 (E. Garcia), they coupled AB 617 (C.Garcia) to create the Community Air Protection Program to address concerns about pollution increases, without consultation or consent from environmental justice communities; and

WHEREAS, the Community Air Protection Program did not create any new authorities for CARB to ensure that air district rulemaking and permitting decisions are aligned with the state's climate programs, and are resulting in direct emissions reductions from individual sources; and

WHEREAS, in 2024 there is little to no evidence that the Community Air Protection Program or any other AB 32 initiative is providing sufficient emission reductions and public health protections to address the inequities resulting from implementation of the cap-and-trade program; and

WHEREAS, the experiment of California's cap-and-trade program has granted significant cost-savings and enabled the largest stationary sources of climate and air pollutants through the trade or purchase of emissions credits at a fraction of the cost of direct regulation, which would have guaranteed direct, real, and verifiable emissions reductions.

NOW, THEREFORE BE IT RESOLVED that the EJAC recommends that the CARB board direct staff to address the above risks and harms to environmental justice communities by incorporating the following changes through rulemaking:

1. Eliminate free allowances.
2. Eliminate offsets.
 - a. If CARB does not eliminate offsets, they should correct the values of projects proven to be overestimated and prioritize projects within the state.
 - b. If CARB does not eliminate offsets, they should prohibit the use of offsets to fund projects that increase air or water pollution.
3. Restrict trading in disadvantaged communities (“no trade zones”) or establish facility-level caps, particularly for sectors in which emissions have failed to decrease at a rate equivalent to the overall declining cap.
 - a. If CARB requires an affirmation of authority, it should make that request from the legislature to better safeguard Californians living near stationary sources in Disadvantaged Communities who have lived with greenhouse gas and related air pollution increases and/or a slower rate of air quality improvement in comparison to non-Disadvantaged Communities.
4. Do not permit facilities in disadvantaged communities that directly emit pollution (toxic air contaminants, criteria air pollutants, and / or greenhouse gases) and / or generate pollution by increasing the volume or concentration of mobile pollution sources.
5. Prohibit crediting for Carbon Capture or Direct Air Capture projects, both in and out of state.
6. Require annual certification by the Board and Executive Officer that the program is being carried out in compliance with the civil rights requirements of Title VI of the 1964 Civil Rights Act and California Code 11135.
7. Continue to build on previous work for adaptive management planning.
8. Strengthen the Community Air Protection Program established by AB 617, including but not limited to through empowered community decision making, more equitable funding, improved data transparency, including online access to all air permits, and reporting on the facility and equipment-level benefits resulting from the expedited Best Available Retrofit Control Technology (BARCT) requirements.
9. Conduct statewide audits of facilities operating within environmental justice communities, including but not limited to by conducting permit reviews, site inspections, and source testing at pollution sources in targeted communities.
10. Ensure direct emissions reductions beyond the Community Air Protection program, and that EJ communities are not experiencing foregone reductions due to carbon markets.
11. *Refineries potential placeholder*
12. *Tropical Forest Standard potential placeholder*

BE IT FURTHER RESOLVED that the EJAC recommends that CARB conduct a thorough analysis of allowances, offset credits, and other compliance mechanisms within the existing system. This analysis should include whether use of the total number of compliance instruments would jeopardize the 2030 emissions target established in law. Data reporting should be strengthened to require annual reports (rather than every three years) to ensure timely tracking of emissions changes.

BE IT FURTHER RESOLVED that the EJAC urges CARB to address how changes to the Low Carbon Fuel Standard, California's carbon market for fuels, interplays with changes to the cap-and-trade program, particularly in regard to adverse impacts on environmental justice communities and the implications of pass-through costs,

BE IT FURTHER RESOLVED that the EJAC requests CARB to clarify, in writing, where it has decided that it does not have legislative authority or political will to implement any of the above.