CalChamber
CALIFORNIA CHAMBER OF COMMERCE

August 11, 2011

The Honorable Mary Nichols
Chair, California Air Resources Board
1001 I Street
Sacramento, CA 95814
cc: Clerk of the Board, Air Resources Board
1001 I Street, Sacramento, California 95814

RE: **CalChamber's Comments & Suggested Amendments for the California Air Resources Board's 15-day Modifications to the AB 32 Mandatory Reporting Regulation of the Greenhouse Gas Emissions**

Dear Chairwoman Nichols:

The California Chamber of Commerce (CalChamber) appreciates the opportunity to comment on the California Air Resources Board (CARB) 15-day modifications to the AB 32, Mandatory Reporting Regulation of Greenhouse Gas Emissions ("MRR")

The CalChamber is the largest, broad-based business advocate in the state, representing the interests of nearly 15,000 California businesses, both large and small. Many of CalChamber's members are subject to CARB's AB 32 MRR regulation, and thus would be directly impacted by the proposed 15-day modifications. CalChamber has been a constructive voice in development of the AB 32 program, including the MRR, and continues to participate in this rulemaking to ensure an adequate balance in the reporting requirements without unnecessary costs and resource burdens. CalChamber is committed to ensuring greenhouse gas (GHG) reductions are achieved while maintaining the competitiveness of California businesses and the health of the economy.

CalChamber has identified the following areas of concern in the MRR 15-day modifications:

New Reporting and Verification Deadlines (Section 95103):
ARB has proposed to change both the Reporting and Verification time deadlines to April 1st and September 1st, respectively. This change significantly compresses the time allowed for those entities that need to prepare their MRR reports and more importantly, eliminates three months of time that is critical for facilities to work with their verifiers to obtain required positive or qualified positive verification statements. While we understand CARB's stated reasons for compressing the timelines due to the needed time to true-up for the pending cap-and-trade program, we respectfully disagree. Taking time away at the expense of the regulated parties who are responsible for ensuring accurate reports is simply inequitable. It is imperative that facilities are given ample time to work on developing their reports and to work with their verifiers to obtain required positive or qualified positive verifications, especially since the facility MRR reports serves as the foundational basis of the cap-and-trade program.

Additionally, further time constraints creates additional pressure on regulated parties, especially given that CARB is proposing additional reporting requirements that are above and beyond what is required under the EPA 40 CFR MRR program.

1215 K Street, Suite 1400
Sacramento, CA 95814
916 444 6670
www.calchamber.com

Given these reasons, CalChamber recommends that CARB re-set the reporting and verification timelines back to the original dates of June 1st and December 1st.

Enforcement Penalty Provisions (Section 95107)
While CalChamber recognizes that some of the 15-day revisions to the penalty enforcement provisions in both the MRR and cap-and-trade regulations are positive changes, we remain concerned with certain provisions that essentially allow CARB unilateral authority to assess penalties for any GHG ton or data measure or collection failure as a separate penalty.

Specifically, subparts (b) and (c) of Section 95107, allows CARB to penalize operators if it has determined there was a failure to report "each" metric ton of CO2e emitted, or "each" failure to measure, collect, record or preserve information required for the report, regardless of whether the operator has obtained a positive or qualified positive (± 5% accuracy level) verification from its verifier. The MRR allows CARB to assess penalties for "any" ton of GHG emissions found to not be reported, despite the fact that the amount of GHG tons are well below the level of accuracy required by the MRR and verification process requirements. Thus, penalties could be assessed in the amount of tens if not thousands of dollars, even though the operator maintains a positive verification of their report.

CalChamber requests CARB to revise Subparts (b) & (c) to reflect that the penalties would only be applicable if it is determined that the amount of emissions that the facility under-reported exceeded the ± 5% accuracy level, and even then, the penalty should only apply to the amount that was above 5%. For emissions below the 5% verification accuracy level, CalChamber recommends that no penalty be assessed, unless the Executive Officer determines that the facility engaged in falsifying, concealing or covering up the information, resulting in the under reporting of emissions. Incorporating these suggested revisions to Section 9107 of the MRR will create parity and consistency with the cap-and-trade's penalty or "Violation" provision of the regulation, Section 96104 (c) (1-3), which is intended to capture the bad and fraudulent actors under the cap-and-trade program.

Additionally, CalChamber remains very concerned that ARB continues to base penalties on a "per ton" metric. It is inappropriate for CARB to base penalties on a per ton metric given the huge amount of GHG emissions involved in the AB 32 program. Assigning a "per ton" penalty for each GHG ton that is not reported can result in a penalty of tens if not hundreds of thousands of dollars to a facility, despite the fact that a facility's MRR report carries a positive or qualified positive verification determination. It is simply unfair to impose such excessive penalties and costly burdens upon facilities. For these reasons, we recommend that the penalty metric be based on the specificity of the violation.

Lastly, CalChamber requests that CARB clarifies that during the period when the facility is working with their verifier on their report, any corrections, edits, clarifications, etc., NOT be subject to any penalties or violations during this period.

Monitoring and Reporting Requirements above Federal EPA MRR Program
CARB has identified several areas that specifically require additional monitoring, record keeping, and data collection procedures, including more stringent meter calibration requirements that go above and beyond what is currently required under the Federal EPA Mandatory Reporting program. While CalChamber understands CARB's stated reasons for adopting a more stringent reporting program (i.e.: the need for an accurate inventory for the cap-and-trade program), we are very concerned that CARB has not done a thorough and transparent cumulative and individual cost analysis of impacts, of the AB 32 MRR requirements that exceeds the Federal MRR program. In addition to such cost impact analysis, there should be an analysis of the difference in overall emission estimates as a result of a more stringent requirements compared to the emission estimates based on the Federal EPA MRR reporting program.

CalChamber understands the importance of ensuring accurate emission data. However, it is just as important to have a balance between time, resources and costs incurred by facilities prior to determining whether more stringent criteria requirements, above the Federal EPA MRR program are necessary and whether these more stringent criteria will result in any measurable GHG reporting difference. Additionally,

it is imperative to assess the ability of California businesses to continue to operate and remain competitive with the rest of the nation under CARB's proposed reporting requirements. CalChamber therefore, respectfully requests that CARB conducts an analysis comparing the more stringent MRR requirements to the Federal EPA MRR program, with consideration of all costs and showing the difference in emission estimates.

Dispute Resolution Process

Currently, CARB's Executive Officer (EO) retains sole authority of program implementation of both the cap-and-trade and the mandatory reporting regulations, including determining whether regulated parties have complied with regulations and setting the penalties for such program violations. These important decisions will be made unilaterally without a public process and will have an impact on California businesses. It is important for these regulated entities to have a fair and transparent process by which to appeal a decision.

CalChamber supports the adoption of a formal autonomous dispute resolution process that would enable facilities to challenge and resolve disagreements prior to potential enforcement actions through an equal process for all parties involved in any dispute. We believe this program should use an unbiased mechanism to resolve disputes, variances and penalty disagreements with the EO.

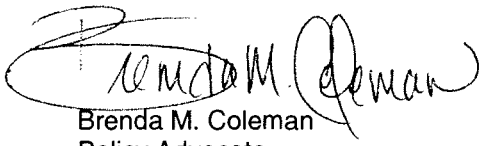
Without a fair, independent process, an entity's options are limited. Currently, an entity's only recourse is to challenge the decision in court, which requires significant resources and time. Lawsuits are not only costly but rarely solve the underlying problem. We are proponents of a transparent process that helps reduce money and time spent defending lawsuits so that regulated entities can instead focus their time and efforts on job creation and economic stimulation. Without a fair and transparent dispute resolution process, issues that could be resolved relatively quickly could become time-consuming litigation that could hinder the goals of AB 32.

Again, we appreciate your consideration and the opportunity to comment on the 15-day modifications to the AB 32 Mandatory Reporting Regulation of Greenhouse Gas Emissions.

We look forward to further communication as CARB continues to work on this important element of the AB 32 program.

Should you have any questions, please feel free to contact me at (916) 444.6670.

Sincerely,



Brenda M. Coleman
Policy Advocate