

State of California
AIR RESOURCES BOARD

Resolution 11-33

October 20, 2011

Agenda Item No.: 11-8-2

WHEREAS, the Legislature enacted the Global Warming Solutions Act of 2006 (AB 32; Health and Safety Code section 38500 et seq.), which declares that global warming poses a serious threat to the environment of California and creates a comprehensive multi-year program to reduce greenhouse gas (GHG) emissions that cause global warming;

WHEREAS, AB 32 designates the Air Resources Board (ARB or Board) as the State agency charged with monitoring and regulating sources of GHG emissions in California in order to reduce these emissions;

WHEREAS, Health and Safety Code sections 39600 and 39601 authorize ARB to adopt standards, rules and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, Health and Safety Code section 38597 authorizes the Board to adopt by regulation a schedule of fees to be paid by the sources of GHG emissions;

WHEREAS, Health and Safety Code section 38597 requires that the fees be deposited into the Air Pollution Control Fund and would be available, upon appropriation by the Legislature, for purposes of carrying out AB 32;

WHEREAS, on September 25, 2009, the Board voted to approve the AB 32 Cost of Implementation Fee Regulation (Fee Regulation);

WHEREAS, the Fee Regulation is set forth in sections 95200- 95207, title 17, California Code of Regulations (CCR) and became effective on July 17, 2010;

WHEREAS, for the 2007/2008 fiscal year, expenditures by ARB and the California Environmental Protection Agency (Cal/EPA) for AB 32 implementation were supported by loans. ARB received a loan of approximately \$15.2 million from the Motor Vehicle Account (MVA) through the approved Budget and Cal/EPA received a loan of approximately \$300,000 (SB 77, Chapter 171, Statutes of 2007; and SB 78, Chapter 172, Statutes of 2007);

WHEREAS, for the 2008/2009 fiscal year, the expenditures by ARB and Cal/EPA were covered through a \$32 million loan from the Beverage Container Recycling Fund (Recycling Fund). The loan was approved with repayments detailed in the Budget Act (AB 1781, Chapter 268, Statutes of 2008);

WHEREAS, for the 2009/2010 fiscal year, the expenditures by ARB and Cal/EPA were covered through a \$35 million loan from the Recycling Fund. The loan was approved with repayments detailed in the Budget Act (SBX3 1, Chapter 1, Statutes of 2009);

WHEREAS, the revenues from the fee support repayment of loans, AB 32 program implementation activities undertaken by ARB, Cal/EPA, and other State agencies that have positions approved by the Legislature, and other specific costs that are directly linked to AB 32;

WHEREAS, the proposed amendments are intended to conform the Fee Regulation with the proposed amendments to ARB's Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (MRR);

WHEREAS, aligning the Fee Regulation to the MRR includes exempting electricity generating facilities with annual emissions between 2,500 metric tons CO₂ to 10,000 metric tons CO₂ equivalent;

WHEREAS, the proposed amendments include various modifications and clarifications to the existing regulatory language, including modifications to several definitions and minor changes to improve clarity;

WHEREAS, the Board has considered the impact of the proposed amendments on the economy of the State and the potential for adverse economic impacts on California business enterprises and individuals;

WHEREAS, the California Environmental Quality Act and Board regulations require that no project which may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts; Staff's analysis concluded that the proposed amendments consist of administrative changes that do not result in a physical change to the environment, directly or indirectly;

WHEREAS, a public hearing and other administrative proceedings have been held in accordance with the provisions of Chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code;

WHEREAS, the Board finds that:

The proposed amendments are authorized by California law and satisfy the requirements of Health and Safety Code section 38597;

The economic impacts of the proposed amendments have been analyzed as required by California law, and the conclusions and supporting documentation for this analysis are set forth in the Initial Statement of Reasons;

There is no possibility that the amendments may have a significant effect on the environment;

The proposed amendments are consistent with ARB's environmental justice policies and equally benefit residents of any race, culture, or income;

The reporting requirements of the proposed amendments which apply to businesses are necessary for the health, safety, and welfare of the people of the State; and

No reasonable alternative considered or that has otherwise been identified and brought to the attention of ARB would be more effective in carrying out the purpose for which the amendments are proposed, or be as effective and less burdensome to affected private persons and businesses than the proposed amendments.

WHEREAS, the Board further finds that:

The proposed regulations will not result in any significant adverse environmental impacts.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the adoption of the proposed amendments to sections 95201, 95202, 95203, 95204, and 95205, title 17, California Code of Regulations, as set forth in Attachment A, with the modifications set forth in Attachment B hereto.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to adopt the amendments to sections 95201, 95202, 95203, 95204, and 95205, title 17, California Code of Regulations, with the modifications set forth in Attachment B and such other conforming modifications as may be appropriate, after making the modified regulatory language and any additional supporting documents and information available for public comment for a period of 15-days, provided that the Executive Officer shall consider such written comments regarding the modifications as may be submitted during this period, shall make modifications as may be appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if he determines that this is warranted.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to continue to work with fee paying facilities and entities to reconcile and correct emissions data used to calculate the fee, if warranted, to ensure that invoices are accurate.

I hereby certify that the above is a true and correct copy of Resolution 11-33, as adopted by the Air Resources Board.

/s/

Mary Alice Morency, Clerk of the Board

Identification of Attachments to the Board Resolution

Attachment A: Proposed Amendments to the AB 32 Cost of Implementation Fee Regulation, as set forth in Appendix A to the Initial Statement of Reasons, released August 31, 2011.

Attachment B: Staff's Suggested Modifications to the Original Proposal (distributed at the October 20, 2011 Board hearing).