



Western States Petroleum Association
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Catherine H. Reheis-Boyd

Chief Operating Officer and Chief of Staff

June 17, 2008

Mr. Kevin Kennedy, Chief
Program Evaluation Branch
Office of Climate Change
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Subject: **AB 32 Implementation – Scoping Plan - Reporting, Verification and Enforcement**

Dear Mr. Kennedy,

The Western States Petroleum Association (WSPA) is pleased to submit the following comments regarding Reporting, Verification and Enforcement in the Scoping Plan as discussed at the June 3, 2008 workshop. WSPA is a non-profit trade association representing twenty-six companies that explore for, produce, refine, transport and market petroleum, petroleum products and natural gas in six western states – California, Arizona, Nevada, Oregon, Washington and Hawaii.

WSPA member companies own and operate various types of facilities (e.g., oil and gas production properties, refineries, marketing terminals, pipelines, retail gasoline outlets, etc.) that will all be impacted by the implementation of AB 32.

As we have stated over the last two years, WSPA supports a well designed market-based program such as a cap and trade as the most cost-effective program to achieve the ambitious emission reduction targets set out by AB 32. A market-based program such as a cap and trade provides incentives for regulated entities to reduce emissions beyond required levels, and encourages participation by those outside of the program. This flexibility can spur creative and low-cost ways to reduce GHG emissions in the State. However, to function effectively, the market-based program must be well designed. With that as our basis, the following are our comments on the June 3, 2008 CARB presentation and questions on cost reporting, verification and enforcement.

Specific Questions:

1. Should reporting and verification periods be shorter than compliance periods?

Since, cap and trade programs, as with any market program, benefit from transparency, it is critical that information is available to the marketplace. The more asymmetrical the information flows, the more of a risk for inefficiencies in the marketplace. Market pressures make it critical for participants

to be as accurate as possible in providing information. Revised information that demonstrates large shifts will lead to lack of confidence in the participant, and concomitant penalties in the market place.

As WSPA envisions that the compliance period will be three to five years we, therefore believe that annual verified emissions reports will be sufficient to ensure data accuracy.

2. What other changes would need to be made to the existing reporting and verification procedures created by the 2007 Greenhouse Gas Reporting Regulation to accommodate a cap-and-trade system? For facilities that are currently required to verify their emissions on a tri-annual basis, the regulation will need to be updated to require annual verification.

3. How should ARB set penalties for failure to surrender sufficient allowances or offsets to match verified emissions?

We might look to EU-ETS, RGGI or even EPA's SO₂ or NO_x trading programs for guidance in this arena. The basic penalties as we understood them were:

- EU-ETS: \$50/ton in the 1st phase, then increases to \$125/ton (euro 40 and 100); 1:1 offset required for excess emissions.
- RGGI: 3:1 offset ratio for excess emissions, backed up by possible civil/criminal penalties.
- EPA's SO₂ Program: automatic penalty of \$2k/ton, adjusted for inflation (after the adjustment it may be closer to \$3k/ton), with an automatic 1:1 offset from the next year's credits. Additional civil/criminal penalties are used as a back-stop if, for example, a company refuses to pay the automatic penalty.
- EPA NO_x Program: automatic 3:1 offset ratio for excess emissions, backed up by possible civil/criminal penalties.

Thus, what is common for a broad cap and trade program is for facilities to face a combination of a financial penalty (a set fee, perhaps inflation-adjusted, with a multiplier) and a deduction of allowances from the next year's allocation equal to the facility's shortcoming in the current year. Civil/criminal penalties should be limited to only "bad actors" that refuse to pay the penalty and/or knowingly provide incorrect information.

4. How should CARB best implement the enforcement provisions of section 38580 against violations resulting from electricity imports or the purchase of offsets from out-of-State entities?

We see no reason why enforcement actions on these types of violations should be different than those for any other violation. The entities holding the credits and allowances to meet compliance requirements are the ones responsible, and these entities will all be located in-state. California has no enforcement authority over out-of-state entities.

5. How should CARB contend with potential manipulation in credit trading markets?

We disagree fundamentally with the Carbon Trust approach. The price needs to be set by the market, not for the market. The state could examine existing watchdog mechanisms to look for manipulation, such as what NERC regions have done with electricity prices. . For example, the California Independent System Operator (CAISO) has a Department of Market Monitoring (DMM). The DMM detected the market manipulation that was occurring during the 2000-01 energy crisis, but the Federal Energy Regulatory Commission (FERC) was slow to act. The federal Commodities and Futures

Trading Commission (CFTC) has the jurisdiction and capability to monitor and enforce existing regulations against manipulating such markets. The ARB should directly invite the CFTC to participate in market monitoring and enforcement.

Thank you for considering our comments. If there are any questions, please do not hesitate to contact me at (916)498-7752.

Sincerely,

A handwritten signature in blue ink, reading "Cathy A. Boyle". The signature is fluid and cursive, with the first name "Cathy" being the most prominent.

cc: Dan Dunmoyer
Linda Adams
Cindy Tuck
Mary Nichols
CARB Board Members
Chuck Shulock
Edie Chang