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Cap-and-Trade Workshop
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Submitted via the Workshop Comment Submittal Form
and by email to ctworkshop@arb.ca.gov

Re: Comments on the CARB Public Workshop: Potential Amendments to the Cap-and-Trade Regulation

The Western States Petroleum Association (WSPA) appreciates the opportunity to comment on the California Air Resources Board's (CARB) workshop: Cap-and-Trade Program Workshop, hosted on July 10, 2024.[1] WSPA is a non-profit trade association that represents companies that import and export, produce, refine, transport and market petroleum, petroleum products, natural gas and other energy supplies in California and four other western states, and has been an active participant in air quality planning issues for over 30 years.

WSPA supports CARB's objective to adopt a 2030 reduction target for the Cap-and-Trade program that can maintain a steady and stable carbon market in California. Market-based approaches like the Cap-and-Trade program will help California make significant progress towards its emissions reduction goals while ensuring that these reductions are more cost-effective. However, as explained in comment letters for previous workshops, WSPA reiterates that CARB's proposed updates to the Cap-and-Trade program must be consistent with requirements under Assembly Bill (AB) 32, AB 398, and Senate Bill (SB) 32; should integrate carbon-negative technologies; and should limit cost impacts consistent with other legislative programs seeking to mitigate consumer burdens related to petroleum and alternative transportation fuels. It is also important to provide entities with regulatory and legal certainty as these proposed amendments impact auction activities in 2025 and beyond.

CARB's authority to adopt and implement the Cap-and-Trade program is governed by AB 32, SB 32, and AB 398 (2017). AB 32, the California Global Warming Solutions Act of 2006, sets ambitious greenhouse gas (GHG) emission reduction goals that will continue to position the State as a global leader in green technologies. In carrying out these goals, AB 32 directs CARB to adopt regulations to achieve the maximum technologically feasible GHG emission reductions, but places key limits on CARB's broad authority to regulate emissions, requiring CARB to minimize the leakage potential of the actions taken, ensure that the emissions reductions are technologically feasible *and* cost-effective, and ensure that any reductions achieved are real, permanent, quantifiable, verifiable, and enforceable.[2] SB 32, the California Global Warming Solutions Act of 2016, builds on and expands the requirements in AB 32, but reiterates that reduction measures must be technologically feasible and cost-effective.[3] AB 398 outlines specific requirements for the Cap-and-Trade program through 2030 intended to limit the program's cost impacts for consumers and industry, including a price ceiling, price containment points, and industry assistance factors.[4] In particular, in setting a price ceiling, CARB must consider any adverse impacts on businesses, 2020 tier prices of the allowance price containment reserve (APCR), leakage potential, the auction reserve price, and the cost per metric ton of GHG emissions reductions, among other factors. Therefore, in amending the Cap-

[1] CARB. Cap-and-Trade Program Workshop. 2024. Available at: https://ww2.arb.ca.gov/sites/default/files/cap-and-trade/meetings/nc_CapTradeWorkshop_July1024.pdf. Accessed: July 2024.
[2] AB 32. Available at: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200520060AB32. Accessed: July 2024. See Attachment A.
[3] Ibid.
[4] California Legislative Information. Assembly Bill No. 398. Available at: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB398. Accessed June 2024. See Attachment A.

and-Trade program, CARB is statutorily bound to carefully consider these factors and to account for these legislative priorities. CARB's analysis to date has failed to appropriately quantify and assess potential consumer impacts or leakage risks under various proposed update scenarios, in violation of CARB's statutory mandate.

CARB has also not taken sufficient action to integrate carbon-negative technologies into the Cap-and-Trade program. WSPA has repeatedly emphasized that CARB must incorporate mechanisms within the Cap-and-Trade program to support the successful development and deployment of carbon dioxide removal (CDR) technology, including carbon capture, utilization, and storage (CCUS). As CARB itself has recognized, these technologies will be necessary to achieve the State's decarbonization objectives. In the 2022 Scoping Plan Update, CARB found that it will not be possible to meet the 2045 carbon neutrality target without deploying CDR and CCUS at scale.[5] Indeed, the 2022 Scoping Plan Update set targets for the removal and capture of 20 million metric tons of carbon dioxide equivalent ($MMTCO_2e$) <u>by 2030</u> and 100 $MMTCO_2e$ by 2045. However, these targets are currently infeasible due to cost and regulatory barriers that delay even pilot projects. CARB's updated modeling since the 2022 Scoping Plan Update suggests that ongoing delays in implementation for CDR and CCUS may result in a gap of up to 40 MMTCO2e of planned reductions in 2030, and no alternative framework to achieve these reductions. To address these barriers, CARB must incentivize research and investment to support deployment of CCUS and CDR technologies at the scales and expedited timelines required to meet the State's climate goals. One potential pathway would be to include CCUS and CDR technologies in the Mandatory GHG Reporting (MRR) program, which would allow entities to reduce their compliance obligations or generate tradable credits under the Cap-and-Trade program. By doing so, CARB would incentivize long-term investments in these critical technologies while facilitating substantial future emission reductions, consistent with statewide goals. Without incentives, companies may be reluctant to incur the high up-front costs required to develop these technologies. Incorporating such mechanisms in the Cap-and-Trade program will ease existing burdens and increase access to these critical technologies.

CARB has also failed to address potential conflicts between the proposed Cap-and-Trade program amendments and other legislative programs seeking to minimize consumer burdens associated with transportation fuels. Senate Bill X1-2 (2023) directs State agencies to evaluate measures to ensure that petroleum and alternative transportation fuels are adequate, affordable, reliable, and equitable. However, according to the California Energy Commission, the existing Cap-and-Trade Regulation and the Low Carbon Fuel Standard (LCFS) together add approximately 42 cents per gallon to the cost of gasoline.[6] As currently proposed, CARB's amendments to the Cap-and-Trade program are likely to increase these already-significant burdens, and potentially conflict with SB X1-2. In particular, WSPA is concerned that the proposed amendments to the Regulation could exacerbate existing impacts by further compromising the supply reliability of critical transportation fuels, leading to increased energy costs and possibly further burdening California drivers. CARB must consider impacts to gasoline costs in updating the Cap-and-Trade Regulation and seek to minimize costs, consistent with SB X1-2's legislative mandate. In enacting SB X1-2, the California legislature recognized the importance of ongoing supply constraints for transportation fuels, leading energy affordability to be a pressing priority for many Californians.

In response to the July 10, 2024, workshop, WSPA offers the following comments:

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5 CARB. 2022 Scoping Plan for Achieving Carbon Neutrality. Available at: https://ww2.arb.ca.gov/sites/default/files/2023-04/2022-sp.pdf. Accessed June 2024.

6 CEC. 2024. California Oil Refinery Cost Disclosure Act Monthly Report: Aggregated Data Reported. April. Available at: https://www.energy.ca.gov/data-reports/energy-almanac/californias-petroleum-market/california-oil-refinery-cost-disclosure. Accessed: July 2024.

1. **CARB's proposed adjustments to the allocation caps must account for issues related to technology readiness, implementation uncertainty, and the need to maintain a stable market.**

In its July 10, 2024, workshop, CARB explained that the proposed short-term cumulative 2021-2030 program budgets in the Agency's Standardized Regulatory Impact Assessment (SRIA) and previous workshops would not support California's longer-term 2045 reduction target.[7] As a result, CARB is proposing adjusted cumulative 2021-2045 allowance budgets that would provide a smoother transition to a post-2030 program and would better incentivize increased decarbonization investments this decade.

As WSPA previously explained in its August 17, 2023, comment letter, CARB requires legislative authorization to extend the Cap-and-Trade program beyond 2030. While WSPA continues to encourage CARB to work with the State Legislature to establish legally defensible post-2030 targets, we appreciate that CARB is now assessing the feasibility of various reduction scenarios based on longer-term impacts in response to stakeholder concerns about the SRIA scenario.[8] CARB's consideration of longer-term scenarios better aligns with the long lead times required for investments in sustainable and low-carbon initiatives. This approach also provides a more stable and reliable allowance market to make these investments.

However, CARB's proposed adjusted scenarios would still require significant allowance reductions in the short-term. Option 1 would remove 180 million allowances between 2026 and 2030 before maintaining a smooth decline of the budget through 2045.[9] Option 2 frontloads a significant portion of long-term reductions by removing 265 million allowances between 2026 and 2030 before maintaining the 2030 allowance budgets through 2036.[10] While Option 1 provides for a less steep decline through 2030 compared to the SRIA proposal, neither of these "smoothed" scenarios sufficiently addresses issues under the SRIA proposal related to disincentivizing low-carbon investment, creating market instability, and harming overall program implementation. Between Option 1, Option 2, and the SRIA proposal, Option 1 is more reasonable and allows entities relatively more flexibility to schedule and invest in long lead-time technologies for decarbonization. This option would still enable California to meet its cumulative reduction targets, while being more consistent with the long-term planning and significant upfront capital investment necessary to install large-scale emissions control projects. However, CARB should revise its adjusted scenarios to better reflect the "smooth transition" goals that CARB emphasized in its presentation. Further, CARB's adjusted scenarios must account for short-term technological feasibility concerns. AB 32 requires CARB to consider technological feasibility and cost-effectiveness in regulating GHG emissions.[11] Recent modeling shows that even the 180 MMTCO2e additional reductions under Option 1 are significant and may not be achievable within that timeframe—CARB's 2022 Scoping Plan Update modeling found that the Agency's 48% GHG reduction target may not be achievable by 2030 due to implementation uncertainties associated with CDR and CCUS.[12] As CARB acknowledged during the July 27, 2023,

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7 CARB. Cap-and-trade program workshop presentation. Available at: https://ww2.arb.ca.gov/sites/default/files/cap-and-trade/meetings/nc_CapTradeWorkshop_July1024.pdf. Accessed: July 2024.

8 *See* CARB. 2024. Cap-and-Trade Program Workshop. Available at: https://ww2.arb.ca.gov/sites/default/files/2024-04/nc-CapTradeWorkshop_Apr232024_1.pdf. Accessed: July 2024.

9 CARB. Cap-and-Trade Program Workshop, Slide 30. 2024. Available at: https://ww2.arb.ca.gov/sites/default/files/cap-and-trade/meetings/nc_CapTradeWorkshop_July1024.pdf. Accessed: July 2024.

10 *Ibid*

11 AB 32. Available at: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200520060AB32. Accessed: July 2024.

12 CARB. 2022 2022 Scoping Plan Update, Appendix J: Uncertainty Analysis. Available at: https://ww2.arb.ca.gov/sites/default/files/2022-11/2022-sp-appendix-j-uncertainty-analysis.pdf. Accessed: July 2024.

workgroup meeting,[13] the 2022 Scoping Plan Update scenario[14] relied on a significant amount of mechanical CDR, including CCUS and renewable hydrogen, among others, to achieve these reductions. These technologies have yet to be deployed in the State at the levels necessary to reach a 48% reduction target by 2030. The 2022 Scoping Plan Update assumed that the State would have achieved significant progress in the following key areas: (1) streamlining permitting for CDR and CCUS projects, (2) adopting a regulatory framework for CDR and CCUS technologies, and (3) approval of Cap-and-Trade and Mandatory Reporting Regulation updates that would incentivize investments in CCUS technologies. However, this progress has been delayed, and CARB's updated modeling suggests that these delays may result in up to 40 MMTCO2e of unachieved reductions by 2030. Further, the 2022 Scoping Plan Update identified significant policy-level changes that must be made to achieve the targeted GHG reductions, including permitting reforms, Federal waivers under the Clean Air Act, and an influx of Federal funding. CARB must account for these implementation uncertainties when developing and selecting its adjusted scenarios.

2. CARB should not retroactively adjust allowance allocations.

CARB explained in its July 10, 2024, workshop that the Agency's goal is to provide regulatory certainty "as soon as possible." WSPA strongly agrees that regulatory certainty—including a steady price signal—is key to the ongoing success of the Cap-and-Trade program.

However, CARB's proposed program updates would remove regulatory certainty and program stability by retroactively adjusting reduction targets based on actual achieved reductions in previous years. As WSPA has repeatedly explained in its previous comment letters,[15] retroactively removing allowances from any prior year by lowering a future year's allowance supply will create a flawed regulatory market dynamic and undermine the program's goal to create a steady carbon price signal. This approach would create a disincentive for companies to take early action to maximize their GHG emissions reductions, conflicting with the statutory directive in AB 398 that requires CARB to design regulations to "encourage[] early action to reduce greenhouse gas emissions."[16]

CARB should not adjust any future allowance budget based on allowances that have been sold into the market or allocated to covered entities from previous budget years. AB 32 requires CARB to consider cost-effectiveness in regulating GHG emissions.[17] Consistent with this mandate, the Cap-and-Trade program has been able to achieve cost-effective emissions reductions by providing a stable market and price signal. Retroactively manipulating the allowance market would set a concerning precedent that would undermine confidence in the Cap-and-Trade program, which could undermine market certainty, disrupt business planning, and introduce volatility to the market, and therefore significantly decrease the program's cost-effectiveness, in violation of AB 32.

If CARB proceeds with this proposed approach, WSPA emphasizes that, at minimum, any changes to the allowance budget must begin at the beginning of the calendar year following the year the new Cap-and-Trade Regulation amendments become effective. As stated by

[13] CARB. 2023. California Public Workshop: Potential Amendments to the Cap-and-Trade Regulation. Available at: https://ww2.arb.ca.gov/sites/default/files/2023-07/nc-CapTradeWorkshop_July272023_0.pdf. Accessed: July 2024.
[14] CARB. 2022 Scoping Plan for Achieving Carbon Neutrality, Table 2-3 Available at: https://ww2.arb.ca.gov/sites/default/files/2023-04/2022-sp.pdf. Accessed: July 2024.
[15] *See, e.g.*, WSPA. 2023. WSPA Comments on 10-05-2023 Cap-and-Trade Workshop. Available at: https://ww2.arb.ca.gov/system/files/webform/public_comments/6456/WSPA%20Cap-and-Trade%20October%202023%20Workshop%20Comments%2010-26-2023.pdf. Accessed April 2024.
[16] Cal. Health & Safety Code § 38562(b)(1).
[17] See Cal. Health & Safety Code § 38560.

CARB staff during the discussion following the July 10, 2024, public workshop, it would be extremely complicated to adjust the 2025 allowance caps given that the amendments are not anticipated to be adopted until early 2025. Consequently, CARB should only evaluate scenarios that adjust allowances in 2026 and beyond.

3. **WSPA requests that CARB provide additional opportunities for stakeholder feedback before and after the release of the initial regulatory package.**

   CARB noted during the workshop that the Agency is planning to provide a formal 45-day public comment period for the draft regulatory language for the Cap-and-Trade program. WSPA is concerned that this single comment period will not comprehensively capture public input given the complexity of the proposed amendment.

   CARB's proposed amendments to the Cap-and-Trade Regulation are complex and will require significant time for stakeholders to digest and compile feedback. These amendments involve significant technical background, and many of the proposed changes and the analyses behind these decisions have only been made available to stakeholders late in the process. In addition, several key issues previously raised by stakeholders remain unaddressed. Without detailed development of various amendment scenarios—including information on proposed calculation methods and data sources—CARB cannot meaningfully solicit public feedback in accordance with its statutory requirements.[18]

   Stakeholders must have sufficient review time and opportunities for iterative feedback both before and after the release of the initial regulatory package. Otherwise, stakeholders cannot adequately and thoroughly review the proposed changes and provide meaningful feedback on issues relevant to their businesses and the broader California economy. Given these significant public engagement challenges, WSPA requests that CARB host additional public workshops and provide additional details on key topics that have been mentioned in the previous workshops but remain unclear to the public. These workshops should take place before the release of the draft regulatory language and provide information on the proposed changes to APCR allowance budgets and industrial allowance allocation methods, among other topics.

4. **WSPA incorporates and reiterates comments made in our letter dated June 21, 2024, concerning CARB's proposed revisions to benchmarks for crude oil extraction, proposed approach on allocations for transportation fuel production, and need to consider carbon negative technologies, among other considerations.**

   These comments are included in Attachment A below for the ease of CARB's review.

Thank you for considering our comments. We would welcome the opportunity to discuss these concerns in more detail. If you have any immediate questions, please feel free to contact me at tderivi@wspa.org. We look forward to working with you on these important issues.

Sincerely,

Tanya DeRivi

Tanya DeRivi
Senior Director, California Climate and Fuels

[18] CA Health & Safety Code § 38561(g).