



Environmental Law

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AB 32's Cap and Trade "Delay" Explained

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A funny thing happened on the way to the start of California's Cap and Trade program in January 2012: it was sort of delayed. At a Senate Committee meeting chaired by greenhouse-gas-reduction champion Senator Fran Pavley, California Air Resources Board Chairman Mary Nichols informed the world that even though the program is still going to start in 2012, there will be no compliance obligation that first year. Huh? Newspapers were quick to call this a delay, but when you dive into the details, it really isn't. So let's dive in.

As originally proposed in October 2010, the Cap and Trade Regulation ("Regulation") required the program to start in 2012. This included allocation distribution, enforcement, credit trading and tracking, auctions, and all the other pieces that go along with a full-blown market program. Within the details was a requirement that each year within a three-year compliance period an entity subject to the Regulation would have to turn in (surrender) 30% of their annual greenhouse gas emissions. In her testimony, Chairman Nichols stated that CARB will remove that initial obligation to surrender allowances, but that major components of the program were still in effect. So on one hand there is a delay in the initial date that an obligation has to be complied with, but the overall scope, direction, reduction amount, and breadth of the program are NOT being proposed to be changed. According to Chairman Nichols: "This would not affect the stringency of the program or change the amount of emission reductions that the program will achieve, keeping us on track to meet the 2020 target required by AB 32."

It can easily be viewed that in principle this change shouldn't be considered a delay since there were no reductions anticipated in year one anyway. But the first obligation to comply shifts from 2012 to 2013. Sounds like the definition of a delayed start. CARB has promised to release more details and a full explanation of how this shift will ripple through the rest of the program. Until that is released and digested, there are many questions unanswered.

This proposed change, which will be publicly noticed for comment in late-July, still has to be approved by the CARB Board. If this change is made to the Regulation which is scheduled to be finalized in October, it will relieve much of the pressure that was building around the program with respect to its readiness to launch in January. It allows for a one-year "test phase" of the program.

Was this "delay" inevitable due to the lawsuits that have surrounded the program for all of 2011 and slowed the process down the public implementation of the program? Probably. CARB had originally scheduled half-a-dozen public workshops for the first part of 2011 to iron out many of the program's nuts and bolts (allocation, offset details, enforcement/tracking, etc). When these were scrapped due to the shadow of the lawsuit, the questions about readiness started to swirl throughout Sacramento and California. This proposal by CARB should quiet the noise for now. Though it should be noted that CARB received an official stay from shackles of the original lawsuit, and have just recently been freed to publicly move ahead.

So now what? The following schedule (subject to change) is how CARB has stated they will proceed with the program:

July 8, 2011	Workshop on revised Scoping Plan CEQA analysis
July 15, 2011	Workshop on CT discussion draft of proposed changes (to be issued shortly)
Late July 2011	Public comment period for proposed Cap and Trade revisions, including initial compliance delay outlined by Chairman Nichols
August 24, 2011	Board hearing to revisit Scoping Plan CEQA analysis and reaffirm Cap and Trade as preferred alternative

October 27/28, 2011	Board hearing to finalize Cap and Trade Regulation
January 1, 2012	Start of Cap and Trade program
January 2014	Initial compliance date for 2013 emissions
January 2015	Cap and Trade program expands to include natural gas and transportation fuels
July 2015	Initial compliance “true-up”
2020	Statewide GHG emissions reduced to 1990 levels

The professionals at Manatt are fully engaged in this issue and those issues surrounding California’s efforts to reduce greenhouse gases. For additional information on how this ruling or the pending Cap and Trade regulatory requirements will affect you, or for assistance participating in CARB’s continued rulemaking process, contact [Jon Costantino](#) at 916-552-2365 in the [Energy, Environment & Natural Resources](#) practice group at [Manatt, Phelps & Phillips, LLP](#). Jon Costantino is also the Executive Director of the Association of Carbon Market Participants.