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The AB 32 Train is About to Leave the Station: California Air Resources Board Releases Key Climate Change Planning Document

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Sprinting toward regulation of global warming-related emissions, the California Air Resources Board (CARB) released its proposed Scoping Plan “for achieving the maximum technologically feasible and cost-effective reductions” in greenhouse gas (GHG) emissions on October 15. Required by California’s Global Warming Solutions Act (AB 32), the Scoping Plan is designed to chart the course that California will follow for reducing its emissions to 1990 levels by 2020. CARB is scheduled to formally approve the Scoping Plan in December and will be holding a series of public hearings on the document in the weeks ahead.

Completing the Scoping Plan is the first major milestone under AB 32’s regulatory process and sets the agenda for the regulations that will eventually follow. The Scoping Plan identifies a comprehensive set of ambitious actions designed to reduce overall GHG emissions. After the Scoping Plan is adopted, the process of drafting and eventually adopting regulations will begin. Many businesses plan to increase their participation as this process gets underway.

The Scoping Plan incorporates changes made by CARB after the release of a draft in June, bringing in additional studies and public input from workshops held in July. The Scoping Plan maps out three general types of measures: (1) a cap-and-trade market-based program; (2) so-called “transformational” measures that fundamentally alter the existing regulatory framework, such as implementation of the Low Carbon Fuel Standard or reforming land use and transportation planning processes to account for climate change; and (3) measures that address barriers that cannot be overcome via a market approach, such as a lack of information or coordination.

The Scoping Plan details more of the cap-and-trade program – now a political certainty – including its fit within the broader Western Climate Initiative (WCI), through which seven states and four Canadian provinces are poised to enter a broad cap-and-trade agreement. California’s participation in the WCI is expected to benefit regulated industries – 85% of the state’s emissions will be subject to a firm cap – through access to a larger regional carbon trading market. The extensive detail now present in California’s cap-and-trade proposal, alongside AB 32’s ambitious reduction target, virtually ensure that the state’s program will be a model for an eventual federal cap-and-trade initiative, as has been called for by both Presidential candidates.

Key Changes from the Draft Scoping Plan

We highlight below several of the key changes introduced by CARB in the final Scoping Plan, which will affect several industry sectors and local governments:

- Increased reductions for regional transportation-related GHG targets from 2 to 5 million metric tons. The initial target of 2 million metric tons from the emissions-heavy transportation sector was roundly criticized in CARB’s June draft. The increase draws heavily on the new mandate of SB 375, signed by Governor Schwarzenegger on September 30, which requires regions to prepare – for the first time – plans in which transportation investments are designed to reduce GHG emissions, a mandate which likely can only be achieved in most

regions by changing land use siting and design standards. The two state measures now work in tandem: the final Scoping Plan by setting a higher reduction target, and SB 375 by denying state dollars to transportation projects that are inconsistent with regional infrastructure plans designed to meet the target. For our recent client alert about SB 375, [click here](#).

- Set a *de minimis* level of GHG emissions, below which the regulations will not apply. CARB recommends a *de minimis* level of 0.1 million metric tons of CO₂ equivalent (MMTCO₂E) annual emissions per source, while reserving the possibility of regulating smaller sources in an industry if that industry's aggregate emissions contribute significantly to global warming. We also would not be surprised to see this *de minimis* level start to play a role in environmental review under CEQA.
- Added a goal for local governments to reduce their municipal and community-wide emissions by 15% by 2020, in line with the state's overall goal. This change seems to recognize the leading role several local jurisdictions have played in pushing climate change initiatives.
- Introduced targeted mitigation fees on inexpensive chemicals with high global warming impacts, such as older refrigerants. Alongside the 4.4-cents per metric ton carbon emission fees and the public goods charge for water efficiency investments, these upstream user-driven fees will begin to affect emitters and ultimately California consumers.

These components are added to the programs CARB had previously identified as key to achieving AB 32's targets, including:

- Developing a California cap-and-trade program that links with other Western state programs, through the WCI, to create a regional market system;
- Increasing the renewable portfolio for investor- and publicly-owned utilities to 33%, which would significantly increase reliance on energy sources such as wind, solar and geothermal;
- Expanding and strengthening existing energy efficiency programs, including green building programs;
- Fully implementing the California Clean Car Law (the Pavley standards) to provide for more efficient cars and trucks and the implementation of the Low Carbon Fuel Standard to require cleaner fuel.

Other measures identified include continuing to push the Million Solar Roofs initiative, construction of the high-speed rail line, improved water efficiency, and regulations to reduce emissions from California ports.

What happens now?

The next three months present the final chance for input on the Scoping Plan. CARB will take oral and written comments at three upcoming meetings: CARB's regular October 23 board meeting, a public meeting on November 20-21, and a final public hearing to be held December 11-12 at which CARB will consider approval of the Scoping Plan. All of the meetings will take place at CARB's headquarters in Sacramento. The final deadline for written comments is 12:00 noon on December 10.

If you would like further information or have questions relating to AB 32 or California's other climate change regulations, please contact Michael Steel (msteel@mofo.com / **415-268-7350**), Bill Sloan (wsloan@mofo.com / **415-268-7209**), Miles Imwalle (mimwalle@mofo.com / **415-268-6523**), or Rachel Peterson (rpeterson@mofo.com / **415-268-6007**) in San Francisco.