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Environmental Alert

California Air Resources Board Releases Draft Scoping Plan Describing Measures to Reduce Greenhouse Gases

In June 2008, the California Air Resources Board released its first draft of a comprehensive plan to achieve greenhouse gas emission reductions mandated by the landmark Global Warming Solutions Act of 2006 ("AB 32"). This plan, the "Climate Change Draft Scoping Plan – June 2008 Discussion Draft" ("Plan"), describes a variety of strategies for achieving AB 32's objective of reducing greenhouse gas emissions in California to 1990 levels by 2020. CARB has calculated that reducing greenhouse gas emissions to 1990 levels by 2020 will require reductions of 10% from current levels and of 30% from

"business-as-usual" levels, that is, the level of emissions projected for 2020 if no emission reduction measures are imposed. The aggregate target reduction from the proposed measures is 169 million metric tons of carbon dioxide or its global warming potential equivalent in other greenhouse gases.

The impacts of the measures described in the Plan, if and when they are adopted, will be felt to some degree by every citizen of California, but they will be especially significant for the specific sectors and industries targeted for achieving the reductions needed to meet AB 32's ambitious objectives.

Cap-and-Trade. CARB's Plan relies heavily on a market incentive-based Cap-and-Trade program to ensure that the needed reductions will be achieved. Under Cap-and-Trade, sources in certain "sectors," described below, will be assigned or otherwise acquire a baseline allowance of greenhouse gases that they may emit in a particular year. The allowances will decrease over time so that the statewide emissions load is reduced by 2020 to the estimated level of emissions in 1990, which CARB estimates at 365 million metric tons of CO₂ or its equivalents.

This alert details the plan set forth by CARB to significantly reduce the amount of greenhouse gas emissions in California by 2020.

The affected sectors include:

- **Transportation**
- **Electricity generation**
- **Commercial and residential**
- **Industry**

Sources that are able to maintain emissions below their assigned cap may bank their allowances for future use, or sell them to sources that cannot economically maintain emissions below their caps. In this way, Cap-and-Trade is intended to encourage the development of technologies that most efficiently and cost-effectively reduce greenhouse gas emissions while not imperiling industries or sources that cannot economically or timely reduce their emissions to the prescribed levels.

CARB plans to link its Cap-and-Trade program to similar qualifying programs in other western states pursuant to the Western Climate Initiative Program ("WCI"), in order create a western regional market, and limit incentives for "leakage," or migration, of businesses to other states in order to escape limitations imposed in California. AB 32 also requires CARB to consider potential localized impacts, ensure market security (avoid gaming), and ensure enforceability. Cap-and-Trade program regulations must be adopted by January 1, 2011, with implementation to begin in 2012.

Capped Sectors. Under CARB's Plan, most of the needed greenhouse gas reductions will be achieved by curbing greenhouse gas emissions from capped sources in four main sectors:

- Transportation
- Electricity generation
- Commercial and residential
- Industry

The Transportation Sector represents the state's largest source of greenhouse gas emissions. Projected reductions from Transportation sources account for about 36% of the total to be achieved through the Plan. Transportation Sector reductions are to come from implementation of light-duty vehicle emission standards, low carbon fuel standards, increases in aerodynamic and engine efficiency and hybridization of medium and heavy duty vehicles, and high speed rail, other vehicle efficiency measures, ship electrification at ports and system-wide efficiency measures in goods movement.

Major reductions – about 29% of the total needed - are to be achieved in the Electricity Generation Sector through building and appliance energy conservations measures, solar water heating, increases in combined heat and power electricity production, a 33% Renewable Portfolios Standard (generation of electricity through renewable resources like solar and wind power), and residential solar power conversions. The Commercial and Residential Sector will also be counted on to contribute to some of the building and appliance energy efficiency measures through

The projected reductions from the Transportation, Electricity Generation and Commercial and Residential Sectors fall about 35 million metric tons of emissions short of the 365 tons needed from all sources subject to Cap-and-Trade. These sectors, together with the Industrial Sector, are expected to make up this difference. The Industrial Sector includes refineries, oil and gas producers, food processors, cement plants, and other large industrial sources.

In addition to complying with their caps, major industrial sources of greenhouse gases (defined as those that emit more than half a million metric tons of CO₂ or equivalents per year) would be required to conduct an audit of the energy efficiency of their individual sources in order to determine the potential for additional reductions of greenhouse gases as well as other air pollutants already subject to regulation under other programs. CARB will use the results of the audits to determine whether these sources can make cost-effective reductions in greenhouse gases that also yield reductions of other pollutants, and it may require such reductions through regulation or imposition of permit conditions.

Reductions Outside Cap-and-Trade. The remaining reductions needed for compliance with AB 32 by 2020 are expected to be achieved by sources not subject to Cap-and-Trade, including emitters of compounds with very high global warming potential, such as refrigerants, and by controlling methane at landfills.

A little over 1% of the reductions are to be obtained by meeting local and regional greenhouse gas targets through changes in land use and transportation planning strategies at the local and regional levels. Although it does not quantify reductions from such measures, the Plan also encourages efforts by local governments to reduce energy use of public infrastructure, such as government buildings and water and wastewater facilities.

Potential Additional Strategies. The Plan describes a variety of additional programs that are not yet part of the recommended strategy and that are still under investigation. These include rebates for low emitting vehicles and fees for high emitting vehicles ("feebates"), congestion pricing (imposition of tolls for driving during peak hour periods), "Pay-As-You-Drive" (keying auto insurance rates to vehicle use), Indirect Source rules for new development (refocusing development patterns by restricting levels of emitting activities, such as vehicle trips, indirectly attracted by new development). CARB is also considering additional standards required to further reduce net energy usage in residential and commercial buildings, as well as measures to reduce coal-based energy usage, to increase boiler and energy

efficiency within a variety of industrial sources, and to reduce greenhouse gas emissions from specific industries including cement manufacturing, refineries and oil and gas production, and glass manufacturing.

Carbon fees and use and limitations of offsets will also be explored as part of the Plan.

Scoping Plan Development and Adoption. This summer CARB will release a supplement to the Plan, detailing the results of its analysis of the costs and economic, environmental and public health benefits of the recommended measures.

CARB has requested comments on the Plan by August 1, 2008. Meanwhile, CARB is holding a series of workshops over the summer on various elements of the Plan. CARB plans to issue its Proposed Scoping Plan in October, with formal consideration by the CARB board in November. CARB will then have two years to adopt regulations to implement the final Plan.

Allen Matkins is following the development of the Scoping Plan closely and will keep its clients and friends apprised of significant developments as they occur.

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