AB 32 Implementation Group

Working Toward Greenhouse Gas Emission Reductions
And Enhancing California's Competitiveness

January 16, 2009

Hon. Mary D. Nichols
Chairman, California Air
Resources Board
1001 I Street
Sacramento, CA 95812

RE: Additional Comments on Preliminary Draft Staff Proposal on Recommended Approaches for Setting Interim Significance Thresholds for Greenhouse Gases under CEQA (Oct. 24, 2008)

Dear Chairman Nichols:

The AB 32 Implementation Group ("AB 32 IG") appreciates the opportunity to submit further written comments on the California Air Resources Board's ("CARB") October 24, 2008 Preliminary Draft Staff Proposal on Recommended Approaches for Setting Interim Significance Thresholds for Greenhouse Gases (GHG) under the California Environmental Quality Act ("CEQA") ("Preliminary Draft Proposal"). The AB 32 IG submitted initial written comments on the Preliminary Draft Proposal on November 26, 2008, and participated in the October 27, 2008 and December 9, 2008 Public Workshops. This letter further explains those prior comments, and suggests language that would best address the establishment of an interim significance threshold for measuring a project's impacts from GHG emissions while CARB drafts and implements the regulations mandated pursuant to AB 32.

The AB 32 IG remains concerned that the Preliminary Draft Proposal relies on a quantitative threshold of significance for GHG emissions from projects subject to CEQA, not only for industrial projects, but also, to be determined, for residential and commercial projects. Our concern is that the recommendation, and potential adoption, of a numerical GHG threshold of significance of CO2e/yr for such projects effectively nullifies any constructive consideration by lead agencies of important qualitative criteria that may otherwise effectively demonstrate that a project's GHG emissions impacts are not significant for CEQA purposes. In fact, a numerical threshold effectively serves to nullify the information evaluation process required of CEQA. The AB32 IG is apparently not alone in its concern that lead agency discretion is an integral component of any GHG significance threshold.

Following its previous suggestion that the evaluation of key qualitative factors should play a fundamental role in the lead agency's evaluation of a project's impacts on climate[1], the California Office of Planning and Research ("OPR") has issued its "Preliminary Draft CEQA Guideline Amendments for Greenhouse Gas Emissions," which provides that the evaluation of project specific GHG emissions pursuant to CEQA should focus on qualitative factors such

[1] OPR, Presentation – April 4, 2008; see also OPR's Technical Advisory entitled "CEQA AND CLIMATE CHANGE: Addressing Climate Change Through California Environmental Quality Act (CEQA) Review (June 19, 2008) ("OPR Technical Advisory").

as a project's energy efficiency and overall reduction of the state's or region's carbon footprint.[2] CARB should give significant attention to this important conclusion. OPR's proposal reflects and relies upon CEQA Guideline § 15064.7(a), which encourages public agencies "to develop and publish thresholds of significance" based on "identifiable quantitative, qualitative or performance level of a particular environmental effect."[3] In other words, CEQA does not mandate the use of a quantitative threshold, but expressly recognizes that qualitative thresholds may be necessary and warranted.

Several commenters on the Preliminary Draft Proposal, in addition to the AB 32 IG, have suggested that a qualitative standard may be appropriate in various circumstances during the interim period prior to CARB's adoption of AB 32 mandated regulations. For example, the Solid Waste Industry for Climate Solutions commented that "a strict quantitative threshold for solid waste, recycling, composting and related operations is [...] impractical at this time."[4] Environ, on behalf of the Green Developer's Coalition, commented that the "significance threshold for commercial and residential projects should not specify a quantitative threshold."[5] And the City of Los Angeles commented that while its City departments "have not reached an agreement on whether significance thresholds should be in a quantitative form or more qualitative performance standard [...], [p]erformance thresholds may allow lead agencies to be more sensitive to the ability of certain sectors to reduce emissions from their activities, and allow us to rely [on] and support our planning processes."[6]

As these comments collectively suggest, the idea that CEQA lead agencies need discretion when making significance determinations regarding GHG emissions transcends economic sectors. A strict numerical threshold could have the counterproductive effect of driving highly desirable projects outside of California, with a further unintended effect of causing global GHG emissions to rise as the distance between energy supply and consumption increases. Additional GHG emissions may occur due to transmission losses (in the electricity sector) and increased transportation costs (in the fuels sector), for example. Such concerns are not merely speculative, but are reflected in multiple real world examples.

In the land use sector,

- The imposition of a numeric greenhouse gas threshold ignores the scientific, regulatory and legal consensus reflected in AB 32 and SB 375, and will have the perverse result of discouraging just the type of projects that will most effectively reduce California's overall GHG emissions. A numeric threshold will promote sprawl because developers will focus on smaller housing developments with few

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[2] OPR, "Preliminary Draft CEQA Guideline Amendments for Greenhouse Gas Emissions and Public Workshop Notice" (January 8, 2009) ("Proposed CEQA Guidelines").

[3] OPR Technical Advisory, pp. 4-5.

[4] See November 21, 2008 Letter from Solid Waste Industry for Climate Solutions, p. 4, available at http://www.arb.ca.gov/lispub/comm2/bccommlog.php?listname=ceqa-general-ws.

[5] See November 26, 2008 Letter from Environ, p. 1, available at http://www.arb.ca.gov/lispub/comm2/bccommlog.php?listname=ceqa-general-ws.

[6] November 26, 2008 Letter from the City of Los Angeles, p. 4, available at http://www.arb.ca.gov/lispub/comm2/bccommlog.php?listname=ceqa-general-ws.

neighborhood amenities in order to achieve discreet GHG emissions that are less than any adopted numeric threshold. However, by focusing on achieving GHG emission reductions by minimizing vehicle miles traveled, AB 32 and in particular SB 375 demand just the opposite. Communities with larger numbers of units and related amenities will reduce vehicle miles traveled and therefore promote the goals of AB 32 and SB 375, but these overall benefits will be trumped in the CEQA process by the focus on a numeric threshold. Put another way, if a larger project (e.g., 4,000 housing units) meets GHG emission reduction standards tied to AB 32 and SB 375, that project should be determined to have mitigated its GHG emission impacts to the same proportional extent as a smaller project (e.g., 40 or 400 units). In fact, the larger project would move us more quickly towards meeting California's GHG emission reduction goal by achieving AB 32 compliance for a larger number of units, and also by more likely accommodating mixed uses and jobs-housing connections that reduce the vehicle miles traveled consistent with SB 375. CARB's proposal thus imposes a burden on the very type of projects which are needed to help implement AB 32 and SB 375, and frustrates -- rather than helps -- to implement those statutes.

In the refining and oil production sector,

- A number of permit applications have been submitted by the oil and gas industry for the installation and replacement of steam generators. These steam generators are designed to improve energy efficiency per barrel of oil extracted. A number of permit applications are for the installation of 85 mmBtu/hr steam generators. Historically, 62.5 mmBtu/hr steam generators have been used in the San Joaquin Valley for enhanced oil recovery (EOR) through steam flood. The new larger 85 mmBtu/hr units are more efficient from both gas consumption and steam production standpoints. Thus, steam will be produced with fewer GHG emissions per unit of steam generated than the older steam generators. An overall increase in energy efficiency for the generation of a barrel of steam results in an increased energy efficiency per barrel of oil extracted. In using these higher efficiency models the industry is decreasing the overall emissions per barrel of steam and per barrel of oil extracted. The benefit of new steam generator technology and the overall benefit of such industry-wide actions should be a significant consideration in the CEQA process but that is obviated by setting a strict numeric threshold.

- Projects that produce, process and supply clean fuels should be either exempt from CEQA or, at a minimum, the lead agency should presume such projects do not have a significant effect on climate change. Clean fuel mandates are designed to reduce undesired emissions as part of an effort to reach clean air standards and should be given serious qualitative consideration for their positive effect, notwithstanding CO2 emissions released in the concomitant industrial process.

In addition to these specific examples, a purely quantitative significance threshold for GHG emissions presents a unique problem under CEQA for all projects. The primary purpose of CEQA is to identify whether a particular project will result in a significant environmental effect on the physical environment, and to mitigate the identified significant impacts to the maximum extent feasible. However, unlike impacts from criteria pollutant emissions, for

example, there does not appear to be a scientific basis linking GHG emissions from a particular project to specific physical, localized environmental effects. Thus, the analysis of impacts from GHG emissions must be evaluated in a significantly larger context than most environmental impacts under CEQA. To accurately evaluate an individual project's possible impacts on climate change, the project must be viewed in the context of statewide, or at the very least, sector-wide GHG emissions, and of the reductions targeted under AB 32. A numeric threshold strips lead agencies of the discretion to view project-specific GHG emissions in this larger context. Any recommended interim significance threshold must therefore give agencies discretion to make such a contextual determination, using CEQA to evaluate whether a project results in a net increase or decrease of statewide GHG emissions, and whether it meets the qualitative goals of AB 32.

The AB 32 IG also believe that the Preliminary Draft Proposal should reflect the fact that, once adopted, the AB 32 Scoping Plan should be used to inform the CEQA process. The Scoping Plan provides a blueprint for how the state will achieve the GHG reductions needed to meet the AB 32 mandate. Therefore, projects for sources within sectors covered by the GHG measures and reductions referenced in the Scoping Plan should be able to reference those mandated measures and reductions when determining whether the projects result in a significant environmental impact pursuant to CEQA.

In order to permit lead agencies to undertake the appropriate and necessary qualitative evaluation, taking into account AB 32 mandated GHG reductions and mitigation, the AB 32 IG suggests the following language concerning the threshold of significance to be considered by a lead agency:

> <u>Projects at facilities subject to the AB 32 Scoping Plan are assumed to meet CEQA greenhouse gas (GHG) mitigation requirements through the GHG emission standards imposed on these facilities by AB 32. If GHG emission standards are not in effect for those projects that the Lead Agency anticipates will be subject to regulations promulgated by CARB under AB 32 for the reduction of GHG, the lead agency should presume less than significant impacts related to climate change if the project will result in a net increase in energy efficiency or decrease in the carbon intensity of the underlying economic activity or the state's overall carbon footprint.</u>

From the AB 32 IG's perspective, a rule that permits a lead agency to consider a project's overall emissions, efficiencies and the broader overall impact on carbon intensity is a rational approach to the mandate in SB 97. Only if an agency cannot find, based on substantial evidence, that a project achieves these efficiencies and is therefore consistent with the mandate of AB 32, should it undertake a further evaluation of whether the project, with adequate mitigation, results in significant impact to climate change.

Further, the AB32 IG believes that CARB's draft proposal for a numeric standard for industrial sources has serious deficiencies. CARB has proposed a threshold of 7,000 MTCO2e/yr for industrial sources, but the manner in which it has reached this number as the significance threshold is unsupported by substantial evidence. As the Preliminary Draft Proposal notes, the purpose of a significance threshold is to establish an identifiable quantitative, qualitative or performance level threshold that marks the division between an

impact that is significant and one that is not. The analysis in the Preliminary Draft Proposal supporting the 7,000 MTCO2e/yr threshold has nothing to do with this "division," which makes the analysis and conclusion suspect.

Instead, as stated in the Preliminary Draft Proposal, "ARB staff's objective is to develop a threshold of significance that will result in the vast majority (~90% statewide) of [GHG] emissions from new industrial projects being subject to CEQA's requirement to impose feasible mitigation." Thus, in an effort to "capture" GHG emissions under the CEQA umbrella – rather than identify the point at which GHG emissions actually result in a significant environmental impact – the analysis focuses on boiler input capacity, and concludes that "boilers with an input capacity of 10 mmBtu/hr or greater correspond to 93 percent of total industrial boiler input capacity. Based on this data, ARB staff used a natural gas boiler input capacity benchmark of 10 mmBtu/hr which equates to emissions of 4,660 MTCO2e/yr. This capacity benchmark defines a significant combustion source." The analysis then calculates proportional emissions from three other categories of emissions (process losses, purchased electricity and water use/wastewater treatment) for similar projects to reach the 7,000 MTCO2e/yr threshold. But simply because boilers with this level of input capacity are asserted to be a significant source of GHG emissions in the "industry" sector does not mean that the emission of 7,000 MTCO2e/yr represents the dividing point at which project-specific emissions result in an impact on global climate change. In the view of the AB 32 IG, the analysis included in the Preliminary Draft Proposal may be appropriate as part CARB's forthcoming GHG regulations under AB 32, but has no role in establishing a significance threshold under CEQA.

Additionally, an unintended consequence of setting a quantitative CEQA threshold of significance is that it can lead to a requirement to purchase credits in the market to mitigate any increases in GHG as a CEQA matter. This action could deplete the available credits created for CARB GHG trading program and drive up prices. Furthermore, it may impact other credit markets such as ERCs and RECLAIM RTCs, as there may be pressure to purchase those credits to mitigate increases as well.

Finally, the AB 32 IG reiterates its previous comments concerning the need to include mitigation when determining the threshold of significance and to expand mitigation obligations beyond the project. We look forward to answering any questions you or your staff may have on these important matters.

Sincerely,

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