State of California
AIR RESOURCES BOARD

Amendments to California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms

Resolution 14-4

April 25, 2014

Agenda Item No.: 14-3-3

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (ARB or Board) to adopt standards, rules and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, the California Global Warming Solutions Act of 2006 (Assembly Bill 32; Chapter 488 Statutes of 2006; Health & Safety Code section 38500 et seq.) (AB 32) declares that global warming poses a serious threat to the economic well-being, public health, natural resources, and environment of California and also provided initial direction on creating a comprehensive multi-year program to reduce California's greenhouse gas emissions to 1990 levels by 2020, to maintain and continue reductions beyond 2020, and to initiate the transformations required to achieve the State's long range climate goals;

WHEREAS, section 38501 of the Health & Safety Code designated ARB as the State agency charged with monitoring and regulating sources of Greenhouse Gas (GHG) emissions to reduce these emissions;

WHEREAS, Executive Order S-3-05 established a California greenhouse gas emission reduction target of 80 percent below 1990 levels by 2050; this target was reaffirmed in Executive Order B-16-2012 which established a California target for the transportation sector of 80 percent below 1990 levels by 2050;

WHEREAS, to reduce California's greenhouse gas emissions to the scientifically recognized levels necessary for climate stabilization will require California to keep building on the framework established in the initial Scoping Plan, approved pursuant to Health and Safety Code section 38561(a) and reapproved in 2011, by continuing to pursue the maximum technologically feasible and cost-effective actions that will steadily drive down greenhouse gases over the coming decades, including through the Cap-and-Trade Program;

WHEREAS, AB 32 added section 38501 to the Health & Safety Code, which expresses the Legislature's intent that ARB coordinate with State agencies and consult with the environmental justice community, industry sectors, business groups, academic institutions, environmental organizations, and other stakeholders in implementing

AB 32; and designs emissions reduction measures to meet the statewide emissions limits for GHGs in a manner that minimizes costs and maximizes benefits for California's economy, maximizes additional environmental and economic co-benefits for California, and complements the State's efforts to improve air quality;

WHEREAS, section 38501(d) of the Health & Safety Code confirms that national and international actions are necessary to fully address the issue of global warming, but action taken by California to reduce GHG emissions will have far reaching effects by encouraging other states, the federal government, and other countries to act;

WHEREAS, the implementation of the market mechanisms pursuant to Health and Safety Code section 38570 will enable California to continue to work to meet the goals set by AB 32, S-3-05 and B-16-2012 beyond 2020;

WHEREAS, in Resolutions 11-32 and 12-33, the Board directed staff to continue to work with stakeholders on several topics related to implementation of the Cap-and-Trade Program, including considering leakage risk determinations, the allowance allocation approach for California industries including refineries, and product benchmarks, as necessary;

WHEREAS, in Resolutions 12-51 and 12-33, the Board directed staff to analyze and, if necessary, propose amendments relating to resource shuffling, legacy contracts, combined heat and power, emission leakage, allowance allocation to universities, cost containment, product-based benchmarks, and waste-to-energy facilities, as necessary;

WHEREAS, in Resolution 10-42, the Board directed the Executive Officer to initiate a public process for the review of additional compliance offset protocols for the purpose of bringing additional protocols to the Board for consideration; and ARB staff has proposed a new Compliance Offset Protocol Mine Methane Capture (MMC) Projects (MMC Protocol) as part of this rulemaking;

WHEREAS, staff prepared a document entitled "Staff Report: Initial Statement of Reasons for the Proposed Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms" (ISOR), which presents the rationale and basis for the proposed regulation and MMC Protocol, and identified the data, reports, and information relied on;

WHEREAS, the ISOR, including the draft environmental analysis for the proposed amendments contained in Chapter III, and the draft environmental analysis for the proposed MMC Protocol contained in Appendix A, was circulated for a 45-day written public comment period from September 9, 2013 until October 23, 2013;

WHEREAS, on October 25, 2013, in Resolution 13-44, the Board directed the Executive Officer to take the following action:

1. Consider the topics set forth in Attachment A, with such other additional conforming modifications as may be appropriate and any additional supporting documents and information available to the public for a period of 15 days,

provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make such further modifications as may be appropriate in light of the comments received, and shall present the proposed regulations to the Board for further consideration;

2. Evaluate all comments received during the public comment periods, including comments raising significant environmental issues, and prepare written responses to such comments as required by ARB's CEQA certified regulations at title 17, CCR, section 60007 and Government Code section 11346.9(a);

3. If appropriate, prepare and circulate any further environmental analysis, to the extent required by ARB's regulations at title 17, California Code of Regulations, sections 60001-60007, and incorporate all feasible mitigation or alternatives that could eliminate or substantially lessen any significant adverse environmental impacts identified;

4. Present at a subsequently scheduled Board hearing, the Board with staff's written responses to comments raising significant environmental issues, along with the environmental analysis, for consideration for approval, and the Final Regulation order for consideration for adoption; and

5. Make available for public review analysis of the potential impact of cap-and-trade offsets on coal mine economics.

WHEREAS, additional conforming modifications and supporting documents were circulated for a 15-day written public comment period from March 21 until April 5, 2014.

WHEREAS, the Board finds that:

The proposed amendments to the Cap-and-Trade Regulation meet the statutory requirements for a market based mechanism identified in section 38570 of the Health and Safety Code;

The proposed amendments to the Cap-and-Trade Regulation were developed in an open public process, in consultation with affected parties, through numerous public workshops, individual meetings, and other outreach efforts, and these efforts are expected to continue;

No reasonable alternatives to the amendments considered to date, or that have otherwise been identified and brought to the attention of ARB, would be more effective at carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected entities than the proposed regulation; and

The proposed amendments are consistent with ARB's environmental justice policies and do not disproportionately impact people of any race, culture, or income.

WHEREAS, the California Environmental Quality Act (CEQA) requires that if a public agency has determined that a project would have a significant effect on the environment, it may not approve the project as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental impacts of such a project. In the event that specific economic, social, or other conditions make infeasible the alternatives or mitigation measures, the project may be approved if it is determined that any remaining unavoidable significant impacts are acceptable due to overriding considerations;

WHEREAS, Public Resources Code section 21080.5 allows public agencies with regulatory programs to prepare a plan or other written document in lieu of an environmental impact report or negative declaration once the Secretary of the Resources Agency has certified the regulatory program;

WHEREAS, that portion of the ARB's regulatory program that involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans has been certified by the Secretary of Resources Agency (CEQA Guidelines, section 15251(d));

WHEREAS, in accordance with ARB's certified regulatory program at title 17, California Code of Regulations (CCR), section 60005(b), and the policy and substantive requirements of CEQA, as part of the Chapter III of the ISOR and Appendix A to the ISOR, ARB staff included two separate environmental analyses to assess the potential for significant adverse and beneficial environmental impacts associated with the proposed amendments and implementation of projects under the proposed MMC Protocol and a succinct analysis of those impacts;

WHEREAS, staff reviewed written comments received on the draft environmental analyses and prepared written responses to those comments;

WHEREAS, on April 14, 2014, staff posted on the ARB website a document containing staff's written responses to comments received on the draft environmental analysis entitled, "Response to Comments on the Environmental Assessment Prepared for the Proposed Amendments to the California Cap on Greenhouse Gas Emissions and Market Based Compliance Mechanisms";

WHEREAS, prior to the duly noticed public hearing held on April 25, 2014, staff presented the final environmental analysis along with the written responses included in the Response to Comments on the Environmental Assessment Prepared for the Proposed Amendments to the California Cap on Greenhouse Gas Emissions and Market Based Compliance Mechanisms to the Board for review; and

WHEREAS, a public hearing and other administrative proceedings have been held in accordance with the provisions of Chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby certifies that the environmental analysis was completed in compliance with ARB's certified regulatory program to meet the requirements of CEQA, reflects the agency's independent

judgment and analysis, and was presented to the Board whose members reviewed and considered the information therein before taking action to approve the proposed Final Regulation Order.

BE IT FURTHER RESOLVED that the Board approves the written responses to comments included in the Response to Comments on the Environmental Assessment Prepared for the Proposed Amendments to the California Cap on Greenhouse Gas Emissions and Market Based Compliance Mechanisms.

BE IT FURTHER RESOLVED that in consideration of the environmental analyses and the written responses to comments received on the environmental analyses, the Board adopts the Findings and Statement of Overriding Considerations as set forth in Attachment C to this resolution.

BE IT FURTHER RESOLVED that the Board hereby adopts the amendments to sections 95802, 95811, 95812, 95813, 95814, 95821, 95830, 95831, 95832, 95833, 95834, 95841.1, 95851, 95852, 95852.1.1, 95852.2, , 95853, 95856, 95857, 95870, 95890, 95891, 95892, 95893, 95910, 95911, 95912, 95913, 95914, 95920, 95921, 95922, 95942, 95970, 95971, 95972, 95973, 95974, 95975, 95976, 95977, 95977.1, 95978, 95979, 95980, 95980.1,95981, 95981.1, 95982, 95983, 95984, 95985, 95986, 95987, 95990, 96022, and adopts new sections 95894, 95895, 95923, 95979.1, new Appendix B, and new Appendix C, title 17, California Code of Regulations, as set forth in Attachment A.

BE IT FURTHER RESOLVED that in consideration of The Mine Methane Capture Protocol and Mining Economics analysis, the Board adopts the MMC Protocol, as set forth in Attachment B to this resolution.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to finalize the Final Statement of Reasons and submit the completed rulemaking package to the Office of Administrative Law.

I hereby certify that the above is a true and correct copy of Resolution 14-4 as adopted by the Air Resources Board.

Tracy Jensen

Tracy Jensen, Clerk of the Board

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Identification of Attachments to the Board Resolution

Attachment A: Final Regulation Order- Amendments to sections 95802, 95811, 95812, 95813, 95814, 95821, 95830, 95831, 95832, 95833, 95834, 95841.1, 95851, 95852, 95852.1.1, 95852.2, , 95853, 95856, 95857, 95870, 95890, 95891, 95892, 95893, 95910, 95911, 95912, 95913, 95914, 95920, 95921, 95922, 95942, 95970, 95971, 95972, 95973, 95974, 95975, 95976, 95977, 95977.1, 95978, 95979, 95980, 95980.1,95981, 95981.1, 95982, 95983, 95984, 95985, 95986, 95987, 95990, and 96022, California Code of Regulations, title 17. Adoption of new sections 95894, 95895, 95923, 95979.1, new Appendix B, and new Appendix C, California Code of Regulations, title 17.

Attachment B: Compliance Offset Protocol Mine Methane Capture Projects.

Attachment C: Findings and Statement of Overriding Considerations.