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# AB 32 Implementation Group

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

February 4, 2009

Mr. Jim Norton, Reporting Subcommittee Chair  
Western Climate Initiative  
Office of the Secretary  
Environmental Protection Division  
New Mexico Environmental Department  
New Mexico

**Subject: AB 32 Implementation Group Comments on the January 6, 2009 - WCI Background Document and Progress Report for Essential Requirements of Mandatory Reporting for the Western Climate Initiative, Third Draft**

Dear Mr. Norton,

The AB 32 Implementation Group (AB 32 IG) is pleased to submit the following comments regarding your January 6 solicitation for stakeholder input on the Western Climate Initiative (WCI) - Background Document and Progress Report for Essential Requirements of Mandatory Reporting for the Western Climate Initiative, Third Draft.

AB 32 Implementation Group (AB 32 IG) is a coalition of more than 185 organizations that supports a plan to meet AB 32 greenhouse gas (GHG) emission reduction goals which will protect jobs, keep costs low for consumers, and grow the California economy.

Many AB 32 IG members have facilities in the western states that will be impacted by climate change issues now being developed by WCI. We believe it is critical that recommendations from the WCI mesh with all the other regional, state and local programs to ensure consistency and to avoid costly and confusing unintended consequences. Equally important, the AB 32 IG believes the WCI must align with the federal program, when one is established, to avoid duplication and increased costs for western businesses that would put them at a competitive disadvantage. We urge the WCI to clearly describe in its program, how the WCI program will link, merge, or otherwise work with the federal program and with other programs such as international carbon markets and other regional or state programs.

We reference our previous comment letter of August 15, 2008 on broader principles for a comprehensive cap-and-trade program. In addition to those broader policy statements, below are more detailed comments on the January 6, 2009 document.

## **ATTACHMENT 1: GENERAL PROVISIONS**

**Applicability WCI.1:** The proposed WCI reporting level of 10,000 metric tons CO<sub>2</sub>e per year (as compared to the 25,000 metric tons CO<sub>2</sub> per year in the California rule or the 25,000 metric tons CO<sub>2</sub>e per year for inclusion in the WCI cap-and-trade program) has developed considerable concern within the reporting community. It becomes particularly problematic when linked to the yet-to-be-defined reporting requirements for fuel providers. The requirement for “any supplier that within the WCI region distributes gasoline and diesel transportation ... that ... would emit 10,000 metric tons CO<sub>2</sub>e/year” to report those emissions goes beyond the scope of any reporting protocols that we have seen in the EU, the US or California. Further, how this would be

implemented, how suppliers would comply, and how it interacts with other provisions of the reporting requirements is a particularly complex issue with significant potential confidentiality issues. We urge you to think through this provision very carefully in terms of its workability. AB 32 IG believes the entire set of reporting issues for fuel suppliers should be determined only after the point of regulation has been established.

**Indirect Emissions:** Further, AB 32 IG believes that indirect emissions, particularly from electricity, heat, steam should be reported. The WCI Essential Requirements document does not provide for indirect emissions reporting. We suggest the indirect emissions reporting provisions in the California reporting protocols as an option the WCI should consider.

**General Greenhouse Gas Reporting Requirements and Schedule WG.2(a) - General Timing:**

Getting the reporting program up and running to support a cap-and-trade program is an important objective. However to meet the recommended 2010 start date, data gathering will have to begin in fewer than 12 months. This will create a huge time crunch to complete and finalize WCI's reporting recommendations; for each of the individual states to move their implementing regulations through their regulatory processes; and for facilities to get their programs designed, any new required measurement equipment in place, and to get their people trained to do the work. Depending upon the nature of the measurement requirements, complex facilities like those in the oil and gas industry may simply not have enough time to execute the upfront work prior to the beginning of the first compliance period. This would in turn, create an unacceptable compliance exposure for industry. This same issue developed during the design of the California program and was resolved by allowing the first year of reporting to occur using best available data. We strongly recommend that a similar provision be incorporated into WCI's program design.

**General Greenhouse Gas Reporting Requirements and Schedule WG.2(g) - Fuel Use**

**Measurement Accuracy:** The general requirement for fuel use accuracy will be difficult for many existing meters to meet. Depending on the meter, service and installation, it may not be possible to maintain and calibrate "in a manner and a frequency required to maintain this level of accuracy" short of completely replacing measure devices or forcing the unscheduled shutdown of operating facilities for the installation, maintenance and/or calibration of flow meters - none of which are viable alternatives. California recognized this issue by developing maintenance and calibration guidelines that recognized these issues. AB 32 IG strongly recommends WCI develop similar guidelines or provisions.

**Confidentiality:** Much of the underlying fuel use and process data used in calculating GHG emissions for oil and gas facilities are closely held trade secret information. It is absolutely critical that this data be protected as confidential. To that end, the third party verification process imbedded in the recommended WCI reporting approach is a valuable tool in protecting this information. This approach allows trade secret information to remain on-site under the control of the reporting facility, but it allows the auditors full access to the information during their verification work. The final emission numbers for the facility can then be released to the public with the confidence that the numbers are correct. Although the January 6 Background Document discusses confidentiality, the Essential Requirements document is silent on the issue. We believe confidentiality is such a critical provision of any future state regulation, that the Essential Requirements should contain a specific provision that can then be tailored to the specific confidentiality provisions applicable to each jurisdiction.

**Third Party Verification:** It is very important that WCI and its partners have consistent, comparable, compatible, and generally equivalent verification protocols so that companies that have facilities in different partner jurisdictions can avail themselves of properly trained verifiers

who are eligible to verify emission reports for their different operations in the different jurisdictions. In addition, this will allow for an expanded pool of trained verifiers, and most importantly it will establish the credibility need with potential future trading partners/jurisdictions.

Further we would generally recommend that reporting dates, verification dates, etc. be consistent among the WCI partners – we note that the dates in the WCI proposal (WCI 2.0(b)(1) and (2) are different from verification dates in the California rule. The staggered dates in the California rule were designed to spread out the demand/workload on verifiers to help ensure there were enough qualified bodies to go around. As WCI states join the mandatory reporting world en masse in 2010, the demand for qualified verifiers will go up significantly and we recommend that WCI adopt the staggered California verification schedule to minimize potential compliance exposures that might result from excessive demands on the verification service providers.

**Compliance and Enforcement:** For GHG reporting programs, the paramount goal is to ensure not only that everyone reports, but most importantly, that everyone reports accurately and on time. In a third party verification based approach, accuracy is ensured via the verification process itself, not by the threat of potential enforcement oversight. In fact, the verification process is actually designed to pursue the best answer through a collaborative effort between the reporting facility and the verifiers. We strongly recommend the WCI and its members incorporate all of the compliance/enforcement elements carefully developed for, and as designed in, the California rule which focuses on making sure the process works correctly, the data is submitted on time, and that the data is free from error. The California approach also carries strong penalties designed to prevent cheating.

Compliance and Enforcement (WCI.5) - The California rule specifies that failure to submit a report, failure to include in a report all required information, and late submittal of any report, "shall constitute a single, separate violation of this article for each day that the report has not been submitted beyond the specified reporting date." Under this language, failure to include "all information required" in a monitoring report would be considered only one daily violation, irrespective of the quantity of specific required information that was not included. In contrast, the WCI language defines "violation" to include four broad categories of noncompliance: failure to collect needed data; failure to monitor and test as required; failure to calculate GHG emissions using the specified methodologies; and failure to retain required records. Further, the WCI language also states that "each violation of this rule shall constitute a single separate violation . . . ." (***Emphasis added***)

When these two differences are taken together, it appears that under the WCI language each particular failure to collect data, monitor or test, and to use the specified calculation methodologies would be classified as a separate violation for each day such failure(s) continued after the pertinent report submittal deadline. As a result, the potential penalty exposure under the WCI approach could be many times higher than under the California rule.

AB 32 IG urges WCI to amend the penalties language to be comparable to the California rule. If the WCI's goal is to include more specific examples of what would constitute a violation, we suggest that WCI amend the language to read as follows:

(b) Each violation of this rule shall constitute a single, separate violation for each day beyond the specified reporting date. A violation includes failure to submit or late submittal of any report, or failure to include in a report all information required by this rule. Information required to be included in a report includes data needed to calculate GHG emissions,

monitoring and testing results, GHG emissions calculated following the methodologies specified in this rule, and all other information required to be provided in the report. For the purposes of this rule, "report" means any GHG emissions data report, verification statement, or other document required to be submitted by this rule.

Missing Elements – AB 32 IG believes that there are two vital provisions missing in the WCI Essential Elements that are inseparably linked with the Compliance and Enforcement requirements in WCI.5 1) There need to be provisions to address equipment breakdowns or other types of malfunctions when data cannot be physically gathered (see California 95103(a)(10) Procedure for Interim Fuel Analytical Data Collection) and 2) There need to be provisions for defining data capture requirements (see California 95103(a)(8) Analytical Data Capture). Without these provisions each and every individual missing data point of the tens of thousands of hourly, daily, and monthly sampling and measurements required by the Essential Elements becomes a violation under the enforcement and compliance provision of WCI.5 - whether it as any impact or not on meeting the 95% emission accuracy requirement to receive a positive verification finding.


Compliance Certification WCI.7(c)(2) - AB 32 IG believes the WCI proposed certification language includes a number of unnecessary and unduly onerous provisions such as “certification under penalty of law.” In contrast, the existing California certification requirement for submission of mandatory monitoring reports and documents simply calls for a statement the report was prepared in accordance with the reporting regulations, and the information in the report is true, accurate and complete. AB 32 IG urges WCI to amend the certification language to make it less onerous. A demonstrated alternate approach which was thoroughly vetted is the certification required under Clean Air Act Title V for submission of monitoring and compliance reports. The Title V approach does not require statements about authorization or penalty of law. Instead, it simply requires that Title V certifications state that "based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete." See 40 CFR 70.5(d). There is no reason that state-level certification requirements for GHG emissions monitoring reports should be any more onerous than the standard Title V certification.

In summary, we have identified a broad range of significant issues in the current draft of the document that need resolving. These range from higher level policy issues to more complex technical methodology, calculation, and structural issues. We look forward to discussing with WCI, in more detail, a number of the very complex issues related to the WCI proposal and our suggested recommendations to make the proposal more workable while still meeting the needs of the WCI.

Sincerely,



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