Authority to Regulate Climate Post- 2020

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Climate Stabilization or Bust

- Returning to 1990 level only first step in long journey to climate stabilization

- Executive Order B-30-15
  - 2030: 40% below 1990
  - 2050: 80% below 1990

- 2050 limit designed to sync with 2°C global average increase necessary to avoid worst impacts of climate change

View from Saturn (Cassini)
900 million miles away
• Required ARB to determine 1990 statewide GHG emissions level and approve equivalent **statewide GHG emissions limit** to be achieved by 2020 (HSC § 38550)

• Required ARB to adopt “**emission reduction measures** by regulation to achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions in furtherance of achieving the statewide greenhouse gas emissions limit” (HSC § 38562(a))

• Regulations could include the establishment of:
  • “a system of market-based declining annual aggregate emission limits for sources or categories of sources that emit greenhouse gas emissions, applicable from January 1, 2012, to December 31, 2020, inclusive, that the state board determines will achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions, in the aggregate, from those sources or categories of sources.” (HSC § 38562(c))
  • “market-based compliance mechanisms” (HSC § 38570)

• ARB promulgated **Cap-and-Trade Program regulations** (17 CCR § 95800 et seq.)
AB 32 Requires ARB to Serve Many Masters
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To the extent feasible and in furtherance of achieving the statewide greenhouse gas emissions limit:

- Design the regulations ... in a manner that ... seeks to minimize costs and maximize the total benefits to California....

- Consider cost-effectiveness of these regulations.

- Consider overall societal benefits, including reductions in other air pollutants, diversification of energy sources, and other benefits to the economy, environment, and public health.

- Consider the potential for direct, indirect, and cumulative emission impacts from these mechanisms, including localized impacts in communities that are already adversely impacted by air pollution.

- Design any market-based compliance mechanism to prevent any increase in the emissions of toxic air contaminants or criteria air pollutants.

- Maximize additional environmental and economic benefits for California, as appropriate. HSC §§ 38562(b), 38570(b).
• Does the act authorize the Governor or the ARB to establish a statewide GHG emissions limit that is below the state’s 1990 level of emissions and that would be applicable after 2020?

• Does the act authorize the Governor or the ARB to establish a system of market-based declining annual aggregate emissions limitations for sources or categories of sources of GHGs that would be applicable after 2020?

• May the ARB increase the fee authorized under section 38597 in order to achieve a statewide emissions limit that is below the 1990 level and that would be applicable after 2020?
• “[A]ny authority that the Governor or the ARB is entitled to exercise with respect to GHG reductions must emanate from a statutory enactment such as the Act [AB 32].”

• Plain language of AB 32 (HSC § 38551)
  - (a) The statewide greenhouse gas emissions limit shall remain in effect unless otherwise amended or repealed.
  - (b) It is the intent of the Legislature that the statewide greenhouse gas emissions limit continue in existence and be used to maintain and continue reductions in emissions of greenhouse gases beyond 2020.
  - (c) The state board shall make recommendations to the Governor and the Legislature on how to continue reductions of greenhouse gas emissions beyond 2020.

• Separation of Powers
  - “We think the determination of a standard for the statewide GHG emissions limit is a fundamental policy decision that only the Legislature may make. Yet the argument that the act authorizes a lower emission limit after 2020 entails the consequence that the executive branch would have unfettered discretion in setting that limit.”
Position of Air Resources Board and Governor’s Office
External expressions of confidence in authority

ARB Charging Forward
- 2030 Scoping Plan
- Extensions of Emission Reduction Measures (e.g., Cap-and-Trade Program and Low Carbon Fuel Standard)
- SLCP Reduction Strategy

Governor Defiant in Face of SB 350 Defeat on 50% Reduction in Petroleum Use by 2030
Implications

- Lawsuits
  - Final agency action

- Clean Power Plan Compliance

- Market Fluctuations and Investment Decision Disruption

LCFS prices climbing back out of the frozen valley

[Graph showing LCFS prices from August 2012 to August 2015]
Possible Next Steps?

- New Legislation
  - Failed Attempts
    - AB 1288 (would have removed 2020 date for Cap-and-Trade Program)
    - SB 32 (would have codified 2030 and 2050 limits)
  - Supermajority required?
    - See Auction Litigation

- Achieve GHG Reductions via existing mechanisms
  - Renewables Portfolio Standard
  - Title 24
  - Advanced Clean Cars

- Target GHG emissions indirectly
Mobile Source Strategy

- Ozone Standards
  - 2023 and 2031
  - Does not address 70 ppb standard finalized on Oct. 1, 2015

- PM Standard

- Environmental Justice and toxics exposure
Mobile Source Strategy – Emissions Contribution from Mobile Sources

Source: ARB, Mobile Source Strategy, 2015
Mobile Source Strategy

Benefits of Mobile Source Strategy

<table>
<thead>
<tr>
<th>Smog Forming Emissions</th>
<th>GHG Emissions</th>
<th>Petroleum Usage</th>
<th>Diesel PM Emissions</th>
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<tbody>
<tr>
<td>South Coast</td>
<td>Statewide</td>
<td>Statewide</td>
<td>South Coast</td>
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</tbody>
</table>

Percent reduction by 2030/2031 from today

- Smog Forming Emissions: 80%
- GHG Emissions: 45%
- Petroleum Usage: 50%
- Diesel PM Emissions: 45%

Source: ARB, Mobile Source Strategy, 2015
South Coast NOx Emission Trends (tons/day)

Source: ARB, Mobile Source Strategy, 2015
ARB – Pathways to the Future

Source: ARB, Mobile Source Strategy, 2015
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