California Climate Regulation Post-2020

Law Seminars International
Electric Power in California Conference
November 4, 2016

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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
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?
Legislative Counsel’s Analysis

• “[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  • (a) The statewide greenhouse gas emissions limit shall remain in effect unless otherwise amended or repealed.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.”
Legislative Review

• SB 350 (2015)
  • 50% RPS and Doubling Rate of Energy Efficiency

• SB 32 (2016)
  • 40% below 1990 by Dec. 31, 2030

• AB 197 (2016)
  • 2 new ex officio, non-voting ARB Board Members
  • Joint Legislative Committee on Climate Change Policies
  • Posting of GHGs, criteria pollutant, and toxic air contaminants
  • “[C]onsider the social costs of the emissions of greenhouse gases”
  • “[P]rioritize … Emission reduction rules and regulations that result in direct emission reductions….”

• SB 1383 (2016)
  • Short-Lived Climate Pollutants
  • 40% below 2013 by 2030
  • Targets livestock and agricultural sectors

• AB 1613, SB 859, AB 1550, AB 2722 (2016)
  • $900,000,000 appropriated from GHGRF
Legislative Review – Recurring Motifs

- Benefits to Disadvantaged Communities
- Oversight, Transparency, and Accountability
- Cost-Effectiveness
  - Social Cost of CO$_2$ = $50/MT in 2030 (3% discount rate)
  - Social Cost of CH$_4$ = $1,600/MT in 2030 (3% discount rate)
Cap-and-Trade Program Dynamics

This is where it all started when AB 32 was adopted

Environment is doing well, but emission reduction measures not be funded

Cap set at environmental level

State “spends” auction revenues before auctions

Emissions are lower than expected, auctions do not clear, prices low

ARB forces reductions through complementary measures
Pressure on Program

- Auction litigation
- Weight of LCFS on industry
- Long market, low prices, unsold allowances, decreased state revenues
- SB 350 Failure
- Authority to continue program post-2020?
- CPP stay

Effort to Support the Program

- Governor’s “five pillars”
- EO B-30-15
- Update scoping plan
- Amend cap-and-trade
- SLCP strategy
- Oil and gas rule
- Freight strategy
SB 32 and AB 197
- Silent on Cap-and-Trade
- Prioritize direct emission reduction measures?
- No supermajority

Allowances Auctions Undersubscribed
- May 2016 = 11% current and 9% future
  - $10 million vs. $500 million
- August 2016 = 35% current and 8% future
  - $8.4 million vs. $620 million

Auction Litigation Key Driver
Auction Litigation
*Chamber of Commerce v. ARB; Morning Star Packing v. ARB*

- Initial Briefing Completed May 2015
- Chamber’s Request for Calendar Preference Granted April 7, 2016
- Court Directs Supplemental Briefing on 7 Questions April 8, 2016
  - Something for everyone
- Simultaneous Supplemental Briefs Filed May 23, 2016
- No Oral Argument Scheduled To Date
- Decision By Court Required 90 Days After Argument
- Potential California Supreme Court Review
Lawsuits
  - Final agency action

Structural Design Changes?
  - Increased consignment to auctions
  - GHGRF
  - AB 197 prioritization
    - Role of offsets
    - Industrial assistance

Clean Power Plan Compliance

Market Fluctuations and Investment Decision Disruption
• 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
2030 Target Scoping Plan Update – Concept Paper

Option 1
- SB 350
- LCFS
- Mobile Source Strategy
- SLCP Reduction Strategy
- SB 375
- Sustainable Freight Action Plan
- Cap-and-Trade Program
- Natural and Working Lands

Option 2
- SB 350
- LCFS
- Mobile Source Strategy
- SLCP Reduction Strategy
- SB 375
- Sustainable Freight Action Plan
- Industrial Facility Caps

Option 3
- SB 350
- LCFS
- Mobile Source Strategy
- SLCP Reduction Strategy
- SB 375
- Sustainable Freight Action Plan
- Natural and Working Lands

Option 4
- SB 350
- LCFS
- Mobile Source Strategy
- SLCP Reduction Strategy
- SB 375
- Sustainable Freight Action Plan
- Carbon Tax
- Natural and Working Lands
Scoping Plan(s)

- Initial Scoping Plan (2008 - 2011)
- First Update (2014)
- Concept Paper (June 2016)
- 2030 Scoping Plan (March 2017)
Cap-and-Trade Program Extension – Timeline

July 19, 2016
Informal Draft Changes

Aug. 5
Comment Period Opens

Sept. 22-23 Board Meeting

Mar. 23-24 Board Approval

Aug. 2
Final Proposed Changes and Notice Public Hearing

Sept. 19
Comment Period Closes

Mar. 17, 2017
Second Comment Period
Emission Caps over Time

Figure 2-1. Annual California GHG Allowance Budgets for 2020-2031.

- 2016: 382 MMTCO2e
- 2050: 66.5 MMTCO2e
Low Carbon Fuel Standard (LCFS) Extension

Rulemaking Timeline

- Mar 8, 2016: Public Workshop on Proposed Amendments
- Jun 2, 2016: Public Workshop on Preliminary Draft Regulation
- Jul 29, 2016: Public Workshop on Revised Amendments
- Last Public Workshop on Revised Regulation
- Board Hearing

- May 27, 2016: Preliminary Draft Regulation
- Q2: Release Revised Draft Regulation
- Q3: Release Final Regulation Package
- Q4: Q1

ARB, July 29, 2016 workshop
LCFS Challenges in State Court

- **2009**: POET, an out-of-state ethanol company, files lawsuit against ARB
- **November 2011**: Fresno County Superior Court ruled against POET
- **July 15, 2013**: California Court of Appeal for the Fifth Appellate District reversed trial court
- **November 20, 2013**: California Supreme Court denied petition for review submitted by ARB
- **September 25, 2015**: ARB re-adopts LCFS
- **October 30, 2015**: POET again files lawsuit against ARB in Fresno County Superior Court
• Very similar to first lawsuit
  • Adequacy of ARB’s CEQA analysis and mitigation of NOx emissions due to potential increases in the use of biodiesel
  • Compliance with the APA
  • ARB’s scientific peer review under HSC § 57004
  • ARB’s maintenance of public file under CEQA
  • Adequacy of ARB’s responses to comments

• Administrative Record lodged July 22, 2016
  • ~132,000 pages

• Fresno County Superior Court’s July 19, 2016 Scheduling Order
  • September 7, 2016 – POET’s opening brief
  • November 7, 2016 – ARB’s opposition brief
  • December 7, 2016 – POET’s reply brief
  • January 20, 2017 – Trial
Questions?

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