

California's Global Warming Solutions Act of 2006: Coming to a State Near You?



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In September 2006, California's Gov. Arnold Schwarzenegger (R) signed the Global Warming Solution Act of 2006¹ ("AB 32," or "the act") into law. This pioneering legislation aims at achieving significant, real and measurable reductions in greenhouse gas (GHG) emissions in California.² AB 32 has broad, far-reaching implications as it envisions "placing California at the forefront of national and international efforts to reduce emissions of greenhouse gases." Consequently, AB 32 has garnered widespread interest by climate change advocates, the press and certain members of Congress. AB 32 is receiv-

ing much attention by other states and countries interested in having the U.S. establish a national climate change policy.

AB 32 Basics

Now that California has set the U.S. benchmark with AB 32, there is a great deal of interest in understanding the legislation, its implementation and what impacts it will have on California businesses, the economy and its citizens. Those in the know outside of California are interested in learning about AB 32, as there is little doubt climate change legislation (either at the state or federal level) is coming their way soon.

The act places California's Air Resources Board (ARB) at the helm, requiring ARB to establish a statewide GHG emissions cap for 2020, based on the aggregate 1990 emissions (\$38550). While uncertainty remains concerning the reliability of the 1990 emissions inventory (prepared primarily by the California Energy Commission), AB 32's Jan. 1, 2008, statutory deadline to set the inventory and establish the 2020 GHG emissions cap leaves little time for ARB to validate the existing inventory, or to develop its own based on protocols or expertise it has. Because the 1990 inventory also



establishes the 2020 GHG cap, it sets the rulemaking course to achieve the AB 32 mandates. Should the regulated community feel the inventory/cap is wide of the mark—either on a gross basis or as to specific industrial/commercial sectors—then stakeholders may bring into question the viability of AB 32. An accurate and verifiable inventory is critical for creating regulatory buy-in for those transportation, commercial, industrial and utility sectors being called upon to achieve the AB 32 reductions.

Also, by Jan. 1, 2008, ARB must adopt regulations for mandatory reporting for “significant” GHG sources (§38530). Of course, we anticipate that sources required to report will also be subject to regulatory action to achieve “maximum technologically feasible” and “cost effective reductions.” At this time ARB has not defined what constitutes a “significant” GHG source. However, the roll-out of regulations that drive entity-specific reductions will certainly be of particular interest to California (and non-California) businesses. And to what extent these businesses will be allowed or required to utilize market-based and alternative compliance mechanisms is of great interest to all.

More broadly, the “cap and trade” approach presently under consideration is viewed by many as a potential template for other state programs, or possibly even a federal program.³ As such, the regulated community, environmental groups,

financial institutions, brokers, speculators and others are already closely tracking the dialogue surrounding the development of a trading framework in California.

Some of the bigger questions being considered are: How will emissions initially be distributed—via allocation or auction? Who will get to participate in the market? How big (geographically and quantitatively) will the market be? And, how will GHG reductions within California (and likely outside California) be verified as tradable “credits?” Answers to these questions are of great concern to those who may have either GHG surpluses or deficits. And a lack of answers to these questions introduces business uncertainties that will slow achieving AB 32 goals.

Another aspect of AB 32 is the clear mandate to encourage companies to initiate voluntary early actions to reduce GHGs and ensure appropriate credit is received (§38562 (b)(3)). However, only time will tell whether entities that achieve early reductions actually receive credit. Many are doubtful they will, and investments in early reductions are not being made.

To round out the framework of AB 32, by Jan. 1, 2009, ARB is required to adopt a scoping plan showing just how the state will achieve the required level of GHG reductions by 2020 (§38561). The major rulemakings are to be

complete by Jan. 1, 2011, and fully in effect and legally enforceable by Jan. 1, 2012—only eight years before the targets are to be met (§38562).

The California Climate Action Registry

In the meantime, as California businesses and the nation attempt to predict (and proactively shape) ARB’s program development, many companies are searching for ways to participate in the process and plan for the future—including how to manage various risks associated with a carbon constrained future. The potential upsides include: competitive advantages, reducing risks and uncertainty and creating saleable GHG credits.

When the legislature crafted AB 32, it was understood that in order to compel business to take action now to curb GHG emissions, a process was needed for companies to inventory and report their emissions using widely accepted protocols. Therefore, the AB 32 included language allowing entities that voluntarily participate in the California Climate Action Registry (CCAR)⁴ prior to Dec. 31, 2006, and which have developed a GHG reporting program, not to be required to alter their reporting and verification program significantly with some exception (§38530 (b) (3)).

The CCAR is a non-profit public/private partnership designed to help companies and organizations with operations in California to develop GHG emission baselines against which future GHG emission reduction requirements may apply. The CCAR represents to its members that the state will offer its best efforts to ensure that registry participants receive appropriate consideration for early actions in the event of any future state, federal or international GHG regulatory scheme. Recognizing this, many companies view the registry as a tool to quantify reductions now

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so that they may eventually become the company's baseline from which GHG credits may be generated. The importance of the CCAR programs and protocols in ARB's rulemaking process (as well as national initiatives) cannot be overstated.

Because of the generally accepted CCAR standards and protocols and interrelationship with AB 32, other states involved in climate change initiatives or in the process of establishing policy, have reached out to the California Registry to help maintain consistency in inventorying and reporting. For example, one outgrowth of these efforts is The Climate Registry, a national registry program created in May, comprised of 31 states, representing more than 70 percent of the U.S. population.

The Climate Registry defines itself as a "multi-state and tribe collaboration aimed at developing and managing a common greenhouse gas emissions reporting system with high integrity that is capable of supporting various greenhouse gas emis-



sion reporting and reduction policies for its member states and tribes and reporting entities." The most poignant aspect of The Climate Registry is that it offers a unifying standard for tracking and measuring GHG emissions at the national level.

This consistency may help as states consider the breadth of trading to be allowed. Unlike the CCAR, The Climate Registry is intended to support voluntary reporting programs, and also serve as a clearing house for states that have or will

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adopt mandatory reporting rules. Another key difference is that the framework established under The Climate Registry requires, as a condition to participation, entities to report all emissions from all states where it has operations. There are other notable differences beyond the scope of this article.

An understanding of the relative contributions of GHG emissions on a sector-by-sector basis is requisite to any program designed to achieve real and measurable reductions, whether voluntarily or through regulation. In the case of California, more than 60 percent of the GHG emissions inventoried in 2004⁵ are associated with mobile sources and electricity use. Further, though industrial sources comprise more than 20 percent of the total emissions inventoried, direct emissions from aggregates production is essentially *di minimis*.

Nonetheless, it is important that industry help shape and plan for the

future by considering how it will adapt to the prospect for new engine emissions standards, low carbon and/or alternative fuels for off-road equipment, as well as the need to make products more efficiently, using less energy and/or possibly designing operations to facilitate co-generative benefits. Initial regulatory action is expected to focus on reducing "tail-pipe" emissions and energy efficiency, both of which will have indirect

affects (positive and negative) on the aggregates industry. The industry can also help by advocating smart land use and looking for ways to generate GHG credits. Moreover, as industry responds to this emerging "low carbon diet" in the U.S., it will foster innovative approaches not only aimed at curbing GHG emissions and conserving energy, but potentially also sequestering emissions that may be used to offset impacts from existing or new facilities. ■

¹ California Health and Safety Code Section 38500 *et seq.* All references in this article are to the California Health and Safety Code unless otherwise specified.

² AB 32 establishes a goal of returning the State to 1990 GHG emission levels by 2020 – roughly a 30-35 percent decrease from business as usual. Additionally, by Executive Order S-3-05, Governor Schwarzenegger has mandated that by 2050, GHG emissions be capped at 80 percent below 1990 levels.

³ While a cap and trade program seems likely to be implemented, a political confrontation is brewing over this issue with some in the legislature threatening to restrict ARB funding.

⁴ SB 1771, Sher (2000) is known as the California Climate Action Registry (or CCAR).

⁵ California Energy Commission (2006), *Inventory of California Greenhouse Gas Emissions and Sinks: 1990-2004*.

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