

SEPTEMBER 27, 2006

## Governor Schwarzenegger Signs California Global Warming Solutions Act of 2006

On September 27, 2006, Governor Arnold Schwarzenegger signed into law the California Global Warming Solutions Act (“AB-32”), which makes California the first state to limit man-made greenhouse gas emissions. This landmark legislation imposes a statewide greenhouse gas emissions limit to reduce emissions to 1990 levels by the year 2020, a 25% cut from today’s levels.

California ranks 12<sup>th</sup> in greenhouse gases emissions globally. It is responsible for 10% of the carbon dioxide produced nationally and 2.5% globally.”<sup>1</sup> Experts believe that the California regime will have negligible effects on global warming.<sup>2</sup> However, the California Environmental Protection Agency undersecretary, Dan Skopec, is hopeful that “once it's proven that California can slow greenhouse gases and grow its economy, other states and other nations will follow.”<sup>3</sup>

California’s leadership could have a real impact in curbing global warming by encouraging the U.S. federal government and other states to take similar action. Many believe that California’s regime will boost the state’s economy by making it more efficient, less dependent on petroleum fuels and stimulate new business opportunities within the clean-tech sector.<sup>4</sup> Economists predict that new emissions reductions technology will lead to substantial financial and employment benefits.<sup>5</sup> This new regulatory scheme will position California as an environmental leader and likely provide California with a competitive advantage in the emerging clean energy market.<sup>6</sup>

AB-32 does not provide detailed emission measures but instead has vested the California Air Resources Board (“CARB”) with the responsibility of adopting emission reduction

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<sup>1</sup> Marc Lifsher, Marla Cone, Richard Simon, Janet Wilson and Nancy Vogel, Los Angeles Times, “Global Warming Plan Could be Costly,” September 1, 2006.

<sup>2</sup> Marc Lifsher, Marla Cone, Richard Simon, Janet Wilson and Nancy Vogel, Los Angeles Times, “Global Warming Plan Could be Costly,” September 1, 2006.

<sup>3</sup> Marc Lifsher, Marla Cone, Richard Simon, Janet Wilson and Nancy Vogel, Los Angeles Times, “Global Warming Plan Could be Costly,” September 1, 2006.

<sup>4</sup> Jennifer Witherspoon, Press Release, Environmental Defense, “California's Landmark Global Warming Legislation Poised for Passage” August 30, 2006.

<sup>5</sup> Jennifer Witherspoon, Press Release, Environmental Defense, Environmental Defense, “California's Landmark Global Warming Legislation Poised for Passage” August 30, 2006.

<sup>6</sup> Jennifer Witherspoon, Press Release, Environmental Defense, Environmental Defense, “California's Landmark Global Warming Legislation Poised for Passage” August 30, 2006.

measures, implementing such measures and monitoring compliance. The AB-32 regime requires CARB to determine “what the statewide level of greenhouse gas emissions level was in 1990” by evaluating the “best available scientific, technological, and economic information on greenhouse gas emissions.”<sup>7</sup> CARB must then approve a statewide greenhouse gas emissions limit that is equivalent to the 1990 level and implement *cost-effective* reduction measures to achieve that level by 2020. Such emission reduction measures must be designed to decrease costs and increase technology. While CARB is responsible for implementing AB-32, the legislature intended for CARB to coordinate and consult with state agencies, environmental organizations, industry and business groups, academic institutions and other stakeholders. However, it is likely to become one of the most powerful regulatory agencies as it implements AB-32 given that clean technology will have an impact on business and commerce across all industries. Further, CARB must appoint two different advisory committees to facilitate CARB in implementing the act. AB-32 requires CARB to organize an environmental justice advisory committee, composed of representatives from communities within the state with the greatest exposure to air pollution, to assist in developing the scoping plan and carrying out the requirements of the Act. AB-32 also requires CARB to appoint an Economic and Technology Advancement Advisory Committee to help identify technology, development and funding opportunities that will aid in the reduction of greenhouse gas emissions.

AB-32 provides CARB with civil, criminal and injunctive power to enforce compliance with the emission reduction regulations it mandates. The act borrows certain civil, criminal and injunctive penalties used to enforce non-vehicular air pollution under Division 26 of the Healthy and Safety Code (the “Code”). A violation of any rule, regulation, order, emission limitation or other measure promulgated under the Act may be enjoined pursuant to Section 41513 of the Code and violations are subject to penalties set forth in Article 3, Chapter 4 of, and Chapter 1.5 of Part 5 of, Division 26 of the Code. Penalties imposed for violations include imprisonment and fines depending upon factors such as level of knowledge, type of harm, individual or corporate status.

Under AB-32, the Governor has the power to adjust the applicable deadlines for individual regulations “in the event of extraordinary circumstances, or threat of significant economic harm.”<sup>8</sup> In addition, CARB is not prevented from adopting emission reduction measures prior to the deadlines below or providing early reduction credit where appropriate.

Some of the key provisions of the Act are as follows:

#### 1) **Types of Emissions Covered.**

- AB-32 is aimed at limiting emissions of greenhouse gases which includes all of the following: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride.

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<sup>7</sup> AB-32, Chapter 4, Part 2, Section 38550.

<sup>8</sup> AB-32, Chapter 4, Part 2, Section 38599(a).

**2) Early Action Reduction Measures.**

- CARB must publish and make available to the public a list of early action greenhouse gas emission reduction measures by June 30, 2007.
- Such early action reduction measures must take effect by January 1, 2010.

**3) Statewide Emissions Limit.**

- CARB must determine the 1990 statewide greenhouse gas emission level by January 1, 2008.
- CARB must establish a statewide greenhouse gas emission limit for 2020 by January 1, 2008.

**4) Mandatory Reporting.**

By January 1, 2008, CARB must adopt regulations that accomplish the following:

- Require the monitoring and annual reporting of greenhouse gas emission sources beginning with the sources that contribute most to statewide emissions.
- Account for greenhouse gas emission from all electricity consumed in the state.
- Whenever possible, “incorporate the standards and protocols developed by the California Climate Action Registry.”<sup>9</sup>
- Ensure rigorous and consistent accounting of emissions and provide reporting tools to ensure collection of emission data.
- Maintain comprehensive records of emission data.

**5) Scoping Plan.**

- CARB must adopt a scoping plan which outlines how it plans to achieve greenhouse gas emission reductions by January 1, 2009 through reduction measures, market mechanisms and incentive programs. The environmental justice advisory committee will advise CARB in developing the scoping plan.

**6) Emissions Cap Effective 2012.**

- CARB is directed to implement regulations designed to “achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions” by January 1, 2011, which shall become effective January 1, 2012.

**7) Market-Based and Alternative Compliance Mechanisms**

- CARB can consider using market-based compliance mechanisms such as cap and trade programs and emission credit for early action.

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<sup>9</sup> AB-32, Chapter 4, Part 2, Section 38530(b)(3). The California Climate Action Registry was established pursuant to Chapter 6, Part 4 of Division 26..

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