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Catherine H. Reheis-Boyd

Chief Operating Officer and Chief of Staff

July 7, 2008

Elaine C. Chang, Dr. P.H., Deputy Executive Officer
Steve Smith, PhD., Program Supervisor
South Coast Air Quality Management District
21865 Copley Drive,
Diamond Bar, CA 91765-4182

RE: SCAQMD CEQA Greenhouse Gas Significance Threshold Development

Dear Dr. Chang and Dr. Smith:

The Western States Petroleum Association is a trade group that represents companies that explore for, develop, refine, market, and transport petroleum, petroleum products, natural gas and alternative/renewable fuels in the Western U.S. Many of those companies have significant operations in Southern California, and particularly in the South Coast Air Basin (Basin).

WSPA greatly appreciates the invitation to participate in the South Coast Air Quality Management District's (SCAQMD's) California Environmental Quality Act (CEQA) Greenhouse Gas (GHG) Significance Threshold Stakeholder Working Group.

Formation of the Stakeholder Working Group and the high attendance that has occurred to date at the three meetings, reflect the critical importance of the issue and the statewide interest in the application of CEQA as it relates to the California Global Warming Solutions Act of 2006 (AB 32). This effort is even more important given ARB's June 26, 2008 release of the June 2008 initial AB 32 Draft Scoping Plan.

In embarking on its CEQA effort, the SCAQMD has clearly recognized, as do those following the issue, that SCAQMD, other local and regional governmental entities, and other public and private interests, must develop a reasonable, balanced and equitable approach to harmonizing the requirements of CEQA and AB 32. This should ensure that all interested parties in the Basin can continue to operate in an economically and environmentally sound manner.

Significance Determination

At the June 19, 2008 meeting, the SCAQMD released a series of draft slides that provoked significant discussion. Much of the discussion centered on the definition of significance and how that concept would be used in the context of CEQA compliance and AB 32.

The California Air Resources Board (ARB), charged with implementation of AB 32 under the statute, has indicated that it is reasonable to have a “non-zero” threshold for AB 32 purposes. More recently, at the last Stakeholder Working Group meeting, the SCAQMD also appeared to concur with this position by indicating that a non-zero threshold was a realistic approach to addressing requirements under AB 32 and CEQA.

Clearly, both agencies recognize that there is a range of options in approaching the evaluation of the potential significance of GHG emissions. Moreover, while the SCAQMD’s work on CEQA significance is being issued in advance of the eventual regulations required by SB 97¹ and the regulations to be issued by CARB under AB 32, agencies may validly make a qualitative “significance” determination based on whether a project will help to achieve AB 32 goals, provided the analysis is supported by substantial evidence.

For example, a lead agency may determine under 14 CCR §§ 15061(b)(3) and/or 15064, if supported by substantial evidence, that emission of GHG from the activity, or the effect of the GHG emissions, would not have the potential for causing a significant effect on the environment.² Clearly, there is consensus that emitting some increased amounts of GHG should not, in and of itself, require a finding of significance for a project.

On June 19, SCAQMD Staff presented a revised, tiered approach with a proposed de-minimis level of 900 Metric Tons (MT) CO₂ equivalent (CO₂e). At that meeting, while it was clear to all participants including the SCAQMD that the 900 MT CO₂e threshold suggested by the SCAQMD was extremely low for global climate regulatory purposes, the SCAQMD’s proposal recognized the need to define significance in a manner that gives all parties design and permitting flexibility.

While no one offered an opinion whether other options discussed, varying from 900 MT CO₂e to 25,000 MT CO₂e were the “right threshold,” it seemed clear that a useful threshold should not be so small as to force even the smallest project through CEQA nor too large as to render CEQA meaningless. No CEQA threshold should be lower than the reporting threshold established by ARB under AB 32.

The ratio of a project’s GHG emissions to the total California, US, and global GHG inventories is also relevant. As the recent OPR Technical Advisory states, compliance with CEQA entails assessing “the significance of the impact on climate change.”

No one at the meeting asserted that these numerical thresholds would have any significant impact on climate change. Given the global nature of climate change and GHG emissions, and some of the statements made at the last meeting, WSPA believes that it would be difficult to establish any numeric significance threshold based on substantial evidence as required by CEQA. (See 14 CCR § 15064.7(b)).

In fact, various “place holder” numeric significance thresholds (i.e., 900, 8,100, 10,000, or 25,000 MT CO₂e) discussed in the Stakeholder Working Group meetings, were based on administrative

¹ Under Senate Bill 97 (Dutton, 2007), enacted in August, 2007, the Office of Planning and Research (OPR) is required to develop guidelines for the mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions by July 1, 2009 and to adopt those guidelines by January 1, 2010.

² In making this determination, the “baseline” for CEQA analysis should normally be the existing environment (existing GHG emissions associated with the activity) and not a pre-existing environment. Also, as the SCAAQMD has determined as a matter of sound practice under CEQA, the baseline environmental condition includes an existing facility’s maximum operations under previously approved permits.

considerations rather than on an amount of GHG emissions emitted from a project that could, based on valid, peer reviewed scientific research, realistically impact global climate change.

WSPA believes that, in determining whether a proposed project's GHG emissions may have a significant impact on climate change, the Lead Agency can consider whether, among other factors, the project complies with emissions standards promulgated by CARB under AB 32, the Air Districts, or by other state agencies or commissions applicable to the source. Moreover, we feel that a lead agency may determine that a project does **not** have a significant impact on the climate if the project will meet applicable standards promulgated by CARB, Air Districts or other state agencies or commissions.

If no such standards currently are in effect, then the Lead Agency may evaluate whether the project will result in a net increase in energy efficiency or decrease in the carbon intensity of the underlying economic activity or the state's overall carbon footprint.

Finally, if the project results in a net improvement in energy efficiency or a net decrease in carbon intensity of the underlying economic activity or the state's overall carbon footprint, then a lead agency may determine that a project does not have a significant impact on climate. This type of tiered approach would relate directly to the state's AB 32 program and would be justified under current state CEQA guidelines as well as the OPR's June 19, 2008 Technical Advisory³ and CEQA itself.

WSPA recognizes, given the nature of GHG emissions and global warming concerns, determining the "significance" under CEQA of emissions from a single project is an area of uncertainty. If a default rule based on a project's overall emissions increase in numeric terms is used to determine significance, some companies will forego investment in expansion and/or modernization projects in the State.

Thus, California will lose opportunities for enhanced efficiency. Using a significance threshold that is too small would chill development of important state projects by adding costly mitigation that may be unnecessary and unjustified.

Additionally, costly mitigation of desirable energy-efficient projects will unduly raise project costs, possibly resulting in cancellation of projects. This would create several regressive impacts, including a detriment to public health, an impact on education, significant job losses and inhibiting the building of affordable housing.

Baseline

Determining the impact of a project under CEQA relates directly to the definition of "baseline". We touched on this issue at the June 19 meeting, but time constraints precluded an extensive discussion. In our view, a lead agency can rely upon the existing conditions as a baseline from which any significant environmental effects can be determined, as set forth in Sections 15125 and 15126.2, (a).

This approach is consistent with the recent OPR Technical Advisory which states, "[w]hen assessing a project's GHG emissions, lead agencies must describe the existing environmental conditions or setting, without the project, which normally constitutes the baseline physical conditions for determining whether a project's impacts are significant".

It seems clear that existing conditions may be based on a representative multi-year average rather than being limited simply to the previous year of activity. Also, the SCAQMD has determined as a matter

³ On June 19, 2008, OPR released a Technical Advisory entitled "CEQA AND CLIMATE CHANGE: Addressing Climate Change through California Environmental Quality Act (CEQA) Review."

of sound practice under CEQA that the baseline environmental condition includes an existing facility's maximum operations under previously approved permits.

While AB 32 mandates certain reductions to 1990 conditions, CEQA guidelines and case law reflect that current conditions are the baseline for the evaluation of significant impacts of a particular project. See 14 CCR §§ 15125, 15126.2, (a). Once AB 32 regulations are in place, an agency may evaluate whether a project is consistent with those regulations, but that should not render the 1990 emissions level as the baseline for CEQA purposes.

Mitigation

Unfortunately, the group was not able to discuss issues relating to mitigation. Given that we certainly expect to do so in the future, it seems appropriate to briefly discuss this issue.

If required, mitigation should be appropriately focused on incremental emissions above the baseline of existing GHG emissions. It should allow flexibility for feasible reductions or credits to be applied from any verifiable and quantifiable source and not be limited to just local reduction sources or credits.

As OPR stated in its recent Technical Advisory, “[a] lead agency is not responsible for wholly eliminating all GHG emissions from a project, the CEQA standard is to mitigate to a level that is “less than significant”.”

WSPA feels strongly that, in determining what is feasible mitigation⁴ for the effects of GHG emissions of a proposed project, a lead agency may consider as mitigation any combination of factors. These factors include: reducing emissions; providing carbon off-sets; voluntary payment of fees to a validated GHG mitigation program (as is the case with the SCAQMD Climate Exchange Program); and, making net improvements in energy efficiency or the overall reduction of the state's carbon footprint (e.g., some performance standard), without requiring a complete elimination or total reduction of emissions.

In addition, it seems clear that compliance with ARB regulations issued pursuant to AB 32, to reduce carbon dioxide and other greenhouse gases in the environment, including participation in programs, market mechanisms, offsets and other methods to reduce global, national, state and regional greenhouse gas levels, may be relied upon by a Lead Agency as mitigation.

Given the global nature of GHG effects and as conceptualized in the SCAQMD Climate Exchange, mitigation measures need not be limited to local programs, methods, offsets, credits or reductions. For example, a lead agency may also consider as mitigation for GHG emissions the use of local energy production, including co-generation processes and integrated combined heat and power systems that reduce the need for transmission and use of non-locally generated power.

In summary, WSPA supports:

- efforts by the SCAQMD that are based on substantial evidence (i.e., technology and science) that result in the establishment of a reasonable, equitable, and feasible approach to defining significance, baseline and mitigation as required under CEQA relative to mitigation of GHG impacts;

⁴ As OPR indicated in its recent Technical Advisory regarding feasibility of mitigation measures, “CEQA does not require mitigation measures that are infeasible for specific legal, economic, technological, or other reasons.”

- the concepts proposed by the SCAQMD in their Climate Exchange;
- flexibility of mitigation measures, including the voluntary payment of GHG mitigation fees; and,
- an overall approach that allows local Air Districts flexibility in permitting new facilities including manufacturing, retail, housing and energy needed to support a growing population.

Thank you for giving WSPA the opportunity to work with the SCAQMD and the Stakeholder Working Group on this important CEQA issue. We would also be amenable to meeting with you to discuss these concepts further. Please contact me with any questions.

Best Regards,

A handwritten signature in blue ink, appearing to read "Catherine A. Boyd". The signature is fluid and cursive, with the first name "Catherine" written in a larger, more prominent script than the last name "Boyd".