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Chief Operating Officer and Chief of Staff

October 21, 2008

Via Overnight Mail and E-mail

Elaine C. Chang, Dr.P.H., Deputy Executive Officer
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South Coast Air Quality Management District
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Re: CEQA Greenhouse Gas Significance Threshold Development

Dear Dr. Chang and Dr. Smith:

The Western States Petroleum Association (WSPA) is a trade group that represents companies that explore for, produce, refine, market, and transport petroleum, petroleum products and natural gas in six western states. 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 (District/SCAQMD) California Environmental Quality Act (CEQA) Greenhouse Gas (GHG) Significance Threshold Stakeholder Working Group (Working Group).

Formation of the Working Group and the high attendance that has occurred to date at the five Working Group meetings reflect the critical importance of the issue. They also reflect the statewide interest in the applications of CEQA as it relates to the California Global Warming Solutions Act of 2006 (AB 32).

This effort is even more important given the California Air Resources Board's (CARB) October 15, 2008 release of the proposed AB 32 Scoping Plan slated to be considered at the December 2008 CARB Board meeting, as well as the recent enactment of the Senate Bill 375 (SB 375)¹.

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, AB 32, and SB 375. This must be done to ensure that the interests in the Basin can continue to operate in an economically and environmentally sound manner.

At the request of District Staff, WSPA, as an active and vocal member of the Working Group, has submitted a series of comments (July 7, 2008 and July 25, 2008) addressing the Tiered Approach presented by District Staff. Our comments suggested an alternative GHG Significance Threshold approach that is consistent with the underpinnings of CEQA while achieving the goals of AB 32, as well as SB 375.

To date, however, District Staff has not addressed WSPA's comments or similar comments made by other Working Group Stakeholders. Instead, District Staff has sought to defend and refine its Tiered Approach².

At the August 27, 2008 Working Group meeting, District Staff requested that the Working Group Stakeholders submit comments on the current Tiered Approach. WSPA again reiterates its alternative GHG Significance Threshold approach and respectfully requests that the District seriously consider and respond in writing to these comments along with similar comments made by other Working Group Stakeholders before proceeding any further.

Additionally, WSPA requests that the District defer its GHG Significance Threshold development process in order to follow the extensive work being undertaken by CARB, Office of Planning and Research (OPR), and the California Energy Commission (CEC) on this subject. CARB and the CEC have recently announced that they will be holding public workshops throughout the state to discuss the development of a consistent statewide CEQA GHG Significance Threshold^{3,4}.

¹ Senate Bill 375 (Steinberg, 2008) (SB375), among other things, requires the regional transportation plan for regions of the state with a metropolitan planning organization to adopt a sustainable communities strategy, as part of its regional transportation plan, as specified, designed to achieve certain goals for the reduction of greenhouse gas emissions from automobiles and light trucks in a region. The bill also requires CARB, working in consultation with the metropolitan planning organizations, to provide each affected region with GHG reduction targets for the automobile and light truck sector for 2020 and 2035 by September 30, 2010.

² See http://www.aqmd.gov/ceqa/handbook/GHG/aug27mtg/GHGproposal_augmtg.pdf.

³ See <http://www.energy.ca.gov/calendar/events/index.php?com=detail&eID=156&year=2008&month=10>.

⁴ See <http://www.arb.ca.gov/cc/localgov/ceqa/meetings/meetings.htm>.

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

The District has consistently stated in the Working Group meetings, various public forums and in its comments on the Draft AB 32 Scoping Plan⁵ that development of a statewide GHG Significance Threshold is preferable to specific local or regional thresholds that could vary throughout the state, creating an ad hoc, patchwork CEQA GHG significance and mitigation scheme.

In its October 2008 Proposed Scoping Plan, CARB confirms the importance of statewide coordination on the treatment of GHG under CEQA:

“Many local air districts have already taken a leadership role in addressing greenhouse gas emissions in their communities. These efforts are intended to encourage early voluntary reductions. For example, local districts are “lead agencies” under the California Environmental Quality Act (CEQA) for some projects. In order to ensure high-quality mitigation projects, some districts have established programs to encourage local greenhouse gas reductions that could be used as CEQA mitigation. **As the State begins to institutionalize mechanisms to generate and verify greenhouse gas emissions reductions, ARB and the districts must work together to smoothly transition to a cohesive statewide program with consistent technical standards.**” (p. 111)

Staff Recommendation (Not Consensus) – Need for Detailed District Responses in Writing

From the start of the process, District Staff indicated that their Tiered Approach was a recommendation based on their expertise and discussions that have taken place during the Working Group meetings. While the discussions during the Working Group meetings have been very interesting, based on District Staff’s most recent proposal it is evident that very few, if any, comments or suggestions from participants at the August 27, 2008 Working Group meeting, which included other public agencies, community groups, and business representatives, have been entertained or addressed yet by District Staff.

District Staff noted at the August 27, 2008 Working Group meeting that written comments have been sparse, and thus, they had little to work with in terms of feedback. However, literally hours of conversations, extensive oral comments, and WSPA’s written comments have been provided to District Staff.

These comments seem to have not been thoroughly vetted or considered by District Staff as none of them has been included in the Tiered Approach currently presented by District Staff. It is very disappointing that at least some oral and written comments made by Working Group

⁵ See Letter to James Goldstone from Barry R. Wallerstein, SCAQMD Staff Comments on June 2008 Draft Scoping Plan (August 8, 2008).

stakeholders could not be addressed and incorporated into the developing District Tiered Approach.

At a minimum, WSPA requests that District Staff compile a complete list of all the concerns and comments presented by the Working Group stakeholders orally and in writing, so that the District Board can see and evaluate the comments, including all of the alternatives presented during this lengthy process. Such a list will help the District Board understand the genesis and current status of the Working Group stakeholders' unresolved issues and concerns and allow them to make a determination of whether these concerns and comments have merit that should be included in the CEQA GHG Significance Threshold development process.

Difficulty in Harmonizing CEQA Requirements with AB 32 and SB 375

Several Working Group stakeholders, including WSPA, have commented on the difficulty of harmonizing the requirements of CEQA with those of AB 32 and SB 375. We are all aware, the purpose of CEQA is to provide the public and decision-makers with adequate information to understand the environmental impacts of a proposed project and, where the identified environmental impacts of a project are found to be significant, identify appropriate mitigation measures.

In order to understand whether a project will result in any environmental impacts, it is necessary to first establish the environmental "baseline" and then the "thresholds" against which the significance of a project's impacts will be measured. The significance thresholds help quantify what level of change to the environment is acceptable before rising to the level of an impact requiring evaluation and mitigation.

By their nature, significance thresholds and mitigation measures apply to project-specific impacts. It is the project-specific nature of CEQA review that is difficult to reconcile with, or fit into the parameters of, the mandates of AB 32 and SB 375.

AB 32 and SB 375 are unique in that, rather than requiring emission reductions from individual projects or project sponsors, it requires GHG emission reductions by sectors, which include multiple sources. While it is anticipated that the accumulated emission reductions will result in environmental improvement, the targeted reductions are on a sector-wide basis, not on a project-specific basis.

Therefore, looking at CEQA impacts through the lens of AB 32 and SB 375 causes great distortion because the statutes are focused on different outcomes. CEQA is looking at analyzing possible project-specific impacts, while AB 32 and SB 375 are implementing policies to reduce GHG emissions on a sector-wide basis regardless of individual sources.

It should be clear however, that compliance with provisions of AB 32 and SB 375 will result in a reduction in sector emissions from all sources and projects covered by AB 32 and SB 375, resulting in an environmental benefit. It follows that any project resulting in net GHG reductions

or a reduction in GHG intensity, must by definition result in environmental improvement over the existing baseline, and therefore, should not require additional analysis or mitigation under CEQA.

CEQA GHG Significance Determination

The discussions that have taken place as part of the District's CEQA GHG Significance Threshold development process highlight a fundamental problem if one tries to define a numeric CEQA GHG significance threshold in the context of AB 32 and/or SB 375. That is, lacking any substantial evidence (i.e., technical or scientific basis) for determining significance, attempts to define CEQA significance result in arbitrary, ill-conceived and untested definitions.

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. Moreover, a default rule based solely on a project's overall emissions increase in numeric terms could have the counterproductive effect of driving highly desirable projects outside of the Basin. This could create the further unintended effect of causing global GHG emissions to rise as the distance between energy supply and delivery to consumers increases.

An imbalance between energy supply and consumption increases GHG emissions due to transmission losses (in the electricity sector) and increased transportation activities/costs (in the fuels sector). Using a default "mass emissions" (i.e., 6,500 MT CO₂ eq. as currently proposed by District Staff) to determine project significance would chill development of important state projects by adding costly mitigation that may be unnecessary and unjustified.

Additionally, costly mitigation of projects that are desirable from an energy-efficiency perspective will unduly raise project costs, with potential for regressive impacts including a possible public health detriment, impact on education, significant job losses and the building of affordable housing in California.

WSPA recognizes that the District needs to conduct CEQA analyses for proposed projects within its jurisdiction – and to do so in light of the implementation of AB 32 and SB 375. To this end, WSPA believes that, in determining whether a proposed project's GHG emissions may have a significant impact on climate change, the District as a lead agency for a project should consider the following principles:

- Whether the project complies with GHG emissions standards or requirements promulgated by CARB under AB 32 and/or SB 375, the District, or by other state agencies or commissions applicable to the source;
- Determination that a project does **not** have a significant impact on the climate if the project will meet applicable standards promulgated by CARB, Air District, or other state agencies or commissions; if no such standards currently are in effect, then the District 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; and,

- 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 the District may determine that the project does not have a significant impact on climate.

This alternative tiered approach would relate directly to the CARB's AB 32 and SB 375 programs and would be justified under current state CEQA guidelines as well as OPR's June 19, 2008 Technical Advisory entitled "CEQA AND CLIMATE CHANGE: Addressing Climate Change Through California Environmental Quality Act (CEQA) Review (OPR Technical Advisory).

In advance of OPR's SB 97 implementation, CARB's promulgation of the proposed AB 32 Scoping Plan, CARB's implementation of SB 375, and CARB's and CEC's GHG Significance Threshold public workshops, WSPA believes strongly that the above alternative approach is preferable to the numeric, mass emissions, Tiered Approach currently contemplated by District Staff. That tiered approach is based on an unsubstantiated link to the District's current NO_x Significance threshold.

Baseline

Determination of the impact of a project under CEQA relates directly to the definition of "baseline". In WSPA's view, the District 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 is consistent with the recent OPR Technical Advisory that 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 also seems clear that existing conditions may be based on a representative multiyear average rather than being limited simply to the previous calendar year of activity. Additionally, the District has determined as a matter 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 project⁶. Specifically, in the context of GHG mitigation, the focus of mitigation should be new or net emissions above the existing, current GHG baseline as a significant effect.

⁶ See 14 CCR §§ 15125, 15126.2(a).

Mitigation.

Unfortunately to date, the Working Group has not been able to spend a significant amount of much needed time to discuss critical issues related to GHG mitigation. This will be especially important if District Staff continues to disregard WSPA's and other similar Working Group stakeholders' comments, and moves forward with its Tiered Approach.

The Tiered Approach will likely arbitrarily cause thousands of projects each year to be deemed significant, adding delays and perhaps requiring mitigation of GHG impacts at costs that may impact projects' economic viability

WSPA feels strongly that, in determining what is feasible mitigation⁷ for the impacts of GHG emissions of a proposed project, regardless of the ultimate GHG Significance Threshold, the District may consider as mitigation compliance with AB 32 and/or SB 375, and any consistent regulations of the District, to reduce carbon and other greenhouse gases in the environment. This includes participation in programs, market mechanisms, offsets, and other methods to reduce global, national, state, and regional GHG levels, that may be relied upon by a Lead Agency as mitigation.

In determining what is feasible GHG mitigation, the District may consider as mitigation any combination of reducing emissions, providing carbon offsets, 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.

Given the global nature of GHG impacts, mitigation measures need not be limited to local programs, methods, offsets, credits, or reductions.

It should also be made clear that GHG mitigation need not reduce a project's potential GHG impacts to zero. 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'." In addition, mitigation should be appropriately focused on incremental emissions above the baseline of existing GHG emissions.

Challenge in Transitioning From an Interim District GHG Significance Threshold to a Statewide Threshold

At the August 27, 2008 Working Group meeting, a new issue was identified that needs careful attention. If, despite the concerns and comments expressed by WSPA and Working Group

⁷ 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."

stakeholders, the District adopts its current Tiered Approach in advance of guidance from OPR, CARB, CEC, or other state agencies, a process needs to be developed that transitions from the District's CEQA GHG Significance Threshold to the statewide threshold for projects still undergoing environmental review or that have been reviewed and permitted under the District's threshold.

In such cases, it would be necessary to possibly reopen and revise the District's CEQA GHG Significance Threshold (i.e., *Air Quality Analysis Guidance Handbook*), including changing the definition of significant impacts and revising required mitigation measures.

Of great concern are the inequities, delays and unnecessary costs that would result from projects being permitted under the "interim SCAQMD" GHG Significance Threshold and then subsequently under the statewide threshold. Assuming these definitions are different, projects permitted under the interim District standard would have been subject to different mitigation measures than those permitted subsequent to establishment of the statewide threshold.

To prevent an undesired outcome, the District should defer its GHG Significance Threshold development process so it can be made consistent with the work being undertaken by CARB, OPR, and CEC on this subject. The District has consistently stated that development of a statewide GHG Significance Threshold is preferable to specific local or regional thresholds that could vary throughout the state, creating an ad hoc, patchwork CEQA GHG significance and mitigation scheme.

WSPA Specific Comments on the District's Tiered Approach

District Staff's Working Group Presentation⁸

The discussions at the August 27, 2008 Working Group meeting surrounding Slide #1 are indicative of the challenges and opportunities facing the District. For WSPA, two key issues emerged:

- Inclusion of Life Cycle emissions - the District proposal to include life cycle emissions is fraught with problems. We are not aware of any regulation under which life cycle emissions (which we assume includes emissions from project construction to completion or emissions from transportation of raw material to distribution of final product) have been included in an analysis for criteria pollutants and been subject to mitigation pursuant to CEQA.

Even if such a calculation were possible, how would the District consider emissions that occur outside the Basin, or outside the country? For many projects, a scientifically based calculation seems virtually impossible. The District, despite the size of the Basin, is

⁸ See <http://www.aqmd.gov/ceqa/handbook/GHG/aug27mtg/ghgmtg5.pdf>.

simply not in the position to fairly and consistently analyze the impact of global emissions on such a small local scale.

- Treatment of Cap and Trade Facilities - the District correctly pointed out that treatment of facilities subject to cap and trade provisions is unique because a decrease in GHG emissions will be mandated under AB 32. Hence, those facilities will by definition result in environmental improvement. As a result, those facilities need to be defined as a separate category and treated within the Tiered Approach as “less than significant” (see discussion below).

Tiered Approach⁹

In the event District Staff continues to disregard WSPA’s and other similar Working Group stakeholders’ concerns and comments, especially the alternative approach articulated in this document, and moves forward with its Tiered Approach, WSPA offers the following specific comments related to the currently proposed Tiered Approach.

The District Staff’s Tiered Approach featured some refinements of previous versions and raised some questions. The easiest change to the flow chart would be to shift the positions of the vertical arrows to clarify the intent to have a “stepwise” approach. Secondly, the flow chart needs to have a new step to include facilities that are already within CARB’s proposed Cap and Trade Program under AB 32 as being less than significant by definition. Including this change will help ensure the District’s program is consistent with AB 32 implementation.

The District’s assertion that for large facilities, performance standards may be the most appropriate means to evaluate projects under CEQA, seems reasonable. Clearly, the process for defining such standards in a clear, equitable and meaningful way will be difficult, especially when dealing with complex facilities. WSPA would like to have the opportunity to work with the District to define useful performance standards.

Finally, with respect to the District’s currently proposed Tiered Approach, even if projects are not screened out in Tiers 1 through 4, and therefore, require further evaluation, it is premature to label impacts from such projects as “significant”. In fact, given the analyses that will be undertaken in response to the CEQA process, the significance of impacts from any project at the outset is undefined.

As a result, WSPA suggests the projects that need further study beyond Tiers 1 through 4 be labeled as “potentially significant,” similar to the manner in which potential impacts are categorized during the Initial Study phase of CEQA.

Business as Usual (BAU): Future Baseline Conditions and Significance

⁹ See http://www.aqmd.gov/ceqa/handbook/GHG/aug27mtg/GHGproposal_augmtg.pdf.

The discussions at the August 27, 2008 Working Group meeting also highlighted problems with attempting to harmonize AB 32's requirement of a 30% reduction in the Business as Usual (BAU) case with the future baseline conditions. In other words, if the baseline in a General Plan or other applicable agency plan recognizes growth in the future, how is it affected by the requirement for reduction of 30% from BAU in AB 32? This is an issue that requires further study, as many complexities are involved.

We are also interested in determining if an individual District can interpret the 30% BAU reduction within the context of CEQA significance. This too is an issue that requires further study before being implemented as part of the District's CEQA GHG Significance Threshold development process.

Screening/Threshold Level

District Staff noted at the August 27, 2008 Working Group meeting that the purpose of the screening level is to "define small projects that do not contribute appreciably to climate change." District Staff further noted that the initial discussion looked at setting the threshold at 900 MT CO₂e, and now is proposing the threshold be set at 6,500 MT CO₂e. The District's efforts, irrespective of the level proposed or selected, have two fundamental flaws.

First, District Staff has not offered any evidence, let alone substantial evidence as required by CEQA, supporting a conclusion that the currently proposed mass emissions threshold accurately represents the delineation point at which a project significantly impacts global climate change. The only support provided by District Staff is that the proposed 6,500 MT CO₂e GHG Significance Threshold equates to the District's NO_x Significance Threshold of 55 pounds per day. This calculation is interesting and is convenient from an administrative standpoint, but does not by itself provide any scientific basis that it is required by CEQA or AB 32.

Second, establishing a 6,500 MT CO₂e GHG Significance Threshold that is linked to District's NO_x Significance Threshold could lead to a patchwork of varying GHG thresholds throughout the state as other jurisdictions with higher NO_x significance thresholds may establish different GHG thresholds. The inconsistency between jurisdictions could lead to inefficient GHG emission control programs and delays associated with projects being challenged.

The fallacy of this patchwork approach is further evident in the District's proposal to measure (and presumably mitigate, if significant) lifecycle emissions. In the case of two conflicting thresholds from the District and another agency with jurisdiction over the lifecycle source, which threshold will the District apply?

The result could be not only multiple thresholds applicable across the state, but multiple thresholds being considered and applied to the same project during environmental review.

At the very least, the District must document the scientific basis for any numeric, mass emissions-based GHG Significance Threshold selected for the Basin, even if on an interim basis

pending action by OPR, CARB, or CEC. In the absence of a legitimate scientific basis supported by substantial evidence in the record, premature action on this issue, even in the spirit of leadership is unjustifiable, duplicative and wasteful.

* * *

In summary, WSPA supports state-wide guidance on implementation of CEQA within the State's GHG program. Such state-wide guidance will ensure consistent and appropriate implementation of CEQA throughout California. Absent that guidance, if SCAQMD decides not to defer its CEQA GHG Significance Threshold process, then 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 analysis and mitigation of GHG impacts;
- Flexibility in mitigation measures including the voluntary payment of GHG mitigation fees; and,
- An overall approach that allows local government and Air Districts flexibility in permitting new facilities including manufacturing, retail, housing and energy needed to support economic growth consistent with a growing California population.

WSPA in these comments has provided an alternative approach that relates directly to CARB's AB 32 and SB 375 programs and would be justified under CEQA, current state CEQA guidelines as well as OPR's Technical Advisory.

In light of OPR's ongoing SB 97 implementation, CARB's imminent promulgation of the state's first AB 32 Scoping Plan, CARB's implementation of SB 375, and CARB's and CEC's GHG Significance Threshold public workshops, WSPA believes that the alternative approach it has outlined in these comments is the preferred approach compared to the numeric, mass emissions in the Tiered Approach currently contemplated by District Staff, which is based on an unsubstantiated link to the District's current NO_x Significance threshold.

Further, WSPA requests that the District defer its GHG Significance Threshold development process such that it can be made entirely consistent with the work now being undertaken by CARB, OPR, and CEC on this subject. The District has consistently stated that development of a statewide GHG Significance Threshold is preferable to specific local or regional thresholds that could vary throughout the state, creating an ad hoc, patchwork CEQA GHG significance and mitigation scheme. CARB agrees with that approach.

Dr. Chang and Dr. Smith, *Re: SCAQMD CEQA GHG Significance Threshold Development*

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WSPA appreciates the opportunity to work with the District and the other Working Group stakeholders on this important CEQA issue. If you have any questions concerning WSPA's comments, please contact me.

We are available at the District's convenience to meet with you to go over our comments and concerns in more detail.

Sincerely,

A handwritten signature in black 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".