San Joaquin Valley
Air Pollution Control District

APR - 2025

CEQA Determinations of Significance for Projects Subject to ARB's GHG Cap-and-Trade Regulation

Approved By:	Arnaud Marjollet, Director of Permit Services	Date:	June 25, 2014

I. Purpose:

The District has a statutory obligation to fully comply with the provisions of CEQA before issuing an Authority to Construct (ATC). The purpose of this policy is to provide guidance to District staff on how to determine significance of greenhouse gas (GHG) emissions from projects subject to the California Air Resources Board Cap-and-Trade regulation or occurring at entities subject to the California Air Resources Board Cap-and-Trade regulation.

II. Applicability:

This policy is to be followed when processing ATC applications and when providing technical guidance to lead agencies and the public regarding significance of project specific GHG emissions.

III. Background:

Assembly Bill 32 (AB32)

Assembly Bill 32 (California Global Warming Solutions Act of 2006) is a key piece of California's effort to reduce its GHG emissions. AB32 requires the California Air Resources Board (ARB) to establish regulations designed to reduce California's GHG emissions to 1990 levels by 2020. On December 11, 2008, ARB adopted its AB32 Scoping Plan, setting forth a framework for future regulatory action on how California will achieve that goal through sector-by-sector regulation.

Cap-and-Trade

The AB 32 Scoping Plan identifies a Cap-and-Trade program as one of the strategies California will employ to reduce the greenhouse gas (GHG) emissions that cause climate change. The Cap-and-Trade program is implemented by the California Air Resources Board and caps GHG emissions from the industrial, utility, and transportation fuels sectors – which account for roughly 85% of the state's GHG emissions.

The program works by establishing a hard cap on about 85 percent of total statewide greenhouse gas emissions. The cap starts at expected business-as-usual emissions levels in 2012, and declines 2-3% per year through 2020. Fewer and fewer GHG emissions allowances are available each year, requiring covered sources to reduce their emissions or pay increasingly higher prices for those allowances. The cap level is set in 2020 to ensure California complies with AB 32's emission reduction target of returning to 1990 GHG emission levels.

The scope of GHG emission sources subject to Cap-and-Trade in the first compliance period (2013-2014), includes:

- All electricity generated and imported into California. The first deliverer of electricity into the state is the capped entity (the one that will have to purchase and surrender allowances).
- Large industrial facilities emitting more than 25,000 metric tons of GHG pollution/year. Examples include oil refineries and cement manufacturers.

The scope of GHG emission sources subject to Cap-and-Trade during the second compliance period (2015-2017), expands to include distributors of transportation fuels (including gasoline and diesel), natural gas, and other fuels. The regulated entity will be the fuel provider that distributes the fuel upstream (not the gas station). In total, the Cap-and-Trade program is expected to include roughly 350 large businesses, representing about 600 facilities. Individuals and small businesses will not be regulated.

Under the program, companies do not have individual or facility-specific reduction requirements. Rather, all companies covered by the regulation are required to turn in allowances in an amount equal to their total greenhouse gas emissions during each phase of the program. The program gives companies the flexibility to either trade allowances with others or take steps to cost-effectively reduce emissions at their own facilities. Companies that emit more will have to turn in more allowances. Companies that can cut their emissions will have to turn in fewer allowances. Furthermore, as the cap declines, total GHG emissions are reduced.

On October 20, 2011, ARB's Board adopted the final Cap-and-Trade regulation and Resolution 11-32. As part of finalizing the regulation, the Board considered the related environmental analysis and, consistent with CEQA requirements, approved ARB's functionally equivalent document (FED).

CEQA Requirements

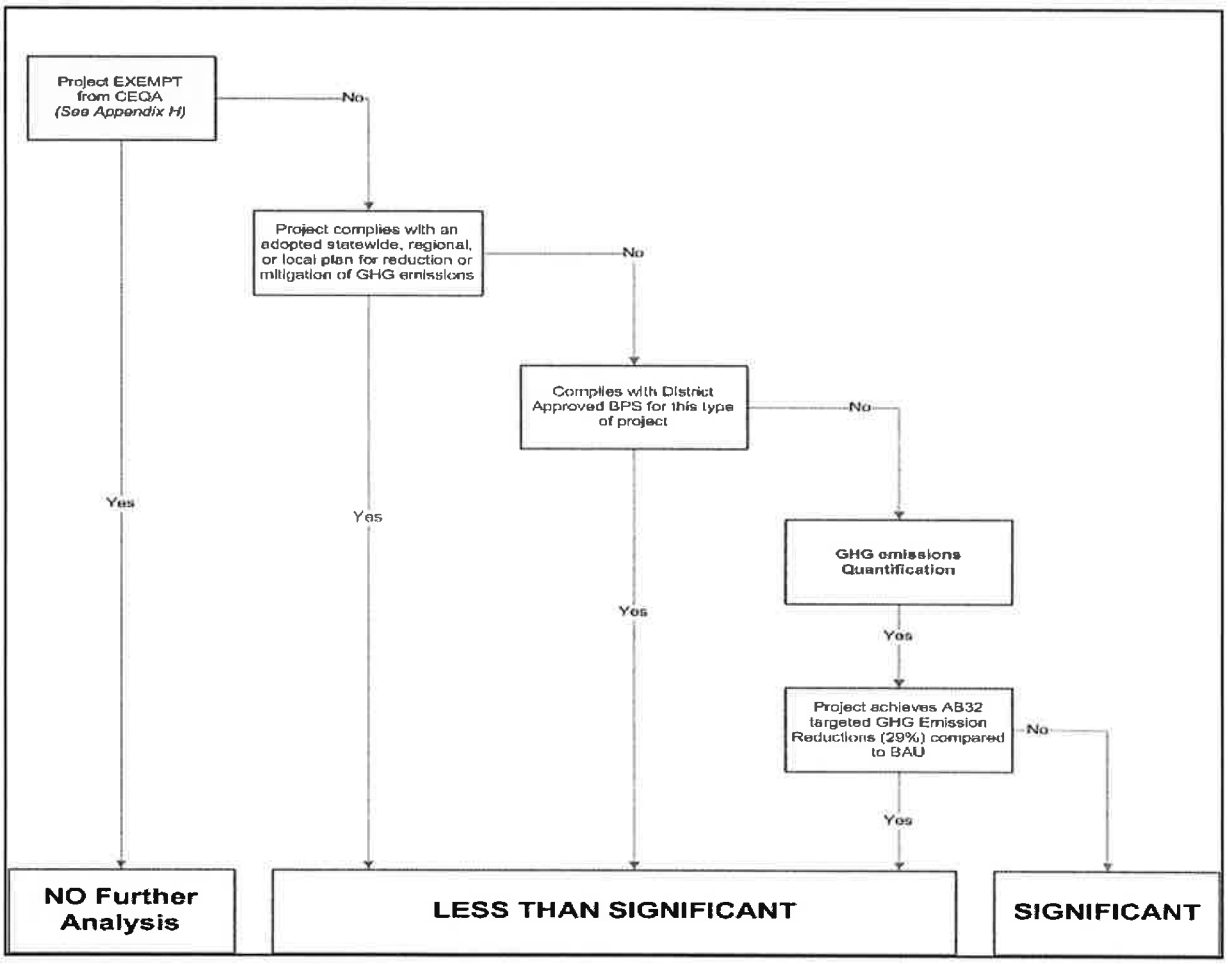
In December, 2009, the California Natural Resources Agency (NRA) amended the CEQA Guidelines to include Global Climate Change (GCC), which is now generally accepted by the scientific community to be occurring and caused by Greenhouse Gases (GHG). The amendments address analysis and mitigation of the potential effects of GHG emissions in CEQA documents. In their *Final Statement of Reasons for Regulatory Action,* NRA recognizes that the analysis of GHG emissions in a CEQA document presents unique challenges to lead agencies. NRA amended section 15064(h)(3) of the CEQA guidelines to add compliance with plans or regulations for the reduction of greenhouse gas emissions to the list of plans and programs that may be considered in a cumulative impacts analysis. In their *Final Statement of Reasons for Regulatory Action*, NRA discusses that AB32 requires ARB to adopt regulations that achieve the maximum technologically feasible and cost effective GHG reductions to reach the adopted state-wide emissions limit. NRA goes on to state that a lead agency may consider whether ARB's GHG reduction regulations satisfy the criteria in existing subdivision (h)(3).

District CEQA Policy

CEQA requires each public agency to adopt objectives, criteria, and specific procedures consistent with CEQA Statutes and the CEQA Guidelines for administering its responsibilities under CEQA, including the orderly evaluation of projects and preparation of environmental documents. On December 17, 2009, the District's Governing Board adopted the District's policy, APR 2005, *Addressing GHG Emission Impacts for Stationary Source Projects Under CEQA When Serving as the Lead Agency,* for addressing GHG emission impacts when the District is Lead Agency under CEQA and approved the District's guidance document for use by other agencies when addressing GHG impacts as lead agencies under CEQA. Under this policy, the District's determination of significance of project-specific GHG emissions is founded on the principal that projects with GHG emission reductions consistent with AB 32 emission reduction targets are considered to have a less than significant impact on global climate change.

As illustrated in Figure 1, the District's board-adopted policy for determining significance of project-specific GHG emissions employs a tiered approach. Of specific relevance to Cap-and-Trade is the provision that: "Projects complying with an approved GHG emission reduction plan or GHG mitigation program, which avoids or substantially reduces GHG emissions within the geographic area in which the project is located, would be determined to have a less than significant individual and cumulative impact for GHG emissions. Such plans or programs must be specified in law or approved by the lead agency with jurisdiction over the affected resource and supported by a CEQA compliant environmental review document adopted by the lead agency. Projects complying with an approved GHG emission reduction plan or GHG mitigation program would not be required to implement best performance standards (BPS)". Projects that do not comply with such a plan or program must implement best performance standards or undergo a project-specific analysis demonstrating that GHG emissions would be reduced by at least 29%, as compared to business-as-usual.

Figure 1: Determination of Significance for Stationary Source Projects



IV. Determination of Significance of GHG Emissions for Projects Subject to ARB's GHG Cap-and-Trade Regulation:

Significant GHG Emission increases under CEQA

The District has determined that GHG emissions increases that are covered under ARB's Cap-and-Trade regulation cannot constitute significant increases under CEQA, for two separate and distinct reasons:

1. *Cap-and-Trade Regulation is an Approved GHG Emissions Reduction Plan:*

   As discussed above, ARB's Cap-and-Trade regulation is an adopted statewide plan for reducing or mitigating GHG emissions from targeted industries and is supported by an environmental review process that has been successfully defended in court as equivalent to, and compliant with, CEQA requirements.

   Consistent with CCR §15064(h)(3), the District finds that compliance with ARB's Cap-and-Trade regulation would avoid or substantially lessen the impact of

project-specific GHG emissions on global climate change. The District also finds that the ARB's Cap-and-Trade regulation was supported by an appropriate CEQA-equivalent analysis. The District therefore concludes that GHG emissions increases subject to ARB's Cap-and-Trade regulation would have a less than significant individual and cumulative impact on global climate change., and

2. *Cap-and-Trade Regulation Requires Mitigation of GHG Increases:*

   GHG emissions addressed by the Cap-and-Trade regulation are subject to an industry-wide cap on overall GHG emissions. As such, any growth in emissions must be accounted for under that cap, such that a corresponding and equivalent reduction in emissions must occur to allow any increase. Further, the cap decreases over time, resulting in an overall decrease in GHG emissions. Therefore, it is reasonable to conclude that implementation of the Cap-and-Trade program will and must fully mitigate project-specific GHG emissions for emissions that are covered by the Cap-and-Trade regulation.

Regardless of and independent to the significance determination made above, the District finds that, through compliance with the Cap-and-Trade regulation, project-specific GHG emissions that are covered by the regulation will be fully mitigated. The District therefore concludes that GHG emissions increases subject to ARB's Cap-and-Trade regulation would have a less than significant individual and cumulative impact on global climate change.

Entities Covered by this Policy

Industries covered by Cap-and-Trade are identified in the regulation under section 95811, *Covered Entities:*

1. *Group 1: Large industrial facilities*

   These types of facilities are subject to compliance obligations starting in 2013, and the specific companies covered are listed at http://www.arb.ca.gov/cc/capandtrade/capandtrade.htm, Section 95811 (a), under the "Publically Available Market Information" section (list maintained by the California Air Resources Board,).

2. *Group 2: Electricity generation facilities located in California, or electricity importers*

   These types of facilities are subject to Cap and Trade (section 95811, b), with compliance obligations starting in 2013 (section 95851, a).

3. *Group 3: Suppliers of Natural Gas, Suppliers of Reformulated Gasoline Blendstock for Oxygenate Blending and Distillate Fuel Oil, Suppliers of Liquefied Petroleum Gas, and Suppliers of Blended Fuels*

   These entities are subject to compliance obligations starting in 2015, which obligations must cover all fuels (except jet fuels) identified in section 95811 (c) through (f) of the Cap-and-Trade regulation delivered to end users in California, less the fuel delivered to covered entities (group 1 above).

Under Cap-and-Trade regulation, the program expands to also include fuel distributors. As a result, combustion of fossil fuels including transportation fuels used in California (on and off road including locomotives), not directly covered at large sources, are subject to Cap-and-Trade requirements, with compliance obligations starting in 2015.

Fuel Supplier/Distributor Applicability Threshold

The threshold for a fuel supplier/distributor (Group 3) to be subject to the Cap-and-Trade regulation is 25,000 MT CO2e per year from the emissions of GHG that would result from the combustion or oxidation of the quantities of the specific fuels imported and/or delivered to California by the individual fuel supplier. Consequently, entities supplying fuels that would result in less than 25,000 MT CO2 annual GHG emissions are not subject to the Cap-and-Trade regulation.

Based on ARB's Reporting and Verification Summary, in the year 2012, there were 219 fuel suppliers in California not subject to the Cap-and-Trade regulation. Based on this data, and using the applicability threshold, the District has conservatively estimated that the GHG emissions resulting from the combustion of all fuels supplied by those fuel suppliers not subject to the Cap-and-Trade regulation would represent less than 1.0 % of the State's total Annual GHG emissions. As did the ARB when excluding such sources from the Cap-and-Trade regulation, the District considers GHG emissions resulting from the combustion of all fuels supplied by those fuel suppliers not subject to the Cap-and-Trade regulation to be insignificant. Therefore, it is reasonable to apply this policy to GHG emissions resulting from the combustion of all fuels in the State of California.

GHG Baseline Emissions and GHG Emission Increases

The GHG baseline emission levels of covered entities identified in Cap-and-Trade were established with the original Cap-and-Trade regulation. In addition, under Cap-and-Trade requirements, in order to maintain their GHG emissions below the established cap, facilities identified under "covered entities" are subject to mitigation requirements. Therefore, for the intent of this policy, under Cap-and-Trade requirements, mitigation is required for all GHG emission increases from "covered facilities".

V. Conclusion:

In conclusion, all GHG emission increases resulting from the combustion of any fuel produced, imported and/or delivered in California are mitigated under Cap-and-Trade, either directly by facilities identified under groups 1 or 2 (*section 95811(a) and (b)*), or by fuel suppliers identified under the group 3 (*section 95811(c) through (f)*). Therefore, GHG emission increases caused by fuel use (other than jet fuels) are determined to have a less than significant impact on global climate change under CEQA.