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CENTER *for* BIOLOGICAL



December 12, 2008

Via Email and U.S. Mail

California Energy Commission
Dockets Office, MS-4
Re: Docket No. 08-GHG OII-1
1516 Ninth Street
Sacramento, CA 95814-5512
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DOCKET	
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DATE	DEC 12 2008
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Re: Comments Following the November 19th Committee Workshop on the Analysis of Greenhouse Gas Emission Impacts of Power Plants Under CEQA

Thank you for the opportunity to participate in this Informational Proceeding on Methods for Satisfaction of California Environmental Quality Act Requirements Relating to Greenhouse Gas Emissions of Power Plants. These comments are submitted on behalf of the Center for Biological Diversity, Communities for a Better Environment, Community Environmental Council, and Earthjustice. These comments focus on issues raised at the November 19th workshop, and incorporate our previous comment letter submitted on November 11, 2008.

On December 11, 2008, the Air Resources Board (“ARB”) adopted a Scoping Plan “designed to accelerate this necessary transition, [and] promote the rapid development of a cleaner, low carbon economy This transition will require close coordination of California’s climate change and energy policies, and represents a concerted and deliberate shift away from

fossil fuels toward a more secure and sustainable future.”¹ The California Environmental Quality Act (“CEQA”) plays an important role in supporting California’s climate change and energy policies. CEQA provides both the public and California Energy Commission (“CEC”) with on-going information about how each new power plant project will affect both CEQA’s environmental objective of avoiding dangerous climate change and the state mandate and policy of achieving a low carbon future under AB 32 and Executive Order S-3-05.

The CEC’s siting analysis must take into account the long-term effect of adding new fossil fuel power generation to the power system. Environmental review under CEQA must include “both the short-term and long-term effects” of the project. CEQA Guidelines § 15126.2. Fundamentally, the CEC siting process is designed to evaluate the merits and environmental effects of individual projects. This assessment requires that project emissions be quantified, significance determined, and all feasible mitigation and alternatives adopted where that impact is significant. Given the large quantities of emissions generated by the fossil fuel power plants permitted by the CEC, these plants must be considered to have a significant cumulative environmental impact on global warming and all feasible mitigation measures and alternatives must be adopted to reduce project emissions.

The analysis of global warming impacts from new power plants could be analyzed at the programmatic level. A programmatic assessment would set forth a pathway to a low-carbon energy future and assess the extent to which new fossil fuel power plants would form a bridge to that future or interfere with efforts to stabilize the climate, taking into account increased reliance on renewables, energy efficiency, and the decommissioning of aging power plants. This programmatic assessment is different than the “system approach” proposed by the power industry at the November 19th hearing that would only look at the energy system in the very short-term, and not the low carbon energy system consistent with the greenhouse gas emissions reductions necessary for climate stabilization. *See* Pub. Res. Code § 21001(d) (CEQA is intended to “ensure the long-term protection of the environment”). However, until a programmatic EIR is prepared that sufficiently analyzes the energy sector to allow tiering by individual projects, proposed power plants must be evaluated on a project-by-project basis.

I. Evaluating Greenhouse Gas Impacts for Power Plants Under CEQA

A. Greenhouse Gas Emissions Generated by a Proposed Facility Must be Quantified

The first step in a greenhouse gas analysis under CEQA is to quantify the emissions resulting from the proposed project. *See* OPR, Technical Advisory, CEQA & Climate Change at 5 (June 2008); CEQA Guidelines § 15144 (a lead agency must “use its best efforts to find out and disclose all that it reasonably can.”). Accordingly, where a proposed power plant would be located on an undeveloped site, emissions from the project would primarily be those resulting

¹ Air Resources Board, Climate Change Proposed Scoping Plan, at ES-2.

from construction and operation of the facility. Where a proposed project would replace an existing facility, emissions resulting from the new facility would account for existing emissions, but only to the extent there is substantial evidence that, but for the proposed project, existing emissions would have continued for the lifetime of the new project. In addition, quantification of project emissions should include the embodied emissions of the fuel type used at the proposed facility. If LNG may be used, the increased emissions that may be associated with this type of fuel should be evaluated in the greenhouse gas analysis. CEQA Guidelines § 15358(a) (defining “effects” or “impacts” of a project to include “[i]ndirect or secondary effects which are caused by the project and are later in time or farther removed in distance, but are still reasonably foreseeable.”); accord ARB Staff Workshop Presentation, “Staff Proposal on Greenhouse Gas Thresholds of Significance under CEQA Potential Performance Standards and Measures” (Dec. 9, 2008) at slide 6 (encouraging “lead agencies to include lifecycle emissions where appropriate.”).

B. Determining Significance

1. Claims that Power Plants are Effectively Categorically Exempt from a GHG Analysis Due to Purported Displacement of Emissions or Compliance with SB 1368 Are Without Merit

At the November 19th meeting, certain stakeholders asserted that all new gas fired power plants have a less than significant global warming impact because they “displace” existing emission sources. The displacement theory seems to posit that, because electricity is provided in real time and instantaneous supply is adjusted based on demand, putting a new power plant on-line instantaneously results in reductions in less efficiently produced – and thus more GHG intensive – energy production elsewhere in the electricity system. This argument, which would effectively provide a categorical exemption from greenhouse gas review for all new fossil fuel power plants, has several obvious flaws.

First, even assuming that the electricity system operates with optimal efficiency such that the most polluting sources of energy are displaced the instant less polluting energy sources enter the system,² CEQA analyzes impacts over the life of the project, not one particular instant. CEQA Guidelines § 15126.2(a) (“Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects.”); *Davidon Homes v. City of San Jose*, 54 Cal. App. 4th 106, 119 (1997) (“CEQA is not confined to the immediate effects of an agency’s decisions but should be applied whenever physical changes to the environment are a reasonably foreseeable result of the activity.”). Much like construction of a new road induces additional vehicle traffic, construction

² Since operation of the electric grid by the ISO facilitates certain polluting operations to continually run even though less polluting options may be available, the energy system does not appear to function such that the most polluting sources no longer generate power when less polluting sources are placed in service. Moreover, renewable resources are discounted in determining reliability and often highest emitting facilities are used to effectuate reliability.

of new energy sources can foster new growth. As new growth occurs – facilitated in part by the construction of proposed power plants – energy sources that may have been temporarily displaced in the short term are likely to be reutilized. Absent a showing that more polluting energy sources that would otherwise have continued to operate will be permanently taken off-line as a result of the proposed project, there is no legitimate basis to conclude that new power plants will not ultimately result in increased greenhouse gas emissions.

The displacement theory is premised on the erroneous belief that the relationship between electricity supply and demand is completely inelastic. Taken to its logical conclusion, one could add an infinite number of power plants to the system without any present or future impact on electricity consumption. The CEC currently has approximately twenty gas-fired power plants pending approval totaling more than 10,000 MW. In addition, the state has 3,263 MW that are approved and under construction and an additional 8,065 MW that are approved and not yet under construction. Yet, “[s]lowing global warming requires meeting energy needs with zero- or low-carbon energy sources. Two overarching strategies for obtaining GHG reductions from energy sector are demand-side strategies that reduce use, and supply-side strategies that limit or reduce the emissions associated with electricity generation.”³ Absent a programmatic analysis of the extent to which new fossil fuel commitments may undermine efforts to stabilize the climate, there is no legitimate basis to assume that constructing any number of new gas fired power plants will have a less than significant environmental impact.⁴

Moreover, simply assuming that the large number of fossil-fuel projects pending before the CEC collectively do not have a cumulatively considerable environmental impact is inconsistent with California’s goal to achieve the 33% Renewable Portfolio Standard by 2020, which is a key element of the ARB’s Scoping Plan.⁵ The Public Utilities Commission has determined that “if the state is required to generate 33% of its energy from renewable resources by 2020, then all new procurement of new energy resources between now and 2020 must be entirely renewable energy, except some new fossil for peaking capacity and to replace aging fossil plants critical to renewable integration.”⁶ The presumption that new fossil fuel commitments do not have a significant environmental impact ignores the potential effect operation of these facilities will have on skewing the ratio of California’s renewable/non-renewable energy supply.

In addition, the proposition that the new fossil fuel commitments resulting from power plant construction simply displaces existing higher carbon intensive energy supply has already

³ ARB, Climate Change Proposed Scoping Plan Appendices Vol. 1 at C-94.

⁴ Indeed, one of the values of a programmatic EIR is to “[e]nsure consideration of cumulative impacts that might be slighted in a case-by-case analysis.” CEQA Guidelines § 15168(b)(2). Simply concluding that any increase in energy supply through new significant long-term commitments to fossil-fuel intensive power plants has no future impact on greenhouse gas emissions is both counter-intuitive and improperly attempts to reap the benefit of a programmatic assessment without any supporting analysis.

⁵ ARB, Climate Change Proposed Scoping Plan, at ES-3.

⁶ California Public Utilities Commission, “Renewables Portfolio Standard Quarterly Report, Oct. 2008, at 10.

been rejected under analogous circumstances. In *Center for Biological Diversity v. City of Desert Hot Springs*, RIC 464585, Riv. Sup. Ct. (Aug. 8, 2008), the trial court rejected an EIR's assertion that a residential and commercial development would have a "beneficial impact on CO₂ emissions" because California homes are more efficient than those elsewhere in the country absent any showing that existing homes would be demolished or remain unoccupied. Similarly, absent any showing that aging power plants are decommissioned as a consequence of new power plant approval, there is no substantial evidence that putting new power plants on-line will not have environmental impacts.⁷ While some stakeholders at the November 19th meeting endeavored to portray the electricity sector as unique, like other sectors, creating new supply without eliminating existing sources results in an increased capacity for additional greenhouse gas emissions.

Finally, a de facto determination that all new power plants, regardless of their design, have a less than significant environmental effect subverts the purpose of CEQA by precluding the consideration of less environmentally damaging options. While power plants built today are more efficient than previous generations of power plants, significant quantities of emissions are still generated that could be further reduced through the adoption of alternatives and mitigation measures. *See, e.g., Center for Biological Diversity v. NHTSA*, 538 F.3d 1172, 1216 (9th Cir. 2008) (noting that new fuel economy rule "will not actually result in a decrease in carbon emissions, but potentially only a decrease in the rate of growth of carbon emissions."). Because significant greenhouse gas emission reductions from existing levels are necessary to stabilize the climate, we can not afford to squander any opportunity to adopt feasible mitigation and alternatives that reduce the greenhouse gas emissions from proposed projects.

Importantly, when viewed from a system-wide perspective, it is not enough that existing emission levels generated by the energy sector are roughly maintained over time. Due to inertia in the climate system, greenhouse gas emissions must be significantly reduced in order to maintain existing climactic conditions. In other words, climate stabilization and the preservation of the existing environment require emissions reductions at a system-wide level. Thus, asserting that emissions from the energy sector have not increased significantly over time does not justify a less than significant finding for the global warming impacts from new power plants. Emissions from the energy sector can and must be reduced, in part through consideration of mitigation and alternatives for new proposed power plants in order to maintain our existing environment. *See* CEQA Guidelines § 15125. In an analogous context, when looked at through the lens of their own "system" of existing and new emissions sources, local governments are developing climate action plans under CEQA with the necessary objective of reducing emissions from current levels. Absent a similar programmatic analysis with the objective of achieving the reductions necessary for climate stabilization, the "system" cannot legitimately be relied upon to determine impacts from new projects are less than significant.

⁷ The emissions from a decommissioned power plant would need to substitute reductions on one for one basis. The closing of aged power plant may only constitute a partial mitigation if the reductions are less than the new emissions.

Claims that compliance with SB 1368 emission performance standards is an appropriate standard for significance are also theoretically flawed. The environmental objective for determining the significance of a project's greenhouse gas emissions is stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference (DAI) with the climate system.⁸ SB 1368's standard for energy procurement, while helpful in influencing the carbon intensity of out-of-state energy projects, are simply business as usual for new power plants in California. Indeed, under SB 1368, one could have a power plant of any size, generating enormous quantities of emissions, so long as the efficiency of that power generation met business as usual criteria. *See, e.g., City of Antioch v. City of Council of Pittsburg*, 187 Cal.App. 3d 1325, 1332 (1986) ("conformity with the general plan for the area, does not insulate a project from the EIR requirement, where it may be fairly argued that the project will generate significant environmental effects.") The new fossil fuel commitments resulting from such a power plant are inconsistent with AB 32 objectives and a pathway to climate stabilization. While limiting the procurement of energy from the most heavily polluting sources, SB 1368 was not designed to inform the determination of significance under CEQA.

2. Setting a Threshold of Significance

As set forth more fully in our November 7th letter to the Commission, scientific and factual data most strongly support a threshold of zero. A recent paper by Matthews, H.D., and Caldeira, K. "Stabilizing climate requires near-zero emissions," 35 *Geophys. Res. Letters* L04705 (2008), concludes that "future anthropogenic [carbon] emissions would need to be eliminated in order to stabilize global-mean temperatures." In setting thresholds of significance for other sectors, ARB and SCAQMD have asserted that, at least in the context of the industrial sector, a threshold that would capture 90% of emissions from that sector is consistent with a pathway toward climate stabilization.⁹ However, even assuming a threshold aimed at capturing 90% of emission from a particular sector could be supported by substantial evidence, this approach may not be appropriate for the CEC. First, the CEC only reviews power plants of 50 MW or greater. Accordingly, the smaller projects that would fall out of the 90% capture method are already outside the CEC's purview. Secondly, a non-zero threshold is also intended to address administerability concerns associated with a greenhouse gas analysis for very small projects that would not otherwise require significant environmental review. This is not a concern for the CEC as these projects are large and already undergo extensive environmental review. In the case of projects under review by the CEC, it may be possible to set a threshold at a point at

⁸ The basis for this environmental objective is set forth more fully in our comments dated November 7, 2004. In addition to ARB, SCAQMD has also recognized that a screening level of significance should also look toward 2050 emission reduction targets. SCAQMD, Draft Guidance Document – Interim CEQA Greenhouse Gas (GHG) Significance Threshold at 3-2 (Oct. 2008) available at: <http://www.aqmd.gov/hb/2008/December/0812ag.html> (including new section on policy objectives).

⁹ In light of recent science indicating that an atmospheric concentration of greenhouse gases of no more than 350 ppm rather than 450 ppm is necessary to stabilize the climate, ARB and SCAQMD's industrial threshold may not be sufficiently stringent. *See, e.g., Earthjustice*, Dec. 8, 2008, Comment Letter to ARB, attached.

which renewable projects with minimal greenhouse gas emissions would not be considered significant. However, to support a non-zero threshold with substantial evidence, the CEC will need to justify why the total emissions that are not captured by the threshold would not interfere with attainment of emission reduction targets necessary to stabilize the climate.

At the November 19th meeting to discuss the analysis of GHG impacts of power plants under CEQA, there was discussion about determining the significance of the emissions resulting from new power plants through a programmatic document. Programmatic review of the energy sector would be useful because, as ARB has noted, “the investments that are made in this new infrastructure in the next several years will become part of the backbone of the state’s electricity supply for decades to come.”¹⁰ Such a programmatic document would set forth a pathway to a low-carbon future for California that is consistent with reductions necessary for climate stabilization and determine the extent to which new fossil fuel commitments interfere with this objective. An analysis would determine how new power plants may serve as a bridge to climate stabilization where aging and more polluting plants are decommissioned, reliance on renewables (including distributed power) increases, and demand is reduced through energy efficiency. However, until such an analysis is conducted, global warming impacts from proposed power plants must be analyzed on a project-by-project basis.

3. Mitigating Project Impacts

There are opportunities to ensure that the long-term fossil fuel commitments resulting from construction of new power plants do not interfere with our low-carbon future. The CEQA evaluation of new power plants should include a thorough examination of alternatives that could meet the project purpose with less carbon intensity and mitigation measures to reduce project impacts.

The first step to identifying less environmentally damaging alternatives and mitigation measures is to properly set forth the project purpose. CEQA requires that a project description set forth “[a] statement of objectives” that includes “the underlying purpose of the project” in order to “help the lead agency develop a reasonable range of alternatives to evaluate in the EIR.” CEQA Guidelines § 15124(b). Thus, in the case of all sitings that result in future fossil fuel commitments, it is first appropriate and necessary under CEQA to ask what function the particular project would fulfill prior to engaging in an examination of feasible alternatives and mitigation. For example, if the purpose is to supply peak power, could solar power, which operates well during peak periods, be an alternative to all or part of the project’s proposed capacity. See, e.g., *Natural Resources Defense Council v. SCAQMD*, Case No. BS 110792 (L.A. Sup. Ct. Jul. 28, 2008).

Alternatives and/or mitigation measures that should be considered as part of CEQA review for any proposed gas-fired power plants reviewed by the CEC include:

¹⁰ ARB, Climate Change Proposed Scoping Plan Appendices Vol. 1 at C-93.

a. Energy Efficiency/Retrofits in Local Community

“In order to meet our climate change goals, California must pursue very high levels of energy efficiency using more advanced approaches that go beyond traditional programs, standards, and delivery mechanisms.”¹¹ Mitigation for new fossil fuel power plants could include mitigation programs that provide for energy efficiency retrofits of existing housing stock, with a particular focus of rental and low-income housing. Indeed, new proposed power plants already provide mitigation funds for criteria pollutants and should be required to do the same for greenhouse gas emissions. As one example, the Chula Vista Energy Upgrade Project included \$210,000 worth of mitigation funds “for energy efficiency and related improvements to local homes and business, . . . intended to directly benefit the residents potentially most affected by the proposed project.”¹²

b. Renewable Energy

In addition to energy retrofits, mitigation should include community-scale (1-20 megawatts) renewable energy, such as wind and solar power facilities, and small-scale renewables (less than 1 megawatt) like rooftop solar. The IEPR 2008 Update discusses California’s need “to expand efforts to include renewable generation at the distribution level, such as community-scale photovoltaics or small wind, to reduce electricity loads and the need for upgrades to the transmission system. Similarly, increased use of renewable technologies for heating and cooling, like solar thermal water heating and geothermal ground-source heat pumps, could reduce electricity loads while also decreasing the use of fossil fuels and emissions of greenhouse gases.”¹³

c. Permanent Closure of Carbon-Intensive Energy Generation

The flaw in the displacement argument is that aging facilities – and their corresponding energy generating capacity – are not necessarily decommissioned as a condition of new project approval. To ensure that more pollutant energy sources are no longer utilized as a result of a proposed energy project, approval of a new gas-fired power plant could be conditioned on closing an aging facility if there is an equivalent greenhouse gas reduction.¹⁴ In addition, credit

¹¹ ARB, Climate Change Proposed Scoping Plan Appendices Vol. 1 at C-99.

¹² Docket No. 07-AFC-4, Chula Vista Energy Upgrade Project, FSA Addendum at 3 (Sept. 30, 2008). While the FSA stated that “staff considers [the energy efficiency agreement] to be separate from the official CEQA process,” we disagree with this statement as it is now well-established that greenhouse gas impacts are part of the CEQA review.

¹³ CEC, 2008 Integrated Energy Policy Report Update, Nov. 2008.

¹⁴ See, e.g., Attorney General, Comments of California Attorney General on Proposed Negative Declaration for the Miramar Energy Facility Unit II, July 31, 2008 (“[A]though SDG&E has suggested that building the Miramar II plant will allow it to eventually close the more polluting South Bay Plant, there are no proposed conditions of approval that would ensure that power from the Maramar II plant is used to replace power from the South Bay plant,

for the closure of a facility would only be granted to the extent the aging facility would have remained on-line absent the new project. Thus, if the contract for an aging facility was to expire in two years, and the pollution generated by that facility was such that the contract would not be renewed, it is only appropriate to credit a new facility for two years worth of emissions from the old facility.

d. Hybrid Facilities

A mitigation and alternatives analysis should include an examination of whether fossil-fuel generation of a proposed plant could be reduced through the construction of a hybrid facility. For example, the Electric Power Research Institute recently announced that it is exploring options to add solar energy to fossil-fueled electric power plants.¹⁵ This mitigation measure would not be a substitute for the adoption of less carbon intensive project alternatives, but one of several methods that could collectively reduce project emissions.

Thank you for your consideration. Please do not hesitate to contact William Rostov at (510) 550-6725 wrostov@earthjustice.org or Matthew Vespa at (415) 436-9682 x.309 mvespa@biologicaldiversity.org if you have any questions or concerns.

Sincerely,



William Rostov
Staff Attorney
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Matthew Vespa
Senior Attorney
Center for Biological Diversity



Dave Davis,
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Adrienne Bloch
Senior Attorney
Communities for a Better Environment

or that the plant will actually be closed. Appropriate conditions would be required before this could be recognized as mitigation for the Miramar II plant's GHG emissions.”).

¹⁵ Press Release, EPRI to Evaluate Adding Solar Thermal Energy to Fossil Power Plants (Nov. 21, 2008).



December 8, 2008

VIA ELECTRONIC MAIL

Mr. Doug Ito
Planning and Technical Support Division
California Air Resources Board
P.O. Box 2815
Sacramento, CA 95812
www.arb.ca.gov/cc/localgov/ceqa/ceqacomm.htm

Re: Comments on Preliminary Draft Staff Proposal: Recommended Approach for Setting Interim Significance Thresholds for Greenhouse Gases under the California Environmental Quality Act (Oct. 24, 2008).

Dear Mr. Ito:

We write to encourage the Air Resources Board (“ARB”) to continue its efforts to establish a recommended statewide threshold of significance for greenhouse gases under the California Environmental Quality Act (“CEQA”). Having a statewide recommendation is an appropriate approach to assessing the significance of emissions that contribute to a global problem. We have been troubled by some of the early efforts put forward at the local air district level and encourage you to continue to take the lead in this area. We believe ARB is in the best position in terms of resources and expertise to establish an appropriate threshold. That said, we do not believe ARB’s first draft reflects that expertise. We offer the following comments on areas where further work is necessary to provide substantial evidence supporting the recommended thresholds.

I. ARB Has Not Provided a Sound Basis for Rejecting a Zero Threshold

ARB suggests that zero thresholds are not mandated in light of the fact that (1) some level of emissions in the near term and by mid-century is still consistent with climate stabilization and (2) other programs will increasingly reduce greenhouse gas emissions. The draft proposal then refers to the timing of California’s greenhouse gas emissions “peak” and consistency with the State’s 2020 and 2050 emission reduction targets. This brief discussion lacks any detail and contrary to ARB’s assertion provides no evidence at all for rejecting a zero threshold.

ARB references the now outdated IPCC recommendation that atmospheric levels of greenhouse gases must be stabilized around 450 parts per million (ppm) by 2050 and that this can be achieved by reducing emissions 80 percent below 1990 levels by 2020. The growing consensus is that both of these recommendations were overly optimistic. Scientists, including NASA’s James Hansen, believe that we are already beyond a sustainable level of greenhouses

gases in our atmosphere and that stabilization requires a reduction from current levels to 350 ppm. *See Hansen, J. et al., Target Atmospheric CO₂: Where should Humanity Aim?* (April 2008) available at <http://arxiv.org/ftp/arxiv/papers/0804/0804.1126.pdf>. Certainly these conclusions should come as no surprise given the accelerating impacts of global warming that we are already seeing. Similarly, scientists are also questioning the belief that the 80 percent reduction in emissions below 1990 levels by 2050 will be sufficient. A recent paper by Matthews, H.D., and Caldeira, K. "Stabilizing climate requires near-zero emissions," 35 *Geophys. Res. Letters* L04705 (2008), suggests that in order to stabilize atmospheric levels of greenhouse gases, CO₂ emissions must be reduced not just to 80 percent below 1990 levels but to "nearly zero" by mid-century.

Setting aside the fact that ARB's approach appears to be based on slightly outdated information, what is most troubling about the discussion of zero versus non-zero thresholds is the lack of any information. ARB claims that some level of emissions is consistent with climate stabilization. What level of emissions and what is the necessary path to achieving those emissions? ARB mentions the need to cause California's peak in emissions to occur "sooner" but offers no information on what that peak is, when it is otherwise projected to occur, when it should occur in order to be consistent with scientific evidence on stabilization targets, or how a zero versus non-zero threshold will change the timing of that peak. There is nothing to indicate that ARB has done any analysis to determine when greenhouse gas emissions in the State will peak and whether the proposed threshold is "sufficiently stringent to make substantial contributions to reducing the State's [greenhouse gas] peak." ARB suggests a test for choosing a threshold but then fails to provide any analysis relating to that test.

ARB's general reference to other greenhouse gas reduction programs is similarly devoid of any details or analysis that would support the threshold decision. Many of these activities will affect existing sources rather than those that are the subject of CEQA review. To the extent these programs will set standards for new greenhouse gas emissions of future projects, the obligations are different and do not resolve the question of whether the remaining emissions will be significant under CEQA. Given that our situation demands not just holding the line but actually reducing our current inventory of emissions, any claim that these future programs are relevant to setting a CEQA baseline must demonstrate how growth in greenhouse gas emissions allowed under the proposed CEQA thresholds will hinder the ability of these future programs to achieve the needed emission reductions according to the appropriate time frame.

A zero threshold reflects the reality that there is no room for additional growth in greenhouse gas emissions. There may be other policy and administrative reasons that ARB prefers a non-zero threshold, but these are not based on any analysis of our current environmental situation or the science on what emissions are adding to the global warming problem. If ARB decides to pursue a non-zero threshold, it should be honest about the rationale, so that we can have a meaningful discussion on alternatives to addressing the true concerns with a zero threshold.

II. ARB's Proposed Threshold for the Industrial Sector Has No Rational Connection to the Environmental Significance of those Emissions.

After noting that the issue of determining a threshold of significance requires a consideration of the nature of the environmental problem, Preliminary Draft Staff Proposal at 2, ARB abandons any attempt at such analysis in determining the actual thresholds proposed. The proposal offers the conclusory claim that “[b]ased on available data, ARB staff found that for the industrial sector, small projects – defined as the portion of new projects, that when viewed collectively, were responsible for only a relatively small amount of emissions – could be allowed to proceed without requiring additional mitigation under CEQA.” Preliminary Draft Staff Proposal at 9. The proposal does not provide the referenced “available data” or even cite what it might be. There is no further explanation of what “relatively small” means or, most importantly, why these projects “could be allowed to proceed without requiring additional mitigation under CEQA.” This latter point is the central question for establishing a significance threshold and yet there is nothing more than this assertion offered as a basis for the decision.

Instead of looking at the environmental impact of these collective emissions and analyzing how they relate to emission targets or the timing of peak emissions levels, ARB simply changes the exercise to one wherein the “vast majority” of greenhouse gas emissions from new industrial projects will be subject to mitigation under CEQA. ARB arbitrarily selects 90 percent as meeting this new “vast majority” test. There is no connection, however, between the percentage of emissions captured and the significance of those emissions vis-à-vis the problem of global warming. As noted above, there may be other reasons for selecting this or some other similar cutoff, but it is not based on any analysis of the environmental significance of the emissions and therefore should not be offered as such.

Even if there are other reasons to try to establish a cutoff that exempts the smallest 10 percent of industrial sources, the analysis must be revised to ensure that the threshold is set at the appropriate level. The analysis in the proposal relies upon the 2005 Energy and Environmental Analysis, Inc. report on the national boiler population. ARB uses this data to determine the 90 percent cutoff based on boiler heat input capacity. ARB then uses this size cutoff of 10 mmBtu to calculate the greenhouse gas emission threshold.

We believe ARB's approach overestimates the size of boilers in the State of California, which does not share the same industry mix as other regions of the U.S. that often employ larger boilers. *See* “Characterization of the U.S. Industrial/Commercial Boiler Population,” Energy and Environmental Analysis, Inc. (May 2005). ARB does not need to rely on this national data to approximate the distribution of boiler sizes in California. Information is available on the actual inventory of boilers in the State and ARB should analyze that data instead. Air districts are already regulating boilers much smaller than 10 mmBtu due to their significant contribution to air quality problems, so it is troubling that ARB would conclude that these sources do not deserve to be treated as significant contributors to the problem of global warming.

* * *

Letter to Doug Ito
December 8, 2008
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We encourage ARB to push forward and provide the missing rationale for the threshold recommendations for the proposed sectors. In addition, ARB should also make recommendations for all other sectors including agriculture and transportation. We look forward to the next draft of your recommendations and urge you to build in appropriate opportunities for public review and comment. Thank you for your efforts to date. If you have any questions or concerns regarding these comments, please contact Paul Cort (pcort@earthjustice.org) or Will Rostov (wrostov@earthjustice.org) at (510) 550-6725.

Sincerely,

Paul Cort
Staff Attorney