

Comments on the AB 32 Proposed Scoping Plan
Submitted by Ken Johnson (unaffiliated) on November 10, 2008

If the Scoping Plan is implemented as proposed, it is possible that emission allowances in 2020 could be trading well below \$10/MT – even after the arctic ice cap has disintegrated. This is clearly not what the authors of AB 32 intended. As noted on page 73 of the proposal, “The primary purpose of the Scoping Plan is to develop a set of measures that will provide the maximum technologically feasible and cost-effective greenhouse gas emission reductions.” However, ARB apparently ascribes no operative meaning to this goal, because the statement on page 73 is the only place in the entire 136-page document where it says anything about the Sec. 38560 statutory requirement for maximizing emission reductions.

If ARB staff had seriously intended to implement Sec. 38560 in a meaningful way, they would not have waited until the very last AB-32 Stakeholder Work Group Meeting (on June 3) before addressing the issue of how to evaluate cost effectiveness in the context of Sec. 38560. AB 32 defines a cost-effectiveness metric (Sec. 38505(d)), but allows ARB discretion in establishing a cost-effectiveness criterion, consistent with the legislative intent of Sec. 38560, for assessing whether a regulation is cost-effective. ARB’s concept of “cost effectiveness”, as described in the Proposed Scoping Plan (Sec. III.C) is muddled, incoherent, and ill-defined; and the concept contravenes Sec. 38560 because it is based only on meeting the 2020 emission “target” and does not contemplate potential emission reductions beyond the target.

The term “target” does not actually appear anywhere in AB 32. The statute refers to the 2020 goal as a “limit”, specifically “the maximum allowable level of statewide greenhouse gas emissions in 2020” (Sec. 38505(n)); and Sec. 38560 clearly anticipates emission reductions beyond the 2020 limit. But under the Proposed Scoping Plan the maximization requirement of Sec. 38560 would have no influence on emission reductions, contrary to the clear legislative intent.

Appendix J identifies carbon fees as a regulatory option that would be immune to price erosion or collapse, but carbon fees are rejected as an alternative to cap-and-trade on the grounds that “a carbon fee does not provide certainty in terms of the amount of emission reductions that will be achieved”. However, Appendix J fails to identify another project alternative, a price floor in the context of cap-and-trade, which would guarantee both an emission cap and a minimal price incentive for further emission reductions pursuant to Sec. 38560.

ARB could take the following actions to reasonably comply with Sec. 38560: (1) Design the cap-and-trade system to accommodate a price floor based on a reasonable and meaningful cost-effectiveness criterion (one that does not contravene the intent of Sec. 38560). (2) Seek legislative ratification for the proposed cost-effectiveness criterion and price floor. (3) Require the WCI to adopt Sec. 38560-compatible rules (e.g., harmonized price floors) as a precondition for linkage to the California market.

Key points:

- Sec. 38560 is clearly intended to influence emission levels under AB 32.
- The Proposed Scoping Plan makes no clear connection between the Sec. 38560 maximization requirement and emission levels, and it does not purport to comply with Sec. 38560 under any meaningful cost-effectiveness standard.
- The WCI does not require maximum emission reductions in accordance with Sec. 38560, and is therefore currently incompatible with AB 32.

Key questions relating to the statutory construction of AB 32:

(1) Is AB 32 coherent and self-consistent?

Yes, for the following reasons:

- The maximum emission reduction requirement of Sec. 38560 is not inconsistent with the 2020 emission limit because the latter is an upper limit, not a “target”.
- Sec. 38560 does not supersede the 2020 limit or make it irrelevant, because the limit effectively imposes a minimal cost-effectiveness standard that supersedes any ARB-defined standard.
- The maximum emission reduction requirement does not conflict with the cost minimization goal of Sec. 38562(b)(1) because the ultimate policy goal of AB 32 is climate stabilization (it is not just the 2020 limit), and any emission reductions that are not achieved through early action pursuant to Sec's. 38560 and 38562(b)(1) would still have to be achieved, possibly at higher cost, after 2020.

(2) Is Sec. 38560 meaningful, and can it be applied without a legislatively-defined cost-effectiveness standard?

Yes. Although the noun definition of “cost-effective” in Sec. 38505(d) does not fit its adjective-sense use in Sec. 38560, the legislative intent of Sec. 38560 is clear:

- First, it is clear in the context of Sec. 38560 that cost effectiveness is a threshold condition subject to which emission reductions (not cost reductions) are to be maximized. (An interpretation of “cost-effective” as being synonymous with “least-cost” is thus inconsistent with the intent of Sec. 38560.)
- Second, the Sec. 38505(d) definition indicates that the threshold is intended to be a cost-per-GHG-unit limit. (The Proposed Scoping Plan states, on page 84, that AB 32 “does not specify whether there should be a specific upper-bound dollar per ton cost that can be considered cost-effective ...”, but if that was not the intent

then the Sec. 38505(d) definition of “cost-effective” would appear to have no relevance to the term's use in Sec. 38560.)

- Third, it is clearly the legislature's judgment that the 2020 limit is cost-effective (based on information that was available to the legislature, e.g., in the April, 2006 Climate Action Team report), so the limit effectively defines a minimal cost-effectiveness standard. ARB should, at a minimum, establish a cost-effectiveness standard that is consistent with the 2020 limit based on current information. The standard should not be updated to avoid emission reductions below the 2020 limit, as this would contravene and effectively nullify the emission-reduction requirement of Sec. 38560. The standard should only be updated, if necessary, to ensure that emissions do not exceed the 2020 limit.

(3) Would Sec. 38560 require ARB to impose emission limits that are potentially more stringent than the 2020 limit?

No. Sec. 38560 is essentially a “best-effort” requirement that is better addressed with incentive-type policies. Monetary incentives, such as a price floor and feebates, would be particularly well-suited to the cost-effectiveness requirement, in that they would maintain a stable dollar-per-ton incentive for emission reductions. Emission limits would not be suitable for two reasons:

- First, it is not possible to predict what the limits of feasibility and cost-effectiveness will be years or decades in the future. Regulations that are based on such predictions will necessarily be biased toward cost-conservatism to ensure feasibility and cost-effectiveness, and will not achieve maximum feasible and cost-effective reductions if costs turn out to be lower than expected - as they usually are.
- Second, if emission limits are used to implement Sec. 38560, then the 2020 limit would not influence emission levels unless the limit is not feasible and cost-effective; thus the limit would be either inconsistent or irrelevant. The 2020 limit and the maximum reduction requirement of Sec. 38560 should achieve the separate, but complementary, objectives of imposing a fixed upper limit on emissions while also maintaining a minimal incentive for further emission reductions.

(4) Is the WCI consistent with AB 32?

No, it currently has no requirement comparable to Sec. 38560. The Proposed Scoping Plan states (on page 34) that the WCI's proposed allowance reserve price could “provide an opportunity for the regional cap-and-trade program to provide reductions that exceed the regional target”. Although Sec. 38560 provides a statutory basis for such further emission reductions, this is not recognized in the Proposed Scoping Plan, and the proposed reserve price (which would only apply to the first five percent of auctioned

allowances) is clearly not constructed or intended to achieve maximum emission reductions under any meaningful cost-effectiveness standard.