

Jackie Kepke, P.E.  
Program Manager  
California Wastewater Climate Change Group

November 10, 2009

**Comment 95-1**

The proposals of individual air districts to address greenhouse gas emissions are being developing in a regulatory vacuum while awaiting the final authoritative guidance from the SB 97 CEQA Guidelines amendments. The Guidelines should distinguish between anthropogenic and biogenic carbon dioxide emissions.

**Response 95-1**

The Natural Resources Agency notes that individual air districts play a legitimate role in developing CEQA guidance that is specific to the district's region. Regarding the comment that the Guidelines should distinguish between anthropogenic and biogenic carbon dioxide emissions, the Natural Resources Agency notes that SB97 did not distinguish between the sources of greenhouse gas emissions. Thus, it would not be appropriate for the Natural Resources Agency to treat the different categories of emissions differently absent a legislative intent that the Guidelines do so. Neither AB32 nor the Air Resources Board's Scoping Plan distinguishes between biogenic and anthropogenic sources of greenhouse gas emissions. On the contrary, the Scoping Plan identifies methane from, among other sources, organic wastes decomposing in landfills as a source of emissions that should be controlled. (Scoping Plan, at pp. 62-63.)

The Natural Resources Agency notes, however, that proposed section 15064.4(b)(1) would allow a lead agency to consider the extent to which a project results in an increase or a decrease in greenhouse gas emissions compared to the existing environmental setting. If an agency has performed an analysis that demonstrates that a particular process does not result in an increase in greenhouse gas emissions compared to what already occurs in the existing environment, that evidence might support a conclusion that the project will not cause an increase in greenhouse gas emissions. Thus, to the extent the comment suggests that certain biogenic emissions should not be considered new emissions, the text in proposed section 15064.4(b)(1) is broad enough to encompass the type of analysis suggested, subject to the limitation that such analysis could not be used in a way that would mask the effects of emissions associate with the project. For example, if the emissions occurring in the short-term will have impacts that differ from emissions occurring in the future, those differences may need to be analyzed.

No revision is required in response to this comment.

**Comment 95-2**

The proposed amendments should recognize that biogenic emissions of carbon dioxide mimic the natural short-term carbon cycle and do not cause a net increase in atmospheric concentrations.

**Response 95-2**

The proposed amendments do not distinguish between biogenic and anthropogenic emissions for the reasons described in Response 95-1, above. The Natural Resources Agency notes that existing regulation, which remains unaltered, already establishes that the physical environment at the time of the project will constitute the baseline by which a lead agency determines whether a particular impact is significant. (State CEQA Guidelines § 15125(a).) Consequently, if a project does not add to the concentration of greenhouse gas emissions in the existing environment, or causes a net decrease in such emissions, and if substantial evidence demonstrates that net effect, then a lead agency may determine that the impact less than significant. Proposed section 15064.4(b)(1) would allow a lead agency to consider the extent to which a project results in an increase or a decrease in greenhouse gas emissions compared to the existing environmental setting, and so could be used to support that analysis. It can not be assumed without analysis, however, that projects involving biogenic greenhouse gas emissions will not increase emissions levels above the existing environmental setting.

**Comment 95-3**

Revise Section 15364.5, defining “greenhouse gas” or “greenhouse gases” by striking “carbon dioxide” and adding “anthropogenic emissions of carbon dioxide”.

**Response 95-3**

The Legislature did not define greenhouse gas emissions for CEQA purposes, and its definition in AB32 is not exclusive. Gases that are not listed in the definition of greenhouse gas emissions in AB32 are recognized to be greenhouse gases. Because CEQA must be interpreted to provide the fullest possible protection to the environment, the definition of greenhouse gas emissions in the CEQA Guidelines must not include an exclusive list. The suggested revision to that definition would not be consistent with law, and is, therefore, rejected.

**Comment 95-4**

Commenter believes that if no distinction is made between anthropogenic and biogenic emissions of carbon dioxide it will cause unnecessary action under CEQA and discourage the use of renewable fuels.

#### **Response 95-4**

To the extent that the combustion of renewable fuels, such as methane and digester gas, may cause adverse effects on the environment, those effects would need to be analyzed under CEQA. As the Third District Court of Appeal recently explained:

“[I]t cannot be assumed that activities intended to protect or preserve the environment are immune from environmental review. [Citations.]” .... There may be environmental costs to an environmentally beneficial project, which must be considered and assessed.

(*Cal. Farm Bureau Fed. v. Cal. Wildlife Cons. Bd.* (2006) 143 Cal. App. 4th 173, 196.) Nothing in SB97 altered this rule. Thus, lead agencies must consider whether the greenhouse gas emissions resulting from biogenic emissions may cause adverse environmental effects. However, as explained in Responses 95-1 and 95-2, above, to the extent that substantial evidence demonstrates that such biogenic emissions do not result in a change in the existing environmental setting, a lead agency may consider that information in determining whether such emissions are significant pursuant to section 15064.4(b)(1). No revision is required in response to this comment.