

March 9, 2026



Via electronic submittal

Chair Lauren Sanchez and Members of the Board
California Air Resources Board
1001 I Street
Sacramento, CA 95814
cotb@arb.ca.gov

Re: CBE Comments on the Proposed 2026 Amendments to the Cap-and-Invest Regulation

Dear Chair Sanchez and Members of the Board:

Communities for a Better Environment (“CBE”) writes to raise significant concerns and questions regarding the Proposed 2026 Cap-and-Invest Regulation (hereinafter “the Proposal”). CBE is an Environmental Justice organization, representing communities in East Oakland, Wilmington, Richmond and Southeast Los Angeles that are heavily impacted by fossil fuel pollution from mobile sources, oil refineries and drilling operations, power plants, and many other industrial and polluting sources. The frontline environmental justice communities that CBE organizes in bear the brunt of climate change impacts, suffering two-fold as they are disproportionately burdened by air pollution from GHG emissions and co-pollutants.

CBE supports the recommendations provided to CARB by the Environmental Justice Advisory Committee (“EJAC”) in August 2025. CBE uplifts EJAC members concerns that more direct insights on the Proposal could not be gathered because CARB is not currently convening the EJAC. CBE reemphasizes the important space that EJAC holds for often-overlooked and silenced environmental justice community representatives and supports calls for the EJAC to be consulted regarding the current proposal.

CBE submits this letter in addition to the concerns raised in the Environmental Justice letter submitted to this rulemaking by a variety of concerned environmental justice advocates across the state.¹ CBE supports the salient concerns raised there and underscores that environmental justice communities across California deserve and demand more ambition from this program. This letter details the following additional concerns and suggested proposal adjustments:

- I. CARB must reduce allowances at a greater rate than the proposed amendments.
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- II. CARB must act to reduce industry assistance for refining and extraction and eliminate harmful exemptions for biofuels and unproven CCUS.
- III. Focus on Affordability by maximizing the Climate Credit.
- IV. Draft Environmental Analysis must be corrected because it fails to satisfy CEQA requirements.

I. CARB must reduce allowances at a greater rate than the proposed amendments.

The Proposal fails to meet the State’s greenhouse gas reduction goals. While CARB asserts that over time the Proposal achieves the same total number of allowances in the SRIA Proposed Scenarios, CARB does not acknowledge the likelihood of failing to meet near-term goals established in the 2022 Scoping Plan. In order to meet the State’s climate goals, CARB must act ambitiously now to increase stringency by reducing the number of allowances in the near term.

CARB’s own findings in the SRIA indicated that the proposed removal of 118 million allowances through 2030 fails to meet State thresholds and that “additional reductions are needed before 2030 to be on a course with a high likelihood of meeting 2045 statutory targets.” Despite this, CARB fails to provide analysis that supports the Proposal’s lower stringency approach and gives short shrift to previously discussed leading proposals and alternatives that favor higher stringency.

There is an urgent climate and environmental justice need for GHGs and co-pollutants to be reduced – we are not close to attaining our 2030 target under SB 32 – without sending a strong signal to covered entities that compliance is coming, there will continue to be low incentive for real emissions reductions in lieu of abundantly available allowances and offsets.² We are also concerned that low near-term stringency will simply forestall the next wave of emissions reductions, resulting in deferred action on more manageable transitions infringing on the runway and resources of the most hard to electrify sectors. Given that CARB is trusting a market mechanism to achieve California’s climate protections, CARB must send the correct market signals to achieve necessary reductions – the statutorily required goals for 2030 and 2045 will not happen otherwise. To correct course, CBE asks that CARB amend its proposal to increase stringency and reduce allowances to more ambitious levels that meet the state’s climate goals as discussed in the other proposed SRIA options.

² See CalEPA, California Climate Dashboard, March 6, 2026, <https://calepa.ca.gov/climate-dashboard/>; Christian Lessmann et al., The effect of cap-and-trade on sectoral emissions: Evidence from California, May 2024, <https://www.sciencedirect.com/science/article/pii/S0301421524000867>; Danny Cullenward et al., Structural oversupply and credibility in California’s carbon market, June 2016, <https://www.sciencedirect.com/science/article/abs/pii/S1040619016300707>; Danny Cullenward, Ambition and Affordability, February 2025, at slide 4 <https://theclimatcenter.org/wp-content/uploads/2025/02/Danny-Cullenward.pdf> indicating that historically the program has regulated less emissions than the net supply of allowances and offsets.

a. Allowance removal should prioritize actual emission reductions and ratepayer benefits.

CARB's analysis in the SRIA identifies a more stringent, effective path forward by balancing greater emissions reductions and the value of avoided health and climate impacts against cost considerations and revenue impacts. Yet the ISOR does not provide comparable analysis of these essential considerations and fails to identify how reducing program ambitions affects this balance.

CBE advocates for analysis and decision making that clearly identifies the Proposal's ability to achieve climate goals in the near term to benefit disadvantaged communities as well as real analysis of cost impacts of the Program. As noted above, this analysis is feasible and likely to favor a more stringent program.

The California Climate Credit is an essential affordability tool to balance the cost of the Program to consumers and should be iteratively adjusted and invested in to reflect its role in offsetting a more ambitious program that garners actual emissions reductions while considering costs.

II. CARB must act to reduce industry assistance for refining and extraction and eliminate harmful exemptions for biofuels and unproven CCUS.

CARB's proposal does not meaningfully adjust industry assistance in order to address ongoing harms to environmental justice communities from GHG and co-pollutant emissions. In fact, the proposal retains an unwarranted 100% leakage adjustment factor until 2035 without justification.

AB 32 requires CARB to feasibly ensure that Cap and Invest compliance does not disproportionately impact low-income communities. CARB's own environmental assessment correctly acknowledges that there is a wide gap in emissions reductions in disadvantaged communities. CalEPA's definition and CalEnviroScreen mapping of disadvantaged communities considers socioeconomic factors and indicates that industrial activities, refining, and extraction are overrepresented in disadvantaged communities.³ As CARB's own SRIA analysis acknowledges the cost of health impacts from pollution is significant. Yet CARB fails to adopt measures needed to address the emissions reductions gap. Leakage assistance is one of the significant CARB decisions that supports the reductions gap. CARB should reduce leakage assistance and use the tools of the program to pursue real emissions reductions as intended by AB 32.

a. CBE vehemently rejects compliance exemptions for biomass-derived fuels and biomethane.

³ OEHHA, SB 535 Disadvantaged Communities, last visited March 6, 2026, <https://oehha.ca.gov/calenviroscreen/sb535>.

Crop-based biofuels refining is known to pose particular and significant harms to environmental justice communities across California and the world -- from the indirect land use change implications of fuel stocks to refinery greenhouse gas and co-pollutant emissions and concerning levels of local air pollution from combustion at the tail pipe.⁴ These fuels are already overrepresented in the Low Carbon Fuel Standard, and Federal Renewable Fuels Standard.⁵ Adding support for these fuels in the Cap & Invest Program undermines both our climate goals and local air pollution reduction planning and harms Californians.

Additionally, we echo concerns raised in the Environmental Justice comment on this Proposal regarding the detrimental impacts of enhanced special treatment of livestock pollution on communities near dairies.

b. CCUS exemption should not precede SB 905 rulemaking.

CBE echoes the concerns of environmental justice advocates and objects to CARB's preemptive approval of CCUS. CARB has an obligation to complete SB 905 (2022) rulemaking, and the discussion and advocacy under this process is essential to making programmatic changes regarding CCUS. CBE calls on CARB to remove exemptions for CCUS.

III. Focus on Affordability by maximizing the Climate Credit.

CBE values the Climate Credit as an essential tool to combat the real affordability-related concerns faced by Californians, which is particularly severe in low-income households in the communities where we organize. CBE encourages CARB to amend the proposal to expediently transfer the gas credit to electric utilities while concurrently aiding the transition away from natural gas to clean electricity usage in hard to electrify areas.

CBE supports the reporting and transparency requirements for the California Climate Credit to better facilitate a Climate Credit that effectively maximizes ratepayer benefits for low-income Californians. CBE joins a variety of environmental justice, environmental, and utility advocacy organizations in calling on CARB to direct the CPUC to focus policies on addressing affordability concerns and electrification accessibility concerns for low-income Californians, particularly in regions that incur high energy burdens. We encourage CARB to emphasize that

⁴ Vincent Bregman et al., Farm to Fumes: Hazardous Air Pollution from Biofuel Production, Environmental Integrity Project, June 12, 2024, <https://www.wri.org/insights/increased-biofuel-production-impacts-climate-change-farmers>; Angela Scafidi, Increased Biofuel Production in the US Midwest May Harm Farmers and the Climate, World Resources Institute, June 10, 2025, <https://www.wri.org/insights/increased-biofuel-production-impacts-climate-change-farmers>. Low Emission Diesel (LED) Study: Biodiesel and Renewable Diesel Emissions in Legacy and New Technology Diesel Engines, November 2021, https://ww2.arb.ca.gov/sites/default/files/2021-12/Low_Emission_Diesel_Study_Final_Report_12-29-21.pdf.

⁵ See Jeremy Martin, Biofuels Incentives in Flux: Interactions Between Federal and California Policy, The Equation, (February 3, 2026) <https://blog.ucs.org/jeremy-martin/biofuel-incentives-in-flux-interactions-between-federal-and-california-policy/>.

such policy decisions should be made with public participation, and that that public participation requires clear and accessible access to data and insights on credit distribution.

IV. Draft Environmental Analysis must be corrected because it fails to satisfy CEQA requirements.

The California Environmental Quality Act (“CEQA”) is about transparency and informed decision making, CEQA requires agencies like CARB to inform decision makers and the public about the potential effects of proposed activities and disclose reasoning for agency decisions.⁶ As outlined below, by failing to adequately evaluate the Proposal’s baseline, alternatives, impacts, mitigations, and cumulative impacts the Draft Environmental Impact Analysis (“DEIA”) has failed to meet this key standard for informed decision making and transparency.

a. Baseline

Under CEQA, the “baseline” typically describes the existing environmental conditions to measure changes against. CARB describes the baseline simply as the 2023 environmental setting. This simple description fails to clearly identify relevant baseline conditions such as ongoing and increasing impacts of climate change, air pollution, and specific programmatic setting considerations such as the fact that as it existed in 2023 the program was not structured to meet even the nearest term 2030 greenhouse gas emissions established under SB 32 (2016). Without acknowledging this, we question whether CARB has accurately captured the existing setting and baseline of comparison.

b. Alternatives

CARB fails to satisfy requirements under CEQA to discuss a range of feasible alternatives to the proposed project thereby providing inadequate background for decisionmakers. In 2011, parties including CBE sued CARB for failing to meet this exact requirement. In that case, *Association of Irrigated Residents et al.* contended CARB failed to consider alternatives in its prior iteration of Cap-and-Trade. There the Court found that CARB’s analysis failed to adequately describe and analyze alternatives sufficient for informed decision-making and public review.⁷ The Court emphasized that CARB must provide “clear indication based on factual analysis” as to why a programmatic proposal was taken in lieu of alternatives.

The proposal before us raises just two alternatives: 1) no project alternative and 2) facility specific requirements while summarily rejecting other recently favored proposals in the SRIA. Each of these sections are vaguely explored in just a few paragraphs, with little to no supporting analysis or factual findings. In the ISOR and DEIA CARB identifies the urgent need to increase

⁶ Cal. Code Regs. tit. 14 §15002 (a), 15021. *City of Arcadia v. State Water Resources Control Bd.* (2006) 135 Cal.App.4th 1392, 1422 stating that “a certified regulatory program is subject to the broad policy goals and substantive standards of CEQA.”

⁷ *Ass’n of Irrigated Residents v. California Air Resources Bd.*, 2011 WL 991534, (Cal. Super.)

the stringency of the program to align with ambitious targets under AB 1279 (2022) and that “despite reductions in local air pollution, a wide gap in air quality exists between disadvantaged communities and other communities.” Yet CARB’s alternatives analysis of only no project or facility specific requirements does not clearly identify why a lower stringency that does not directly address acute environmental stress from climate pollutants was selected or the methodology for balancing those interests outright against vaguely asserted economic interests. Nor do these sections robustly analyze facility specific requirements outside of cursory conclusions regarding market effectiveness, as opposed to discrete GHG reduction efficacy.

Further underscoring this inconsistency, CARB’s alternatives analysis summarily rejects the higher stringency alternatives of reducing 55% relative to 1990 levels by 2030 because they claim that this “may produce negative economic consequences.” CARB provides no support for this assertion, in fact CARB’s own analysis in the SRIA favored the balance of economic interests and GHG reductions outcomes in a **more** stringent program than the proposal. As stated above, the conclusion CARB reaches is dubious and unsupported.

Here, as in 2011, we are concerned that CARB is relying on bare conclusions to justify the latest iteration of Cap and Trade, by using unexplained, unclear, and unsupported justifications for why vague descriptions of alternatives that support a stronger more direct path to achieving the state’s goals were rejected. We would assert as the court did in 2011, that this proposal “does not provide basic information necessary for ARB and the public to be informed about this alternative and its place in California’s massive effort to improve the environment pursuant to legislative mandate.” (*Id.*)

In light of the urgency of inaction on climate, and the outsize role of Cap & Invest in the State’s climate regulation, inaction could drastically limit the effectiveness of the program. With sprawling climate change effects at our doorstep, CARB must effectively analyze a more stringent program alternative so that the board can make an informed decision as to the future of California’s climate policy.

c. Impacts and Mitigations

The DEIA must discuss the environmental impacts of the Proposal, adverse or beneficial, and include a sufficient degree of analysis to provide the Board with the information needed to make a fact-based decision, considering the project as a whole in good faith.⁸ Again, the core underpinnings of CEQA are transparency and providing sufficient information for an informed decision.

The DEIA sections that consider impacts and mitigation focus deeply on potential project impacts and mitigations outside of the jurisdictional control of CARB. For example, the impacts of project development and local land use decisions. The DEA does not, however, accurately

⁸ Cal. Code Regs., tit. 17 § 60004.2 (a) (3); Cal. Code Regs., tit. 17, § 60005 (b); *Napa Citizens for Honest Gov’t v Napa County Bd. of Supervisors* (2001) 91 CA4th 342, 356; *Laurel Heights Improvement Ass’n v Regents of Univ. of Cal.* (1988) 47 C3d 376, 392.

describe project impacts and mitigation within CARB's control, such as potential air quality and greenhouse gas adverse impacts or benefits from more nuanced proposal alternatives such as increased stringency. Failing to identify the discrete impacts of programmatic decisions, such as higher stringency and more targeted leakage assistance leaves the Board without vital information when deciding whether to adopt the proposal.

Furthermore, CARB makes several generalizations about the impacts of zoning and land use decision making including that areas zoned industrial are not likely to be located near sensitive receptors. This is unsupported and untrue. The history of environmental injustice in California has resulted in low-income communities and communities of color being disproportionately burdened by pollution, including from sources on industrially zoned land.⁹ An analysis of industrial emitters impacts on sensitive receptors should be essential to accurately understanding leakage assistance, yet it is missing from this DEIA which is analyzing a proposal to set leakage assistance at 100% until 2035. CARB must correct this foundational mischaracterization and related findings so that the DEIA analyzes pollution impacts accurately. Further, a logical extension of such analysis would include reducing leakage assistance as a mitigation or alternative.

d. Cumulative Impacts

Under CEQA, cumulative impacts analysis typically includes individual effects that when considered together compound or increase environmental impacts. CARB has already linked the Cap and Invest program with Quebec, and for some time has been in discussion about linkage with Washington's similarly named program. The Proposal and concurrent analysis should therefore afford careful consideration to the potential compounding or increased environmental impacts and/or challenges to the program if linked with Washington. If proposed changes such as offset decision making or stringency adjustments were made to better facilitate linkage such considerations should undoubtedly be discussed here to better understand its cumulative impacts.

Furthermore, piecemealing to reduce the scope or analysis is prohibited under CEQA. Attempted linkage with Washington is a serious consideration for the program and has been discussed at length and publicly for some time, with particularly concrete steps taken as recently as March 4, 2026.¹⁰ We question why such a significant additional amendment to the program would not be introduced and explored as part of this robust proposal.

⁹ California Department of Justice, Best Practices for Implementing SB 1000, <https://oag.ca.gov/system/files/media/sb-1000-best-practices-en.pdf> "...many of the disproportionate pollution burdens that exist today are due to a legacy of discriminatory land use planning across the state, including redlining and racially restrictive covenants, exclusionary zoning, and decisions to site polluting industries in politically disenfranchised low-income communities and communities of color"

¹⁰ Camille Von Kaenel, Newsom's carbon club gets bigger, Politico, March 4, 2026, <https://www.politico.com/newsletters/california-climate/2026/03/04/newsoms-carbon-club-gets-bigger-00813541>.

In conclusion, CBE calls on CARB to carve out an ambitious program that realizes the promises of emissions reductions not yet realized by Cap-and-Invest by increasing stringency, meaningfully reducing industry assistance, uplifting ratepayer assistance, and supporting outcomes with real analysis to support transparency in decision making.

Thank you for your thoughtful consideration of our comments.

Sincerely,

Lauren Gallagher

Attorney
Communities for a Better Environment

Please find all relevant references available for download here:

<https://drive.google.com/drive/folders/1ov6c-DQZctHRqRP6Xgpt1DeE8cU5ZrFK?usp=sharing>