



March 9, 2026

Clerks' Office  
California Air Resources Board  
1001 I Street  
Sacramento, CA 95814  
Electronic Submission: <https://carb.commentinput.com/?id=pNeRj64MA>

Re: Comments on Proposed Amendments to the Regulation for the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms

To Whom It May Concern:

CARB's proposed (and existing) regulations require attorneys to describe for CARB the legal services they provide to clients.<sup>1</sup> CARB also requires companies to tell CARB who their attorneys are.<sup>2</sup> These regulations have been in effect for a dozen years.

Continuing this is a bad idea.

CARB faces direct federal hostility to its programs. Executive Order 14260 directs federal lawsuits against state environmental protections. One year into a four-year presidential term, these lawsuits already have been extraordinarily aggressive.<sup>3</sup> The first Trump Administration sued California alleging illegal foreign policy by Cap-and-Trade program linkage with Quebec.<sup>4</sup> The Federal Trade Commission explicitly, and expansively, threatened CARB.<sup>5</sup>

---

<sup>1</sup> §95914(c)(3)(C)3: "If an entity ... has retained the services of a Cap-and-Invest Consultant or Advisor, as defined in Section 95923, ... [t]he Consultant or Advisor must provide to [CARB] ... [d]escription of advisory services being performed." §95923(a) defines "Cap-and-Invest Consultant or Advisor" with §95979(b)(2); §95979(b)(2)(R) lists "any legal services."

<sup>2</sup> §95923(b)(1): "An entity employing [an attorney] must disclose the following information for each [attorney] to [CARB] ... Information to identify the [attorney]. §95923(c)(2): "The entity must disclose ... Within 30 days of entering into a contract [with an attorney]."

<sup>3</sup> Law360, *DOJ's Climate Change Suits Test Feds' Powers In State Affairs* (May 2, 2025).

<sup>4</sup> <https://www.justice.gov/archives/opa/pr/united-states-files-lawsuit-against-state-california-unlawful-cap-and-trade-agreement>. The US lost at the District Court and its appeal was dropped by the Biden Administration. Law360, *Biden Admin. Drops Challenge To Calif.'s Cap-And-Trade Deal* (Apr. 22, 2021).

<sup>5</sup> "We are confident that today's outcome ensures the continued free functioning of competition, including by ensuring that consumers are not harmed by California's attempts to coopt private businesses to enforce preempted regulations in large swaths of the nation. Going forward, the [FTC] will intervene where, as here, private parties coordinate with a state actor to execute a sub-regulatory scheme to reduce competition, especially where the legal

Attorneys are the nervous system of the economy. CARB's regulations forcing disclosure of cap and trade legal advice and attorney-client relationships evidences its belief that lawyers are essential. Attorneys that do work the federal government disfavours, such as fighting against freezing US EPA funding,<sup>6</sup> or promoting DEI,<sup>7</sup> are also suffering from federal hostility. Some of the country's largest law firms were recently intimidated into dropping DEI programs and giving the administration's friends, including coal companies,<sup>8</sup> nearly a billion dollars in free legal work.<sup>9</sup>

California has a "jungle primary"- the top two vote-getting candidates face-off in the general election.<sup>10</sup> As of today, the top five candidates include two Republicans.<sup>11</sup> The November election could be between two Republicans. A Republican governor would likely pursue and support the goals of the Republican federal administration.

The risk that attorneys could face federal, and possibly state, revenge for providing cap-and-trade legal advice is not theoretical- it is potential, and with reasonably foreseeable consequences. During the dozen years these regulations have been in force, CARB has presumably built a robust attorney-client database, usable by a hostile federal, and possibly state, government to intimidate attorneys away from serving disfavored clients and causes. Some lawyers would resist, but not all. I don't know how I would respond if it happened to me.

Program participant choice of counsel should not be limited to lawyers willing to take personal risk. CARB should stop building its attorney-client database.

### CARB's Regulations Require Attorneys to Disclose Client Confidences

CARB requires attorneys to describe for CARB the legal advice they provide to clients. Section 95914(c)(3)(C)3 says: "If an entity participating in an auction has retained the services of a Cap-and-Invest Consultant or Advisor, as defined in Section 95923, regarding auction bidding strategy, then ... The Consultant or Advisor must provide to [CARB], the following information: ... Description of advisory services being performed." §95923(a) says "[a] 'Cap-and-Invest Consultant or Advisor' is a person or entity that is not an employee of an entity ... but is providing services listed in §95979(b)(2)." Section 95979(b)(2)(R) lists "any legal services."

---

authority to do so is in grave doubt." Statement of the Federal Trade Commission Regarding The Clean Truck Partnership Investigation (Aug. 12, 2025); see also FTC Resolves Antitrust Concerns Arising from Clean Truck Partnership: Truck manufacturers agree to act independently and avoid entering into future anticompetitive agreements with a state regulator (Aug. 12, 2025).

<sup>6</sup> Reuters, *Trump targets Jenner & Block in latest executive order aimed at law firms* (Mar. 25, 2025); NBC News, *Trump targets lawyers who he says file 'frivolous' lawsuits against his administration* (Mar. 23, 2025) ("Bannon said[,] 'What we are trying to do is put you out of business and bankrupt you.'").

<sup>7</sup> The Hill, *Trump announces \$600 million in new deals with five law firms* (Apr. 11, 2025).

<sup>8</sup> Law360, *Trump Wants To Use Firms That Cut Deals For Coal Leases* (Apr. 8, 2025) ("President Donald Trump said Tuesday that he wants to help coal companies with their leasing matters by proffering the services of BigLaw firms that signed agreements to avoid getting shut out of government work.").

<sup>9</sup> Wikipedia, Targeting of law firms and lawyers under the second Trump administration.

<sup>10</sup> California Secretary of State, *Primary Elections in California*, <https://www.sos.ca.gov/elections/primary-elections-california>.

<sup>11</sup> Public Policy Institute of California, *PPIC Statewide Survey: Californians and Their Government*, <https://www.ppic.org/publication/ppic-statewide-survey-californians-and-their-government-february-2026/>

“Bidding strategy” is not defined; §95914(c)(1)(B) says the term “include[s]” price targets; however “regarding” is very broad and prior CARB enforcement actions make it clear that “bidding strategy” also includes public communications of intent to comply with the requirement to participate in the auction.<sup>12</sup> This means CARB’s regulations require attorneys to give CARB a description of advice given to clients.

This regulatory text seems substantially at odds with what CARB said was its intent on p. 408 of the May 2014 Cap-and-Trade FSOR:

Various commenters raised concerns with respect to whether section 95923 would require the disclosure of confidential, privileged attorney-client communications. This was not staff’s intent, and staff agrees with the multiple comments asserting the long history and legal protections for confidential, privileged legal advice and communications provided by attorneys to their clients. However, under existing legal precedent, ARB staff understands the rule protecting confidential attorney-client communications applies to the communications, and generally not to the existence of the attorney-client relationship in and of itself.<sup>[13]</sup> **In response to these comments, staff has deleted section 95923(b)(2) in 15-day changes to remove the previously proposed language requiring a “description of services” to be disclosed. This amendment ensures that protected attorney-client communications are not in fact disclosed.** As amended, the only information required to be disclosed under section 95923 is the name, contact information, physical work address, and employer of the retained Consultant(s) or Advisor(s).

Moreover, regarding commenters’ concerns about attorneys disclosing any information themselves, section 95923 applies not to the Consultant or Advisor, but to the entity which contracts with such Consultant or Advisor. **Only the registered entity is required to disclose** the names, contact information, physical work address, and employer (if applicable) of any retained Consultants or Advisors.

The regulation very clearly says it requires disclosure **by** the “Consultant or Advisor [i.e., attorney]”, §95914(c)(3)(C), **to** CARB, §95914(c)(3)(C), **of** a “[d]escription of the advisory [i.e., §95979(b)(2)(R) ‘legal’] services being performed”, §95914(c)(3)(C)2. If CARB did not intend to require this, CARB should eliminate the requirement.

#### CARB’s Regulations Require Companies to Identify Their Counsel for CARB

CARB requires companies to tell CARB whenever they have hired or changed counsel. Section 95923(b)(1) says: “An entity employing Cap-and-Invest Consultants or Advisors defined pursuant to 95923(a) must disclose the following information for each Cap-and-Trade [sic] Consultant or Advisor: Information to identify the Cap-and-Invest Consultant or Advisor ...” Section 95923(a) defines “[a] ‘Cap-and-Invest Consultant or Advisor’ is a person or entity that is not an employee of an entity ... but is providing services listed in §95979(b)(2).” Section

---

<sup>12</sup> E.g., the \$75,000 CARB settlement against Southern California Edison for issuing a press release that it planned to participate in the mandatory auction. <https://ww2.arb.ca.gov/southern-california-edison-settlement>.

<sup>13</sup> See these comments for the great danger of this position.

95979(b)(2)(R) lists “any legal services.” Section 95923(c)(2): “The entity must disclose the information pursuant to section 95923(b) to [CARB [w]ithin 30 days of entering into a contract with a Cap-and-Invest Consultant or Advisor pursuant to section 95923(a). Under §95923(c)(3), a company: “must disclose the information pursuant to section 95923(b) to [CARB] ...[w]ithin 30 days of a change to the information disclosed on Consultants or Advisors.”

If CARB threatens an enforcement action against a company in connection with an auction,<sup>14</sup> CARB requires that company to tell CARB that it sought counsel, and identify the attorney. How, including with whom, a company plans to defend against allegations is not a proper subject of government inquiry. Referring again to p. 409 of the FSOR:

In addition, multiple commenters have raised questions about which types of “legal services” being provided by outside counsel would require a disclosure. As specified in section 95923(a), these would include those services provided specifically for the entity registered in the Cap-and-Trade Regulation. **With respect to legal services, staff does not intend this language to apply to legal advice specifically related to enforcement-related matters** initiated by ARB or another regulatory body, white collar criminal proceedings, or legal support in preparing individual and entity registration in CITSS. Registered entities however would have to disclose the nature and status of investigations (ongoing and for the previous 10 years) associated with any commodity, securities, environmental, or financial market pursuant to section 95912(d)(4)(E).

If CARB does not mean to require a company to disclose that it has sought legal advice in connection with an enforcement, then CARB should so state in its regulations.

#### These Regulations Are Contrary to California Statute

CARB’s regulations directly contravene California law. California Business & Professions Code §6068(e)(1) requires every California lawyer “To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.” CARB claims on p. 409 of the May 2014 FSOR that attorneys sometimes provide services that are not “legal services.” Whether or not that is true, it is against the law for a Cap-and-Invest Consultant or Advisor as defined in §95979(b)(2)(R), and licensed in California to provide such “legal services,” to perform §95914(c)(3)(C).

#### CARB Has Failed to Address Objections

When CARB first added these provisions, the law firms of Latham & Watkins, Baker McKenzie, Beveridge & Diamond, Gibson Dunn, Hunton & Williams, Paul Hastings, Pillsbury Winthrop, Norton Rose Fulbright, Reed Smith, and Law Offices of Jeremy D. Weinstein wrote a joint letter of objection to CARB (attached). The concerns expressed in this letter remain unaddressed.

---

<sup>14</sup> E.g., for issuing a press release that it planned to participate in the mandatory auction. <https://ww2.arb.ca.gov/southern-california-edison-settlement>.

Conclusion

Due to CARB's regulations, a database of attorney-client relationships, and of attorney-client advice, is presumably ready for an actively hostile federal, and possibly state, administration. This database is of information that was never a proper subject of government inquiry. CARB should stop building, delete, and publicize the deletion of, this database.

For the reasons set forth above, CARB also should delete §95979(b)(2)(R).

These comments are solely my own and are not necessarily the opinions of any client I represent or industry group in which I participate.

Yours truly,

A handwritten signature in blue ink, consisting of a series of fluid, overlapping strokes that form the name 'Jeremy D. Weinstein'.

Jeremy D. Weinstein

ATTACHMENT

BAKER & MCKENZIE

BEVERIDGE  
& DIAMOND<sup>PC</sup>

GIBSON DUNN

HUNTON &  
WILLIAMS

THE LAW OFFICES OF  
JEREMY D. WEINSTEIN  
A PROFESSIONAL CORPORATION

PAUL  
HASTINGS

pillsbury

NORTON ROSE FULBRIGHT

LATHAM & WATKINS<sup>LLP</sup>

ReedSmith

Wednesday, July 23, 2014

Ellen M. Peter  
Chief Counsel  
California Air Resources Board  
1001 I Street P.O. Box 2815  
Sacramento, CA 95812

Dear Chief Counsel Peter,

The undersigned ten law firms, comprising more than 10,000 active attorneys worldwide, write to request that the California Air Resources Board (“ARB”) issue a regulatory advisory granting an extension to cap-and-trade registrants to comply with the outside counsel disclosure requirements until January 31, 2015. We further request that ARB consider amending its regulations in this regard.

Amendments to the ARB regulations, effective July 1, 2014, require cap-and-trade program registrants to disclose the identity of their outside counsel who provide “legal services” “in relation to” the cap-and-trade program. We are grateful that ARB has offered to limit the scope of this requirement through guidance, but a number of issues remain. For purposes of establishing compliance with the law, registrants cannot rely on informal guidance that contradicts the regulations. More fundamentally, however, we object to the disclosure requirement for the reasons discussed below.

First, we do not see why ARB needs this information. We understand that some consultants and advisors operate in the cap-and-trade market without oversight and that, accordingly, there is a need for ARB to monitor such activities. Attorneys, however, are subject to extensive professional and ethical obligations and are closely regulated by the bar. If an attorney advises or assists a client in illegally manipulating a market, that attorney would face sanctions and disbarment by the applicable state bar.

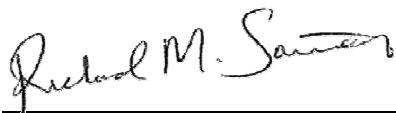
Second, we are concerned that the disclosure requirement will discourage cap-and-trade registrants from seeking legal advice. Clients routinely retain outside counsel to assist in interpreting and complying with the law. Without adequate counsel, companies may not be able to adequately comply with the law and violations may occur.

Finally, the disclosure requirement contravenes the fundamental expectation of clients that they can seek legal advice on a privileged and confidential basis. This raises issues under both the California and the U.S. Constitution, and we are not aware of any other agency that has adopted such a broad requirement of attorney disclosure as ARB is now requiring. For example, we know of no situation in which the Federal Energy Regulatory Commission, the Securities and Exchange Commission or the Commodity Futures Trading Commission require a similar disclosure. The only such requirement we are aware of is promulgated by the Financial Industry Regulatory Authority and applies only to mergers of publicly-traded companies, which raise a significant insider trading risk that has no parallel in commodities markets such as power, natural gas and environmental commodity markets.

If ARB is concerned that certain attorneys are providing services that are not legal services (*e.g.*, if an attorney acts as an allowance broker), then ARB should clarify in guidance, as it has already done at the suggestion of one signatory of this letter, that it expects registrants to disclose the identity of such an attorney because that attorney is providing brokering services. Including “legal services” in the list of services triggering disclosure casts a net that is overbroad and sets a precedent for the nature of attorney-client communications that is unacceptable to the legal community.

Based on the foregoing, we request that ARB issue a regulatory advisory granting an extension to cap-and-trade registrants to comply with the outside counsel disclosure requirements until January 31, 2015. Second, we ask for an opportunity to work with ARB staff on amendments to the regulations that better match ARB’s policy goals and are acceptable to the legal profession. Thank you.

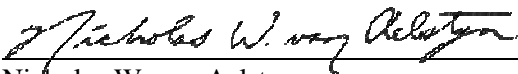
Respectfully yours,



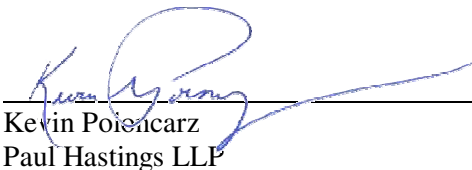
Richard M. Saines  
Baker & McKenzie



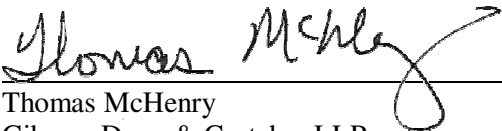
Jeffrey Margulies  
Norton Rose Fulbright



Nicholas W. van Aelstyn  
Beveridge & Diamond PC



Kevin Poencarz  
Paul Hastings LLP



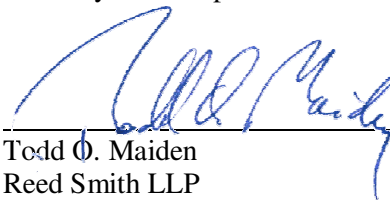
Thomas McHenry  
Gibson, Dunn & Crutcher LLP



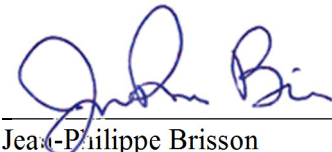
David R. Farabee  
Pillsbury Winthrop Shaw Pittman LLP



Tauna M. Szymanski  
Hunton & Williams LLP



Todd O. Maiden  
Reed Smith LLP



Jean-Philippe Brisson  
Latham & Watkins LLP



Jeremy D. Weinstein  
The Law Offices of Jeremy D. Weinstein, P.C.

Copies to:

Mary D. Nichols  
Chairman  
California Air Resources Board

Edie Chang  
Deputy Executive Officer  
California Air Resources Board

Steve Cliff  
Assistant Division Chief  
California Air Resources Board

Ken Alex  
Director  
Office of Planning and Research  
Governor's Office

Senator Fran Pavley  
Chair  
Senate Select Committee on Climate Change and  
AB 32 Implementation

Assemblymember Wesley Chesbro  
Chair  
Assembly Natural Resources Committee

Jan Smutny-Jones, Esq.  
Chief Executive Officer and General Counsel  
Independent Energy Producers Association

Catherine H. Reheis-Boyd  
President  
Western States Petroleum Association

Richard W. Corey  
Executive Officer  
California Air Resources Board

Michael Gibbs  
Assistant Executive Officer  
California Air Resources Board

Virgil Welch  
Chief of Staff  
California Air Resources Board

Dana Williamson  
Cabinet Secretary  
Governor's Office

Senator Jerry Hill  
Chair  
Senate Environmental Quality Committee

Dorothy Rothrock  
Vice President, Government Relations  
California Manufacturers & Technology  
Association

Beth Vaughan  
Executive Director  
California Cogeneration Council

John T. Bloom, Jr.  
Chairman, Executive Committee  
Coalition for Sustainable Cement Manufacturing &  
Environment