California Global Warming Solutions Act of 2006: Meaningfully Decreasing Greenhouse Gas Emissions or Merely a Set of Empty Promises

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CALIFORNIA GLOBAL WARMING SOLUTIONS ACT OF 2006: MEANINGFULLY DECREASING GREENHOUSE GAS EMISSIONS OR MERELY A SET OF EMPTY PROMISES?

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I. INTRODUCTION

On September 27, 2006, California Governor Arnold Schwarzenegger made headlines when he signed into law a new bill, AB-32, more commonly known as “the California Global Warming Solutions Act of 2006.” This revolutionary piece of legislation aims to reduce the state’s greenhouse gas emissions 25 percent by the year 2020. There is no question that Governor Schwarzenegger, a “pro-business Republican,” is an unlikely environmental hero. So when the Governor pledged to take action to combat global warming during a speech at the World Environment Day Conference in San Francisco on June 1, 2005, environmentalists and pro-business economists alike were skeptical. In his speech, the Governor declared that “the debate [over global warming] is over. . . . [W]e know the time for action is now.” At the conclusion of his speech,

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2. Id.


4. Id.

Schwarzenegger signed Executive Order S-3-05, formally introducing his plans to drastically reduce greenhouse gas emissions in the state, while simultaneously assuring Californians that his new green-conscious goals would also serve to boost California's already booming economy.\(^6\)

California now leads the country as the first state to approve environmental legislation that "caps [greenhouse gas] emissions across all the meaningful economic sectors."\(^7\) However, the state's decision to take action stems mainly from frustration with the federal government's failure to adequately respond to the current global warming problem.\(^8\) While "[a]t least 17 [other] states have taken some action on their own or have joined lawsuits trying to force Washington to limit greenhouse gases,"\(^9\) California is the first state to take the giant leap forward in actively trying to curb greenhouse gas emissions. In his efforts to curb the effects of global warming, Schwarzenegger vows that AB-32 will enable California to simultaneously protect the environment while maintaining a booming business economy.\(^10\) The Governor's plans are ambitious, as AB-32's lofty aspirations now require the state to cut the annual release of carbon dioxide by 174 million metric tons.\(^11\)

With all the publicity and news coverage praising Schwarzenegger's ambitious goals to combat global warming, skeptics are still wondering if the Governor's plans will actually succeed without adversely affecting California's businesses.\(^12\) In addition, environmentalists are worried that AB-32 was drafted with language that lacks any real enforcement power and fails to provide adequate guidance for businesses to successfully comply with its

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8. See id.


10. See id.


12. See California Companies Say 'Cap and Trade' is Preferred Method for Emissions Reduction; Businesses Assess California's Global Warming Solutions Act, BUS. WIRE, Dec. 4, 2006 [hereinafter California Companies (noting that "a significant amount of uncertainty currently exists among California businesses" about AB-32's implementation)].
standards. More alarming, some scientists think it is already too late to act, referring to Schwarzenegger as a “dreamer.” Others, however, optimistically acknowledge that Schwarzenegger is at least “trying to address [the] root threat to the natural systems that sustain us all.”

The real challenge now is for California to figure out a way to implement AB-32’s regulations without hindering production and economic growth in the state. Thus, the question remains: Can Arnold Schwarzenegger’s AB-32 meaningfully reduce greenhouse gas emissions while simultaneously fulfilling his promises of increasing economic growth and the number of jobs in California?

This note will first examine how the recent California Global Warming Solutions Act of 2006 is the result of the changing attitudes about global warming and how the state of California has a history of implementing innovative and ambitious environmental policies. Then, this note will look at AB-32’s specific provisions, analyzing Governor Schwarzenegger’s strategies for implementation and enforcement. Next, the Governor’s promises to the public will be assessed by predicting whether or not AB-32’s regulatory scheme and Schwarzenegger’s plans for the state’s environmental future will be successful. As a result, this note will also look at the implementation challenges facing the California Air Resources Board and suggest how the board may wish to proceed. Finally, this note will conclude that although the enactment of AB-32 is a step in the right direction, the Act lacks any real guidelines to ensure its success. Accordingly, AB-32 may ultimately adversely affect the state economy without actually accomplishing a substantial reduction in California’s greenhouse gas emissions.

II. GLOBAL WARMING AND ENVIRONMENTAL LEGISLATION

A. The Progress of the Environmental Movement and Changing Attitudes About Global Warming

Ever since the modern environmental movement began in the second half of the twentieth century, radical environmentalists have
emphatically cautioned that “the rapidly rising [carbon dioxide] content of Earth’s atmosphere will shortly lead to ‘the end of nature.’”\textsuperscript{15} We have come a long way since the initial days of panic, where predictions of man’s impending environmental self-destruction were rampant. In recent years, numerous scientists have asserted that early estimates of ozone depletion and predictions enumerating the adverse effects of global warming were distorted and greatly exaggerated.\textsuperscript{16} However, the overwhelming majority considers global warming to be a serious problem, and the scientists that argue that these concerns are overstated are few in number. In fact, it is well recognized that prompt action is needed in order to mitigate the effects of industrialization and the impact that the world’s growing population has had on the planet. More specifically, the environmental movement has shifted from the radical Chicken Little-type warnings that “the sky is falling”\textsuperscript{17} to a modern goal aimed at sustaining and preserving our resources for future generations, based on a better understanding of the complex interactions that occur between humans and the environment.

Currently, scientists, environmentalists, and politicians alike preach that not only are greenhouse gas emissions the largest contributor to global warming but also that they are rapidly increasing the depletion rate of the earth’s ozone layer.\textsuperscript{18} Although these facts seem grim, the debate over whether or not the majority of these effects will be beneficial or adverse to the environment continues, and the answer remains largely unknown.\textsuperscript{19} In fact, some scientists still urge that global warming may not be a cause for alarm at all.\textsuperscript{20} However, the vast majority recommends a more cautious

\begin{footnotesize}
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\item[16.] \textit{See} Hugh W. Ellsaesser, \textit{The Great Greenhouse Debate}, in \textit{RATIONAL READINGS ON ENVIRONMENTAL CONCERNS} 404, 404–05 (Jay H. Lehr ed., 1992); \textit{see also} Idso, \textit{supra} note 15, at 415.
\item[17.] \textit{See} STEVEN KELLOGG, \textit{CHICKEN LITTLE} (1985).
\item[18.] \textit{See} \textit{GLOBAL WARMING: OPPOSING VIEWPOINTS} (Tamara L. Roleff ed., 1997); \textit{see also} DOUGLAS LONG, \textit{GLOBAL WARMING} 14, 38–39 (2004).
\item[19.] \textit{See} \textit{GLOBAL WARMING: OPPOSING VIEWPOINTS, supra} note 18; Ellsaesser, \textit{supra} note 16, at 404–05; \textit{see also} Idso, \textit{supra} note 15, at 415.
\item[20.] \textit{See, e.g.,} Ellsaesser, \textit{supra} note 16, at 404–05 (suggesting that global warming may even have positive effects, such as if the increased levels of carbon dioxide will act as a fertilizer for plants and increase plant life’s efficient use of water).
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approach. The crux of the current global warming debate focuses principally on how to significantly and successfully reduce greenhouse gas emissions and further, how to mitigate the adverse effects of global climate change.\textsuperscript{21}

\textbf{B. International and Domestic Environmental Legislation}

In 1997, parties to the United Nations Framework Convention on Climate Change proposed the Kyoto Protocol, a treaty designed to mitigate the effects of global warming by regulating the emissions of harmful greenhouse gases on an international level.\textsuperscript{22} Although the United States signed the Kyoto Protocol in 1998, “it has not yet become effective, either internationally or within the United States,”\textsuperscript{23} and both former President Clinton and President George W. Bush have expressed disinterest in fully ratifying the agreement.\textsuperscript{24} The United States, in its reluctance to commit to the protocol’s ambitious goals of worldwide greenhouse gas emission reductions, principally opposes how the treaty would impact not only the national economy but the global economy as well—due in large part to the agreement’s focus on emissions in industrialized nations while failing to adequately regulate emissions in third world countries.\textsuperscript{25}

Not surprisingly, the United States has also neglected to pass a single piece of federal legislation to regulate greenhouse gas emissions across the fifty states, which means that the United States, as one of the world’s most developed nations and biggest greenhouse gas emitters,\textsuperscript{26} continues to contribute to the entire planet’s environmental problems without any real consequences or

\textsuperscript{21} See \textit{GLOBAL WARMING: OPPOSING VIEWPOINTS}, supra note 18; see also PETER READ, \textit{RESPONDING TO GLOBAL WARMING: THE TECHNOLOGY, ECONOMICS AND POLITICS OF SUSTAINABLE ENERGY} (1994).


\textsuperscript{23} Id. at 8.

\textsuperscript{24} LONG, supra note 18, at 36. It should also be noted that President George W. Bush’s opposition to the United States’ ratification of the Kyoto Protocol is substantially more vehement than President Clinton’s criticism of the treaty. \textit{Id.} (noting that because Clinton thought that the treaty lacked the necessary support it would need for ratification from the Senate, he never submitted it for a vote, whereas Bush announced that the United States would not ratify the treaty because it was “fatally flawed in fundamental ways” and would harm the economy).

\textsuperscript{25} See \textit{id.} at 32–36.

\textsuperscript{26} See \textit{id.} at 32, 38 (“The United States [is] responsible for nearly one-quarter of global carbon output . . . .”).
monitoring. One of the main hopes behind California’s AB-32 is that it will “serve as a springboard for national action” and “could help spur federal action to head off the disastrous consequences of climate change,” which could adversely affect the national economy if there is too little time left to act to prevent an even larger accumulation of greenhouse gases in the atmosphere.\textsuperscript{27} However, by developing workable strategies now that will begin to reduce greenhouse gas emissions, “the economic burden of a crash finish” can be avoided.\textsuperscript{28}

Several individual states have attempted to address climate change issues through the implementation of aggressive regulatory programs, most commonly through the use of tax incentives and disincentives as well as market-based trading options.\textsuperscript{29} Though these programs are a step in the right direction, there has not yet been an aggressive attempt to truly curb and control emission levels, especially the levels of carbon dioxide in our atmosphere. Enter California Governor Arnold Schwarzenegger and, more recently, AB-32—the California Global Warming Solutions Act of 2006.

\textbf{C. California as the “Leader of the Pack”}

Before the introduction of AB-32, California was already well known for its “history of environmental activism” and its “nationally significant” climate change programs.\textsuperscript{30} California’s position as a leader amongst the states in environmental legislation has been significant for three principal reasons. First, California’s efforts have often served as legislative models for the other states.\textsuperscript{31} For example,

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\item \textsuperscript{27} Natural Res. Def. Council, \textit{The Vote Heard Round the World: California Enacts the Toughest Global Warming Law in All the Land}, 28\textit{ OnEarth} 42–43 (2007). Daniel Lashof, the science director of the Natural Resource Defense Council Climate Center, noted that one of the main economic concerns associated with global warming is that if action is not taken now, then “time [will be] short for beginning serious emission reductions [later] if we are to avoid dangerous climate impacts.” \textit{Id.} at 43.
\item \textsuperscript{28} \textit{Id.} at 43. (quoting Daniel Lashof, the science director of the Natural Resource Defense Council’s Climate Center).
\item \textsuperscript{29} See McKinstry, \textit{ supra} note 22, at 10–13 (describing how several northeastern states, including Massachusetts, New Hampshire, and Maine, implemented the Climate Action Plan with five eastern Canadian provinces to establish common greenhouse gas emissions goals and to develop a trading system for the region; also detailing how New Jersey’s Sustainability Greenhouse Gas Action Plan encourages “voluntary efforts by the private sector in partnership with state leadership in energy efficiency and conservation programs”).
\item \textsuperscript{30} \textit{Id.} at 11.
\item \textsuperscript{31} \textit{Id.}
\end{itemize}
California's greenhouse gas emissions registry has been used by other states to create similar programs and is also being considered as an example of how to create a better federal program.\textsuperscript{32} Second, California has already coordinated with Oregon and Washington to reduce emissions through inventory mechanisms and corresponding purchasing policies.\textsuperscript{33} Finally, California has specifically focused on greenhouse gas emissions by previously targeting the transportation sector, "establishing mandatory mobile source emissions standards for carbon dioxide," which is something most of the other existing state programs have not yet attempted to do.\textsuperscript{34}

III. AB-32: CALIFORNIA'S ATTEMPT TO REGULATE AND REDUCE GREENHOUSE GAS EMISSIONS

A. Schwarzenegger's Executive Order S-3-05

Although California's earlier efforts established the state as an active environmental leader, Governor Schwarzenegger took California's green policies a few steps further on June 1, 2005—by signing Executive Order S-3-05. Before setting forth his plans for the future, the Governor noted that California has already taken a leadership approach in reducing greenhouse gas emissions by "implementing the California Air Resources Board motor vehicle greenhouse gas emission reduction regulations; implementing the Renewable Portfolio Standard that the Governor accelerated; and implementing the most effective building and appliance efficiency standards in the world."\textsuperscript{35} Additionally, Schwarzenegger helped set the stage for AB-32 by noting that California businesses and other out-of-state companies with significant activities in California have taken leadership roles by reducing emissions related to their current

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32. See id. at 11, 13–14 (emphasizing that state efforts "will be limited if the federal government fails to implement a mandatory program" and that states are hoping that their regulatory attempts will compel a federal response).

33. Id. at 11.


\end{footnotesize}
operations and developing new technologies to reduce greenhouse gas emissions.\textsuperscript{36}

In an effort to put economic concerns at bay, the order then proclaims that these same companies “have reduced [greenhouse gas] emissions by 25 percent to 70 percent [and] have lowered operating costs and increased profits by billions of dollars,” pinpointing that emissions reduction technologies are in increasingly high demand in the worldwide marketplace.\textsuperscript{37} Finally, Executive Order S-3-05 states that these developing technologies will also serve to boost California’s economy by creating more jobs, providing increased tax revenue, and generating operating cost savings to consumers who can then spend a portion of the savings in a number of the state’s economic sectors.\textsuperscript{38}

Arguably part of an expert strategy, Schwarzenegger’s Executive Order S-3-05 certainly laid the groundwork for AB-32. Proposed by Assembly Speaker Fabian Núñez, a Democrat from Los Angeles, AB-32 not only embraces the Governor’s plan for reducing greenhouse gas emissions outlined in Executive Order S-3-05, but also adopts his promises that the bill will help, not hinder, the state’s economy, mainly through the use of market-based incentives.\textsuperscript{39} At the bill signing ceremony in San Francisco, the Governor declared that AB-32 is “unquestionably . . . good for businesses. Not only large, well-established businesses, but small businesses that will harness their entrepreneurial spirit to help us achieve our climate goals.”\textsuperscript{40} Looking at the actual text of the California Global Warming Solutions Act of 2006, however, it remains unclear just how effective this revolutionary new piece of legislation will be—both in the environmental and economic sectors.

\textbf{B. Examining the Text of AB-32}

AB-32, the California Global Warming Solutions Act of 2006, first opens with a colorful laundry list of the potential dangers and

\textsuperscript{36} Id.
\textsuperscript{37} Id.
\textsuperscript{38} Id.
\textsuperscript{39} Sept. 27, 2006 Press Release, \textit{supra} note 1.
\textsuperscript{40} Id.
threats posed by global warming. Because the potential adverse effects of global warming are now considered real, AB-32 will significantly increase the responsibilities of the California Air Resources Board ("CARB"). Specifically, the bill gives CARB the task of monitoring and regulating emission sources by adopting the necessary regulations to accomplish the bill's goal of reducing emissions of greenhouse gases in the state to 1990 levels. First, the bill requires CARB to adopt regulations on or before January 1, 2008 to "require the reporting and verification of statewide greenhouse gas emissions and to monitor and enforce compliance" with its adopted program. The bill then outlines specific reporting regulations that businesses must follow, including (1) monitoring and annual reporting of the sources that emit the most greenhouse gases, (2) accounting for emissions from all electricity consumed in the state (3) incorporating the standards and protocols developed by the California Climate Action Registry to the maximum extent feasible, (4) using reporting tools and formats for data collection, provided by CARB and (5) maintaining comprehensive records of all emissions.

The heart of AB-32 mandates that CARB set a goal for the state's total greenhouse gas emissions, based on the levels of greenhouse gases that Californians emitted back in 1990. To do so, CARB must first determine what California's levels were in 1990. Then, it can begin to devise a plan of action to ensure that future emissions levels will be equivalent. In accomplishing this and in determining how to regulate the state's emissions, AB-32 requires CARB to conduct public workshops, provide the public with notice

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41. Scientists predict that the potential impacts of global warming (i.e., higher global temperatures) could adversely affect five major areas: oceans, freshwater resources, agriculture and food supply, forests, and human health—all of which are interconnected so that an adverse consequence of global warming in one area could have the domino effect of harming other areas. LONG, supra note 18, at 18–24.


43. Id.

44. Id.

45. Id.

of CARB’s plans, and offer members of the public an opportunity to comment or voice concerns.\textsuperscript{47} Above all else, AB-32 repeatedly stresses that CARB achieve these reduced emission standards in “an open and public process to achieve the maximum technologically feasible and cost-effective greenhouse gas emission reductions.”\textsuperscript{48}

The last few sections of the bill address market-based compliance mechanisms, enforcement, and several other miscellaneous provisions. One of the first things addressed in this section of the bill is that CARB must adopt a plan “indicating how emission reductions will be achieved from significant greenhouse gas sources via regulations, market mechanisms, and other actions” by January 1, 2009.\textsuperscript{49} AB-32’s enforcement section specifies that CARB has the power to enforce any of the regulations that it \textit{chooses to adopt} and also sets forth penalties for any violations that may occur.\textsuperscript{50} However, the most significant part that can be observed from the language of AB-32 is that it is still up to CARB to figure out how to reduce emissions by designing a workable system from scratch that, once implemented, will achieve the bill’s target goal of reaching the state’s 1990 emissions levels.

Overall, AB-32 provides a basic skeletal framework for reducing greenhouse gas emissions in California, but leaves the bulk of the remaining details regarding implementation and enforcement for CARB to fill in. As a result, AB-32 poses as a piece of landmark environmental legislation that curbs greenhouse gas emissions and sets an example for other states and the federal government. The reality, however, is that it is now CARB’s responsibility to truly solve the emissions problem and generate a solution.

\textbf{C. AB-32’s Publicity and Promises}

In analyzing the current debate over the California Global Warming Solutions Act of 2006, it is essential to refer to the actual text of the bill. However, it is also important to examine the publicity and promises that have surrounded the bill’s journey through the California legislature—especially because of industry concerns about the bill’s potential impact on businesses and the
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Although AB-32 is designed to reduce the impact and threat of the potential harms associated with global warming, many of its proponents also laud the bill for its apparent economy-friendly approach to environmental regulation. In fact, Governor Schwarzenegger vows that AB-32 will simultaneously reduce greenhouse gas emissions while also substantially contributing to California’s economic growth.

Ever since Schwarzenegger signed Executive Order S-3-05 in June 2005, the Governor, along with AB-32’s proponents, has utilized the media to introduce Californians to the idea of maintaining economic growth while protecting the environment. Considering the fact that AB-32 has been rather well-received both statewide and outside of California’s borders, this strategy seems to have paid off. Not only has the media enabled Schwarzenegger to gain support for AB-32, but it has also facilitated him in changing his image. Although more commonly known for his larger than life, “profligate and flamboyant ways,” Schwarzenegger has steadily distanced himself as the “antithesis of the stereotype of the parsimonious environmentalist,” and has now presented himself as someone we might want to take “seriously as a conservation hero.”

In addressing the Climate Action Summit on April 11, 2006, Schwarzenegger rejected the long-standing notion that we have to choose between the environment and the economy. Instead, he proposed that “[t]he best way to find solutions to protect our environment is for government to work hand-in-hand with the businesses and with citizens.” According to Schwarzenegger, California has already been able to accomplish this feat in many of its other environmental programs, while also managing to

51. See, e.g., Schwarzenegger Asks California Legislature to Cooperate on State Climate Change Law, GLOBAL POWER REP., Jan. 18, 2007, at 26 [hereinafter Asks Legislature to Cooperate] (citing that the CEO of San Francisco-based Pacific Gas and Electric has expressed support for subsequent measures that have proposed a low carbon fuel standard to aid in the implementation of AB-32).


54. Krakoff, supra note 3, at 926.


56. Id.
successfully create 575,000 new jobs since November 2003.\textsuperscript{57} Although the creation of new jobs is certainly a benefit to California’s citizens, it is the Governor’s admission that “we can’t make a real impact on emissions if only some of our industries are participating,” that has many California businesses concerned.\textsuperscript{58} As a compromise, Schwarzenegger proposes that Californians “work together to create solutions where all utilities and where all industries are part of the solution.”\textsuperscript{59}

In order to make this a reality, AB-32 authorizes CARB to create a trading system where companies and other emitters can swap emissions credits with each other.\textsuperscript{60} Through this type of system, businesses that exceed their individual emissions limits have the option of purchasing credits from other companies that emit less.\textsuperscript{61} According to the Governor, this market sharing approach will further increase economic activity in California, with emissions credits being bought and sold by specialized brokers within the state’s financial markets.\textsuperscript{62}

Thus far, California businesses overwhelmingly support the idea of a cap-and-trade system to meet AB-32’s emission regulations, most likely because such a trading system gives businesses the freedom to choose how to comply with the state’s lower emission standards.\textsuperscript{63} According to a survey that polled California companies about the possible implementation of a cap-and-trade system under AB-32, 91 percent of the businesses believed that an emissions

\begin{itemize}
\item \textsuperscript{57} Id.
\item \textsuperscript{58} Id.
\item \textsuperscript{59} Id. (emphasis added).
\item \textsuperscript{60} Press Release, Office of the Governor of the State of Cal., California, New York Explore Greenhouse Gas Trading Partnership (Oct. 16, 2006), http://gov.ca.gov/index.php/?/press-release/4449/ [hereinafter N.Y. Partnership Press Release]. The bill does not specifically mandate that the State Air Resources Board adopt a trading system—it merely requires that a system to reduce emissions be adopted. The Governor, however, has repeatedly referred to AB-32 and the implementation of a market-based trading system, as illustrated by his official press release. \textit{E.g.}, \textit{id.} (quoting Governor Schwarzenegger announcing “that as we implement our new law we will form a greenhouse gas trading partnership with . . . the multi-state greenhouse gas cooperative” established in the Northeastern and mid-Atlantic states); see also \textit{Asks Legislature to Cooperate, supra} note 51 (noting the disagreement between the Governor and some lawmakers have over how to implement the provisions of the law and whether or not to pursue a market-based approach).
\item \textsuperscript{61} See N.Y. Partnership Press Release, \textit{supra} note 60.
\item \textsuperscript{62} See \textit{id}.
\item \textsuperscript{63} See \textit{California Companies, supra} note 12.
\end{itemize}
trading system should be developed in order to meet the new requirements.\textsuperscript{64} This support from businesses is crucial to the bill's success and is promising considering that two-thirds of the companies surveyed believed that the new regulations would affect their business operations in the state.\textsuperscript{65}

\textbf{D. The Interaction of Market-Based Trading Systems and Regional Programs}

Although a complex market-based trading system appears to offer one solution that will enable California to balance environmental concerns with a desire to continue to fuel a booming economy, the truth of the matter is that without the participation and support of neighboring states and governments outside of California’s borders, AB-32’s market mechanisms will enjoy little success. Hence, Schwarzenegger has publicly recognized that this is an issue California cannot address alone, and AB-32’s success depends largely on whether or not he can incite other leaders to implement similar or supporting programs. This is a critical factor in analyzing AB-32’s success because although California is willing to regulate greenhouse gas emissions, its impact will be minimal unless the federal government becomes involved or numerous other states are spurred into action.

As a result, Schwarzenegger has been actively involved in attempting to develop a more widespread environmental movement, by “consistently pursu[ing] regional and international agreements to solve a problem that requires global action.”\textsuperscript{66} For starters, in a speech given at the June 2005 meeting of the Western Governors Association, Schwarzenegger called on the other Western states “to take a regional approach to meeting energy needs while protecting the environment.”\textsuperscript{67} The following month, he negotiated and signed an agreement with British Prime Minister Tony Blair to become partners to “find joint economic, scientific and technological

\textsuperscript{64} Id.

\textsuperscript{65} Id.

\textsuperscript{66} California Companies, supra note 12.

solutions to global warming.\textsuperscript{68} Then, in August 2006 at the 24\textsuperscript{th} Annual Border Governors Conference, Schwarzenegger called upon his fellow governors to take up the issue of creating a regional, market-based program to cap carbon emissions and the reduction of global greenhouse gas emissions at the next meeting.\textsuperscript{69} More recently, on October 16, 2006, Schwarzenegger met with New York Governor George Pataki to explore how California's future greenhouse gas emissions credit market could be linked with the northeastern and mid-Atlantic states' Regional Greenhouse Gas Initiative ("RGGI") to provide greater market opportunities and efficiency.\textsuperscript{70} Under the RGGI, California businesses could potentially trade carbon emissions with utilities operating in the Northeast and other mid-Atlantic states by 2009 through the use of a cap-and-trade system.\textsuperscript{71} Although the ambitions of the RGGI system to reduce emissions 10 percent by 2019 seem insignificant when compared to the goals of AB-32, the RGGI system will "slash greenhouse gas pollution from the region's electric utilities by 35 percent" when the current rate of increase in emissions is considered. In fact, because Pennsylvania, Massachusetts, and Rhode Island may soon join the RGGI initiative, it may have an even greater impact than previously anticipated.\textsuperscript{72}

In addition to the RGGI system in the Northeast, several western states have recently begun to consider establishing a similar system.\textsuperscript{73} Led by New Mexico, Utah, and Montana,\textsuperscript{74} the establishment of a comparable system would greatly expand the potential of California's current emissions trading agreements with Oregon and Washington,\textsuperscript{75} possibly even opening the doors for a large-scale emissions trading system to form in the West. With the added support and cooperation of more states throughout the country, CARB will have more options available to create a truly

\begin{itemize}
\item[69.] Sept. 21, 2006 Press Release, \textit{supra} note 67.
\item[70.] \textit{Cal.}, N.Y. Partnership Press Release, \textit{supra} note 60.
\item[71.] \textit{Id.}
\item[72.] Natural Res. Def. Council, \textit{supra} note 27.
\item[73.] \textit{Id.}
\item[74.] \textit{Id.}
\item[75.] \textit{Id.}
\item[76.] \textit{See McKinstry, supra} note 22, at 11.
\end{itemize}
revolutionary carbon emissions trading system. These regional regulatory developments have the potential to create a nationwide system to regulate greenhouse gas emissions where the federal government has refused to step in. Ideally, CARB could use its power under AB-32 to attempt to create a market-based system that "could link up not only with the East Coast program but also with the European Union’s carbon trading system," finally attacking global warming on the international level with a system "through which 25 member nations could buy and sell emissions credits with participating U.S. businesses." 77

Although these opportunities could be powerful developments in reducing greenhouse gas emissions nationwide, they raise preemption concerns that if examined, could nullify any efforts to set up a network of market-based programs regionally and nationally. 78 Additionally, because these emission caps and reduction programs are optional and not federally regulated, some states may choose not to join the network in order to avoid penalizing their own industries by forcing them to regulate their emissions. Furthermore, if some states remain unregulated, businesses may opt to relocate to non-regulated areas to avoid having to comply with stricter regulations, thus negating the potential impact of a state-operated network and potentially harming the economies of those states that choose to curb emissions.

Clearly, the successful implementation of the California Global Warming Solutions Act of 2006 is going to require a lot of teamwork. Although it is clear that Schwarzenegger has a genuine desire to make AB-32 a success, there are still a lot of unanswered questions and problems to work out. For one, it remains a mystery as to exactly how AB-32 will achieve all of the goals and promises

77. Natural Res. Def. Council, supra note 27. In May 2007, the Chicago Climate Exchange, a wholly owned subsidiary of Climate Exchange PLC, announced that it was forming the California Climate Exchange ("CaCX") to "develop and trade financial instruments" pursuant to AB-32's regulations and to try and help create an emissions trading system in California that would later be easily linked with other national, regional, and global markets. Press Release, Climate Exchange PLC, Formation of the California Climate Exchange (May 29, 2007), http://www.marketwire.com/mw/release.do?id=737482. Currently, the Chicago Climate Exchange "hosts the world's only market with binding requirements for the creation and trading of voluntary GHG offset credits." NRG Joins Chicago Climate Exchange as Part of its Plan to Cut GHG Emissions, GLOBAL POWER REP., May 31, 2007, at 22.

78. See, e.g., Giovinazzo, supra note 34 (examining the Clean Air Act’s flexibility and the problem of federal preemption over some areas of state regulation).
that the Governor and AB-32's proponents have made along the way. Thus, the question is now whether CARB will be able to devise a successful plan for implementing AB-32's promises.

IV. DEVISING AND IMPLEMENTING A SUCCESSFUL STRATEGY: NEW CHALLENGES FOR CARB

A. AB-32: A Lack of Details

While it appears that Governor Schwarzenegger is serious about implementing AB-32 and curbing greenhouse gas emissions both within the state of California and on a global scale, one may wonder how these goals are going to be met after reading the bill's text. As discussed earlier, AB-32 includes a long list of ambitious goals, including setting an emissions cap by January 1, 2008, adopting a plan by January 1, 2009 outlining how emissions reductions will be achieved, and ultimately executing a definitive set of regulations by January 1, 2011. The set of January 1, 2011 regulations will be designed to "achieve the maximum technologically feasible and cost-effective reductions . . . including provisions for using both market mechanisms and alternative compliance mechanisms." Though this list does sound promising, it lacks any real force at this point because it does not enumerate any guidelines for how this will be achieved. In fact, almost all of the requirements and modes of enforcement set forth in the text of AB-32 remain undefined. Instead, these crucial details and decisions are left to CARB to figure out. Therefore, much of the promises that have been made as a result of the passage of AB-32 regarding the possibility of achieving economic growth while simultaneously preserving the environment now seem somewhat empty.

Looking more closely at the interaction between the guarantees made in the media in regard to AB-32 and the actual text of the bill, one must now try to assess whether the bill will achieve any of its

81. See Cal. Assemb. B. 32. For example, the text of the bill repeatedly refers to those rules and regulations "adopted by the state board pursuant to this division"—meaning that the bill does not define any of these regulations or rules but rather leaves it up to CARB to devise them all from scratch. Id.
82. See id.
purported goals. Will AB-32 successfully result in a reduction of greenhouse gas emissions? Will AB-32 improve California’s economy through the creation of more jobs and the introduction of a financial market-based emissions trading system?

At the moment, these questions will have to remain unanswered until CARB begins to formulate a regulatory scheme and enforcement plan. However, one can begin to speculate about AB-32’s chances of success by looking at the interaction between its environmental goals, its economic promises, and all of the other extraneous factors that will inevitably affect CARB’s ability to formulate a workable plan under the bill’s basic guidelines. The bill’s goal of reducing emissions without adversely affecting businesses or the economy is remarkably ambitious. Unfortunately, however, because AB-32 is the first piece of legislation of its kind in the United States, CARB has no real guidance in formulating a workable plan for California.

Instead of being an outright success, AB-32’s implementation is more likely to be an environmental and legislative experiment, as CARB will need time for trial and error. Principally, CARB needs to identify any previously unknown economic and environmental factors that may affect implementation before ultimately developing a model plan of action. In fact, the bill itself points out that the state board will need to look at a variety of other factors before imposing any regulations or authorizing market mechanisms, such as AB-32’s “impact[] on California’s economy, the environment and public health; equity between regulated entities; electricity reliability, conformance with other environmental laws . . . [all while] ensur[ing] that the rules do not disproportionately impact low-income communities.”

B. Avoiding “Leakage” and Promoting New Technologies

As the main regulatory body charged with implementing and enforcing the provisions outlined in the California Global Warming Solutions Act of 2006, CARB has to work closely with the California Public Utilities Commission and the California Energy Commission. Instead of merely attempting to restrict what may be

83. Id.
emitted by California utilities and power plants, AB-32 enables CARB to "regulate the long-term supply contracts electric utilities make, giving [CARB] potentially far-reaching influence over power plants outside of the state." The language of AB-32 gives CARB this tremendous amount of power by directly addressing the issue of "leakage," arguably one of the biggest environmental and economic drawbacks associated with the implementation of the bill's strict standards. "Leakage" is defined as "an increase in [greenhouse gas] emissions outside of California from emitters who have either left the state or opted to buy supplies from non-California companies." Not only would the problem of leakage decrease the potential benefits and impact of AB-32, but it could also serve to hurt the state's economy if businesses chose to migrate outside of state lines to avoid having to comply with AB-32's stringent requirements. However, in attempting to directly address a possible "leakage" problem, AB-32 purports to ensure that any of its new environmental regulations will not hinder the state's economic growth, principally through the hope that the new emissions standards will encourage businesses to develop new technologies to curb emissions.

Although the act purports to encourage businesses to develop eco-friendly technologies to reduce emissions, other more corporate-friendly alternatives have recently been introduced. Currently, many large corporations are formatting their plans for compliance to involve solutions that are more economically focused and financially profitable. For example, some corporations are now exploring the possibility of establishing carbon hedge funds. The idea of carbon hedge funds is gaining a lot of attention, principally because U.S. venture capital investments as a whole declined by 33 percent during 2006 while investments in American clean technology companies have been growing rapidly over the last five years. Although the concept has yet to be fully developed and successfully implemented, carbon trading offers a new possibility for hedge fund finance and

85. Id.
86. Id.
89. Id.
investment, which could aid those companies that did not adequately plan ahead for the dramatic industry changes that will likely occur once AB-32’s regulations are in effect.

Although AB-32 comes equipped with economic-friendly provisions, the bill in no way shies away from regulating California businesses. In fact, the Act does not just address the electric and utilities industries but aims to restrict greenhouse gas emissions for all industries in California. In addition, a subsequent California Senate Bill, SB-1368, expands on AB-32’s regulatory provisions that deal with electric utilities and “load-serving entit[ies]” by including “local publicly owned utilities that previously were exempt from state regulation . . . address[ing] leakage for electric service providers and limit[ing] the type of long-term contracts they can make both inside and outside of the state.” Considering the bill’s ambitious goals, it is clear that “coming up with business-friendly solutions will be a daunting task that will be heavily lobbied for—and potentially litigated by—industry groups.”

C. Calculating a Goal: Determining the State’s 1990 Emissions Level and Establishing Emissions Credits

Although industry groups may try to attack AB-32’s provisions, CARB’s first main hurdle is to figure out how to calculate the state’s 1990 emissions level, in order to begin to formulate some of the bill’s regulations and emission reporting guidelines. Industry officials have urged CARB to start with the California Climate Action Registry, a program that has kept track of industry emission levels since 2002, on a voluntary basis. Now, many companies are wondering whether early voluntary reductions will receive credit

90. Cavallaro, supra note 84, at 26.
93. See Kenneth Todd Ruiz, Greenhouse Gas Laws Challenged, SAN GABRIEL VALLEY TRIB., Dec. 31, 2006. In fact, environmental legislation is already being attacked in the courts. Currently, automakers are suing CARB in federal court and the United States Supreme Court is concurrently considering whether or not the Environmental Protection Agency has the authority to regulate automobile emissions. Id.
under CARB’s new rules and whether the companies absolutely have to register with and start reporting their emission levels to the California Climate Action Registry in order to receive credit for such reductions. In order to encourage companies to voluntarily report their emissions and register with the Climate Action Registry now, AB-32 “provides that those who [have] register[ed] by December 31, 2006 and [have] develop[ed] a reporting program will not have to significantly alter their program, except to ensure it is complete and verifiable.”

The issue of determining and assigning credits to businesses is another huge obstacle to implementing a market-based trading program. Although the credits act as an incentive to entice businesses to promptly register with the Climate Action Registry, the issuance of too many credits makes for a complicated and potentially less-effective system. If too many businesses receive credits, CARB may have a greater challenge in reaching AB-32’s goal of achieving 1990 emissions levels. In addition, because the bill provides that companies that registered before December 31, 2006 will not have to significantly alter their reporting program, CARB may find that another obstacle will be how to figure out which programs satisfy the requirement of being “complete and verifiable.” This means that CARB may essentially have to quantify a set of standards for determining which reporting programs are satisfactory and which will need to be revised. A credit system will also require CARB to calculate which businesses should receive credits and to what extent, in order to ensure that cooperative businesses receive their fair share. Not only will this be a complicated puzzle for CARB to figure out, but it will also take an enormous amount of time to devise a workable credit system, further delaying the development and implementation of an emissions reduction action plan under AB-32.

**D. Emissions Reporting and the Climate Action Registry**

In addition, AB-32 also requires CARB to incorporate the Climate Action Registry’s standards and protocols to the maximum extent feasible by January 1, 2008. Environmentalists fear,

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95. Poloncranz, What Are the Benefits?, supra note 94.
96. Id.
97. Id.
98. Id.
however, that "much of the data will be based on estimates and extrapolations" because this data is voluntarily reported by businesses in industries which disfavor mandatory emissions reporting. As a result, the worry is that such an "industry-driven 'cap and trade' system will dilute the process." A representative from the Sierra Club’s "Angeles" Chapter further noted that a similar cap and trade system that was operating in Europe proves that this type of market-based system can be a failure: "They set caps based on what industry reported, and industry padded its figures. The cap turned out to be way too loose."

If this same type of padding occurs in California, any cap that CARB puts on emissions based on such figures will be virtually useless. Industries will not be forced to meaningfully reduce their greenhouse gas emissions if the emissions cap is set too high—and no real changes will occur under AB-32. It is clear that if this type of dishonest reporting occurs, it will be problematic—possibly even to the point that AB-32’s goal of drastically reducing emissions will be nullified. Perhaps a more cautious approach to using voluntarily reported industry figures is CARB’s best option for maintaining a balance between incorporating the Climate Action Registry’s standards and ensuring that industries do not exaggerate or embellish reporting figures.

One alternative CARB can consider is using only those voluntarily reported figures from the Climate Action Registry that were collected before AB-32 was conceptualized. Reports from a time before the state legislature began debating the passage of AB-32 may be more reliable because businesses would not have had as great of an incentive to inflate figures. Additionally, those businesses that initially agreed to voluntarily report their emissions figures are probably more likely to cooperate with CARB now and to continue to work with CARB to maintain a collaborative and harmonious relationship. Although using these early figures could mitigate the possibility of industry-inflated reporting, this is not a fool-proof solution. Some of the earlier reports could also be mere estimates and may not be the most accurate figures, especially because before

99. Ruiz, supra note 93.
100. Id.
101. Id.
AB-32, reporting was entirely voluntary. Without any policing power to check on the accuracy of the emissions figures reported, those cooperative businesses who volunteered to report early on did not have much of an incentive to be diligent and precise, as no real consequence resulted if figures were inexact. Still, using these earlier figures may at least quiet some of the concern that industry-reported figures are purposefully inflated. CARB faces a difficult challenge here—finding a way to successfully develop a strategy to meaningfully cap emissions that also upholds AB-32’s promises to incorporate the Climate Action Registry’s standards and protocols to reward cooperative businesses.

For now, AB-32’s provisions send the message to businesses that if they chose to implement a voluntary reporting program before the December 31, 2006 deadline, then they should be able to exercise continued reliance on their own program with the relief and comfort that it will be deemed to meet the requirements of the Act’s forthcoming reporting regulations. However, this does not necessarily guarantee that every business will “receive credit against any future mandatory reduction requirements for early voluntary reductions” because the actual language of the text states that CARB’s “forthcoming mandatory reduction rules must ensure, to the extent feasible, that those who undertake early voluntary reductions ‘receive appropriate credit’ for such reductions.” These reporting provisions in the bill are somewhat unclear because “companies should be able to continue accounting for [greenhouse gas] emissions under alternative reporting programs, such as the U.S. [Environmental Protection Agency’s] ‘Climate Leaders’ program, without fearing that they will be unfairly penalized if and when they later become subject to mandatory reduction requirements.” This means that companies could possibly receive reductions later for undertaking voluntary measures to reduce their emissions now—so long as they maintain adequate records to verify the occurrence of these claimed emission reductions when it comes time for CARB to implement reporting requirements.

102. Poloncarz, What Are the Benefits?, supra note 94.
103. Id.
104. Id. (quoting CAL. HEALTH & SAFETY CODE § 38562 (West 2007)).
105. Id.
106. Id.
In fact, some companies will be able to certify historic reductions by acting to "report upon and certify historical data, simply by choosing any year after 1990 as the 'baseline' and then reporting on reductions achieved since then." Therefore, even data that has never been reported to the Climate Action Registry may be approved retroactively—"so long as [the company] can demonstrate that the historic reductions are otherwise creditable, i.e., that they are real, permanent and quantifiable and were undertaken independent of any other mandatory obligation to reduce emissions." As a result, businesses who opt not to cooperate by voluntarily reporting emission figures early on are essentially rewarded by this lax standard—as they have no real incentive to choose to register and report emissions now when they can instead receive retroactive credit based on historical data. In addition, the provision enables businesses to choose their own retroactive baseline date, allowing some companies who have never reported their emissions figures to be rewarded by being able to maximize their reductions credits without having to do anything proactive to curb their emissions.

Although many of these seemingly stringent rules may be quite lenient in reality, companies do have some motivation to start cooperating with the Climate Action Registry. For one, by voluntarily registering ahead of time, "companies will gain a head-start in instituting a program for accurately inventorying their emissions, without the added risk that any errors or omissions that could occur as they begin reporting . . . will result in violations and potential penalties." In addition, early compliance and cooperation on a voluntary basis could be used to help promote a business as being eco-friendly, which could influence customers and other shareholders concerned with greenhouse gas emissions and global warming issues. Finally, early reporting enables companies to better understand many of the technical issues surrounding greenhouse gas emission reporting regulations, helping them prevent future reporting mistakes and allowing the companies to better predict what types of issues specific to their business should be

107. Id. (quoting CAL. CLIMATE AUCTION REGISTRY, GENERAL REPORTING PROTOCOL: REPORTING ENTITY-WIDE GREENHOUSE GAS EMISSIONS (version 2.1 2006)).
108. Id.
109. Id.
110. Id.
addressed by CARB during its rulemaking process. Further, early-reporting companies would also be in a better position to respond to any future greenhouse gas legislation on the federal level.¹¹¹

E. Problems with the Fast-Tracking of an Emissions Trading System

In an effort to take more immediate action, Governor Schwarzenegger signed Executive Order S-20-06 on October 17, 2006.¹¹² Executive Order S-20-06 commands the Secretary of the California Environmental Protection Agency to convene a “Market Advisory Committee” to design and recommend a market-based compliance program that will help achieve the greenhouse gas emission reduction goals outlined in AB-32.¹¹³ The Market Advisory Committee will be comprised of both national and international experts and must make its recommendations to CARB by June 30, 2007.¹¹⁴ The Executive Order mandates that CARB consider these recommendations and work with the Secretary of the California Environmental Protection Agency and the Climate Action Team to develop a market-based program that will permit trading among California businesses as well as with participants in similar programs both nationally and internationally.¹¹⁵ More specifically, these other programs include the northeastern states’ RGGI cap-and-trade system, and the European Union Emissions Trading Scheme.¹¹⁶

To implement a cap-and-trade program, CARB would have to impose a cap on the total amount of greenhouse gases that could be emitted in the state.¹¹⁷ Then, CARB can either auction off

¹¹¹. Id.
¹¹³. Id.
¹¹⁵. Id.
¹¹⁶. Id. See generally Exec. Order No. S-20-06, supra note 113. The EU ETS is the current world leader for an emissions-trading scheme. Despite the United States’ unwillingness to join, the Kyoto Protocol is also still actively working to achieve global emission reductions, but its value is substantially diminished without the support and cooperation of the United States, China and India. Liz Bossley, Emissions Trading: Green Is the Colour of Money, PETROLEUM ECONOMIST, Jan. 2007, at 33.
¹¹⁷. Poloncarz, Market Based Trading, supra note 114.
allowances to the highest bidder or assign allowances to emitters, giving them specified emission rights that will equal less than the total industry-wide emissions cap.\textsuperscript{118} It is essential that the total number of allowances given to all emitters be less than the designated cap, because otherwise there will be no incentive to cut emissions unless there is a shortage of emissions allowances.\textsuperscript{119} After each emitter has a set emissions allowance, the emitter can do a number of things, including cutting overall production, investing in new technologies that will emit less emissions per unit of production, and/or purchasing or selling any shortage or surplus from another business (i.e., trading emissions allowances).\textsuperscript{120} Finally, a market-based trading system enables CARB to reduce the total cap even further as time goes on, ultimately achieving the long-term reduction target level.\textsuperscript{121}

Although the creation of a market-based emissions trading system is permissible under AB-32, the Governor’s Executive Order S-20-06 has been received with some opposition. Although AB-32’s language allows for the implementation of a market-based, cap-and-trade system, it does not mandate it.\textsuperscript{122} The bill does mandate, however, that CARB ensure that its regulatory scheme “do[es] not disproportionately impact low-income communities.”\textsuperscript{123} Due to this cautionary provision in AB-32’s text, Executive Order S-20-06 has not been well received by some political opponents of the Governor,\textsuperscript{124} such as members of the environmental justice community who are concerned that the order may conflict with other provisions of the bill.\textsuperscript{125} Those opposed to the Governor’s order claim that it conflicts with provisions in the bill that relate to the timing and process outlined in the bill for the development of any

\textsuperscript{118} Bossley, \textit{supra} note 116.

\textsuperscript{119} \textit{Id.}

\textsuperscript{120} \textit{Id.}

\textsuperscript{121} \textit{Id.}

\textsuperscript{122} Cavallaro, \textit{supra} note 84.


\textsuperscript{124} See Poloncarz, \textit{Market-Based Trading,} \textit{supra} note 114 (reporting that the State Senate President Pro Tem Don Perata and State Assembly Speaker Fabian Núñez, the chief author and proponent of AB-32, have urged Schwarzenegger to rescind Executive Order S-20-06).

\textsuperscript{125} \textit{Id.}
market-based trading mechanisms. Further, opponents argue that the order redefines the prominence of the roles previously given to the California and the federal environmental protection agencies in this development process.

The crux of the disagreement regards “the efficacy, enforceability and equity of market-based trading systems” and how CARB will develop AB-32’s mandated rulemaking and implementation process, without overstepping its authority. One of the major concerns with implementing a market-based system is that it enables businesses to buy, sell, and trade their levels of emissions, which could result in a new form of “environmental racism”—where certain geographical areas would have higher emission rates in comparison to other more affluent areas. In addition, by fast-tracking the implementation of a market-based system, CARB has less time to determine what the 1990 levels of greenhouse gas emissions levels were—which means that some of the decisions about emissions and which businesses “must reduce by how much and how many allowances they will have” could be made too hastily.

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126. Id. By trying to speed up its implementation, the Governor’s order may be ignoring parts of the process and timing outlined in AB-32’s text. For example, the text of the bill that gives the Board the power to utilize market-based compliance mechanisms also requires that CARB first examine “the potential for direct, indirect, and cumulative emission impacts from these mechanisms” and “[d]esign . . . mechanism[s] to prevent any increase in . . . emissions.” Cal. Assemb. B. 32. These preliminary steps, purported to enable CARB to determine whether or not a market-based program is the best strategy under AB-32, are essentially by-passed by Schwarzenegger’s mandate that the development of an emissions trading system be fast-tracked.

127. Poloncarz, Market-Based Trading, supra note 114.

128. Id.

129. Environmental racism is a theory that examines the concentrated amount of environmental toxins and pollution in various geographic areas that are highly populated by minorities and persons of lower socioeconomic status. See, e.g., Colin Crawford, Uproar at Dancing Rabbit Creek: Battling Over Race, Class, and the Environment (1996) (chronicling the struggle over a proposal to build a chemical waste dump in Noxubee, Mississippi); Unequal Protection: Environmental Justice and Communities of Color (Robert D. Bullard ed., 1994) [hereinafter Unequal Protection] (analyzing the connection between the environment, public health, and the disproportionate impact of pollution on the most vulnerable groups such as people of color);.

130. For instance, a trading system enables certain emitters, such as landfill sites, to offset credits or purchase allowances from other entities that have reduced emissions. As a result, certain emitters may be able to obtain large amounts of allowance credits (if the market permits), as opposed to having to drastically reduce their own emissions. Bossley, supra note 116.

131. Cavallaro, supra note 84.
While allowing these market-based trading systems, AB-32 specifically requires CARB to ensure there is not a disproportionate impact on low-income communities.\textsuperscript{132} CARB’s biggest challenge will be to figure out a way to design a market-based system that prevents “any increase in toxic air contaminants or criteria pollutants”\textsuperscript{133} in communities and geographic areas that already have high concentrations of air pollution. Avoiding “the creation of toxic ‘hot spots’ primarily within low-income and racially and ethnically diverse communities”\textsuperscript{134} is especially important, both because of the increased amount of national awareness to the problem of environmental racism involving federal environmental programs such as Superfund,\textsuperscript{135} and the inherent need for AB-32 to be a success.

\textbf{F. Waiting for AB-32’s Potential Environmental Impact}

Although a quick glance at AB-32 through rose-tinted glasses may provide hope that the hazards of global warming will soon be mitigated, upon closer inspection it is clear that any real action or regulation will not be immediate. One of the most heavily publicized complaints about the California Global Warming Solutions Act of 2006 is that its actual impact will remain unknown for years.\textsuperscript{136} Not only will it be several years before any of its purported regulations actually take effect, it will take even longer before scientists can begin to examine whether or not the Act actually had any impact on curbing emissions, slowing the depletion rate of the ozone layer, and stalling the adverse effects of global warming.\textsuperscript{137} Although a CARB spokesman, Jerry Martin, publicly announced that the board has

\textsuperscript{133} Id.; Poloncarz, Market-Based Trading, supra note 114.
\textsuperscript{134} Poloncarz, Market-Based Trading, supra note 114.
\textsuperscript{135} See, e.g., UNEQUAL PROTECTION, supra note 129, at 9–10 (citing that “abandoned hazardous waste sites in minority areas take twenty percent longer to be placed on the national priority list than those in white areas”). Superfund is the common name for the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”), a revolutionary piece of environmental legislation. The law was created to protect both people and the environment from hazardous and toxic waste by creating a federal fund to clean up toxic waste dump sites and disaster areas after hazardous waste spills. See Superfund, http://www.epa.gov/superfund/ (last visited Oct. 6, 2007).
\textsuperscript{136} Ruiz, supra note 93.
\textsuperscript{137} See id. (predicting that measurable results from CARB “will not be seen for at least four years”).
“already begun studying the issues and considering new regulations,” Martin also commented that CARB’s strategies will not be ready to be implemented until 2010. Probably the most disheartening admission made by CARB is that although a list of so-called “low-hanging fruit,” or “easily achievable measures,” is due on July 1, 2007, the regulations will not take effect until a January 1, 2010 deadline outlined by the text of the bill. Although the Governor has since attempted to speed up various provisions of AB-32, as with his desired fast-tracking of a market-based system as discussed previously, his eagerness to maintain a pro-business approach raises concerns about whether the bill will actually become forceful and whether emissions will be strictly monitored and policed.

V. CONCLUSION

Overall, AB-32’s chances of success cannot truly be predicted until CARB begins to formulate and design a strategy to curb greenhouse gas emissions. However, it is clear that before this can be done, the state board faces several other obstacles, such as setting a 1990 emissions level cap, choosing whether or not a market-based trading system is the best way to combine emissions reductions with industry cooperation, and how to fairly assign credits to those businesses that have either voluntarily registered with the Climate Action Registry or have a recorded history of reduced emissions since 1990. Thus far, it appears that AB-32 faces a long and difficult road if it purports to meaningfully reduce greenhouse gas emissions while also simultaneously enabling California’s booming economy to continue to flourish and further expand.

The text and proponents of AB-32 have made a lot of promises. The reality, however, is that AB-32 is a rather empty piece of environmental legislation. Although the bill gives CARB an enormous amount of power to regulate and curb emissions within the state, it provides no guidance for how its goals are to be accomplished. Essentially, AB-32 is merely a basic skeletal

138. Id.
139. Id.
140. Id. But see Workshops, supra note 46 (acknowledging AB-32’s requirement that CARB “identify and present a list of early action items by June 30, 2007”).
141. See Polancarz, Market-Based Trading, supra note 114.
framework that outlines a few specific deadlines and suggests some possible implementation strategies. It is now entirely up to CARB to figure out all the details.

Although the California Global Warming Solutions Act of 2006 has the potential to lead the country and spur further action, it now becomes a waiting game to see how CARB will decide to proceed. Until CARB decides on a plan of action, the bill is virtually meaningless. AB-32 is certainly a step in the right direction, but because it lacks any real guidelines to ensure its success, its potential impact on the environment and on California businesses will be unknown for several more years. So while Governor Schwarzenegger continues to laud the bill as a revolutionary piece of environmental legislation that does not hinder California’s thriving economy, it remains a mystery as to whether or not these promises will actually come true.