Comment 1 for ODS Investigation Preliminary Determination (odsinvestigation-ws) - 1st Workshop.

First Name: Katie
Last Name: Sullivan
Email Address: sullivan@ieta.org
Affiliation: IETA

Subject: IETA Comments - ODS Investigation Preliminary Determination
Comment:

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Dear Mr. Corey,

On behalf of IETA, we appreciate this opportunity to comment on the
Preliminary Determination of ARB's investigation of compliance
offsets issued for ODS projects at Clean Harbors. Please contact
me, if you have any questions or information requests related to
the attached submission.

Best Regards,

Katie
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Attachment: https://ww2.arb.ca.gov/sites/default/files/BARCU/barcu-attach/1-odsinvestigation-ws-Bm9TMARxVWcDWgBz.pdf

Original File Name: IETA Submission to ARB_Clean Harbors Preliminary Findings_16Oct2014.pdf

Date and Time Comment Was Submitted: 2014-10-16 21:12:12

No Duplicates.

Comment 2 for ODS Investigation Preliminary Determination (odsinvestigation-ws) - 1st Workshop.

First Name: Richard
Last Name: Saines
Email Address: richard.saines@bakermckenzie.com
Affiliation: Baker & McKenzie LLP

Subject: A-Gas Comments
Comment:

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Please see attached comments of A-Gas to ARB's Preliminary
Determination.
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Attachment: https://ww2.arb.ca.gov/sites/default/files/BARCU/barcu-attach/2-odsinvestigation-ws-VTRWfVA2UGJWI1IN.pdf

Original File Name: A-Gas Comments to ARB.pdf

Date and Time Comment Was Submitted: 2014-10-17 07:34:33

No Duplicates.

Comment 3 for ODS Investigation Preliminary Determination (odsinvestigation-ws) - 1st Workshop.

First Name: Rich
Last Name: Dykstra
Email Address: rdykstra@raprec.com
Affiliation: RapRec Refrigerants, Inc.

Subject: Public Comments: ODS Investigation Preliminary Determination
Comment:

It is our belief that the industry interprets that R-11 and R-12 recovered from refrigeration systems, which are subsequently destroyed, are not hazardous waste. This is based on an understanding that the Code U designation, U121 and U075 respectively, only apply if the refrigerants were manufactured and subsequently destroyed without ever being used.

The ARB determination has at its foundation the notion that these refrigerants are hazardous waste and therefore the byproducts are hazardous waste. The determination therefore found the byproducts of the Projects in question directly contributed to the violation issued against Clean Harbors, for the continued improper disposal of those byproducts.

Used refrigerant handling companies, from service contractors to refrigerant wholesalers, refrigerant reclaimers and all the transportation companies in between have always handled refrigerants used in the HVAC/R industry as non hazardous waste, including R-11 and R-12. To further assure that refrigerants did not fall under RCRA regulation the EPA long ago established an exemption in 40 CFR 261.2 to ease the compliance hurdles for all the players that were being charged with handling refrigerants that had previously been vented as a standard practice. In their argument, found in OSWFR-91-005, the EPA spelled out that taking action to eliminate hazardous waste issues was necessary to encourage businesses to participate in efforts to eliminate venting, meet our treaty obligations, and protect the ozone layer.

The EPA regulations surrounding refrigerants, from the very beginning, lacked specific information for hands on, operational compliance directives. There are hundreds of examples where the industry was charged with developing specific compliance practices and procedures based on their interpretation of the regulations, most often with little or conflicting direction on how to proceed.

The industry developed operational procedures derived from Title VI regulations and those interpretations have produced results to a level in direct correlation to the value of refrigerants. Without the application of haz waste compliance, allowing a lower cost of operation, plus a reasonable resale price, an environment can exist to encourage refrigerant recovery and “no vent” compliance. Historically the industry has seen that adjustments to the price of refrigerants and the cost of compliance activities have directly correlated to compliance levels.

The regulations, when they were conceived, focused on the “3R”s to provide an alternative to venting. Recovery(the capture of otherwise vented refrigerants), Recycling (the reuse of used refrigerants) and Reclaim (the reprocessing of used refrigerant to new standards). From the horizon that was visible back in the late 1980s little consideration was given to what would happen 30 years later when successful industry implementation of the regulations

would lead to a surplus of refrigerants that were no longer needed. Initially, CFC pricing was relatively low however through phaseout supply pressures prices ultimately reached very high levels, causing no vent compliance to also peak. As demand deteriorated, CFC prices went back down to very low levels, unfortunately with corollary levels of compliance.

Thankfully, ARB's carbon offset protocols for refrigerant destruction provide an alternate end of life for CFCs beside the atmosphere. Also inherent in the protocol is the price support necessary to incentivise equipment owners to capture and sell refrigerants, rather than vent them. As a result there now appears to be a financially viable solution for what to do with the leftover CFCs.

Again, in order to encourage the industry to participate in the implementation of the original regulations the EPA carefully defined the U codes and further provided the exemption to ensure the removal of the hazardous waste handling issue from the original owners and the chain of collection activities. With destruction for generation of Carbon Credits becoming the only financially viable end use for used CFCs, and potentially HCFC and HFCs in the future, it is critical to the viability of the protocols that the current industry interpretation, that they are not handling hazardous waste, remains in place.

The objective should be to protect the current industry understanding, that refrigerants are not a hazardous waste, in order to allow the continued use of the existing refrigerant collection network to feed the ARB refrigerant destruction protocols. We would ask that ARB pursue a clarification of the EPA's opinion, armed with this information, so that CFCs can continue to be collected and destroyed through the established collection and handling systems and destruction facilities.

That said, we would also comment that it seems ARB can find the Projects in question to be invalidated simply based on the fact that they were in process at the time that Clean Harbors was found in violation by a governing authority and continued operating in violation. This could be done without taking a position on the hazardous waste question or stipulating the projects' direct contribution to the violation.

Thank you for the opportunity to provide comment.

Attachment:

Original File Name:

Date and Time Comment Was Submitted: 2014-10-17 11:01:58

No Duplicates.

Comment 4 for ODS Investigation Preliminary Determination (odsinvestigation-ws) - 1st Workshop.

First Name: Gary
Last Name: Gero
Email Address: gary@climateactionreserve.org
Affiliation: Climate Action Reserve

Subject: Comments on ARB ODS Investigation Preliminary Determination
Comment:

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Please find attached our comments on the Preliminary Determination.
We thank you for this opportunity to provide input into this
process and look forward to a timely conclusion.
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Attachment: https://ww2.arb.ca.gov/sites/default/files/BARCU/barcu-attach/4-odsinvestigation-ws-VzRcNlU9VWsBZlMn.pdf

Original File Name: Climate Action Reserve Comment Letter on ARB ODS Investigation Preliminary Determination.pdf

Date and Time Comment Was Submitted: 2014-10-17 12:15:48

No Duplicates.

Comment 5 for ODS Investigation Preliminary Determination (odsinvestigation-ws) - 1st Workshop.

First Name: Margaret
Last Name: Rosegay
Email Address: margaret.rosegay@pillsburylaw.com
Affiliation: Clean Harbors El Dorado, LLC

Subject: GHG Credit Investigation – Comments on Preliminary Determination dated October 8, 2014
Comment:

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Comments attached.
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Attachment: https://ww2.arb.ca.gov/sites/default/files/BARCU/barcu-attach/5-odsinvestigation-ws-VTZXPV05WGoHb1IN.pdf

Original File Name: Clean Harbors Comments on ARB Preliminary Determination.pdf

Date and Time Comment Was Submitted: 2014-10-17 13:39:38

No Duplicates.

Comment 6 for ODS Investigation Preliminary Determination (odsinvestigation-ws) - 1st Workshop.

First Name: Peter
Last Name: Weisberg
Email Address: pweisberg@climatetrust.org
Affiliation: The Climate Trust

Subject: The Climate Trust Comments - ODS Investigation Preliminary Determination
Comment:

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Please find The Climate Trust's comments on the ODS Investigation
Preliminary Determination attached. Thank you for your
consideration.
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Attachment: https://ww2.arb.ca.gov/sites/default/files/BARCU/barcu-attach/6-odsinvestigation-ws-VzQHbVQ8UW8KbQVx.pdf

Original File Name: Climate Trust Comments on ODS Investigation Preliminary Determination.pdf

Date and Time Comment Was Submitted: 2014-10-17 13:56:59

No Duplicates.

Comment 7 for ODS Investigation Preliminary Determination (odsinvestigation-ws) - 1st Workshop.

First Name: Matthew
Last Name: Plummer
Email Address: m3pu@pge.com
Affiliation: Pacific Gas and Electric Company

Subject: PG&E Comments - ODS Investigation Preliminary Determination
Comment:

Pacific Gas and Electric Company (PG&E) appreciates the opportunity to comment on the Air Resources Board's (ARB) preliminary determination in the investigation of Clean Harbors' compliance with the requirements of California's Cap-and-Trade Regulation and Ozone Depleting Substance (ODS) Protocol.

Please contact me with any questions or concerns.

Attachment: https://ww2.arb.ca.gov/sites/default/files/BARCU/barcu-attach/7-odsinvestigation-ws-UiICYwFfV2FRCAlq.pdf

Original File Name: PG&E Comments - ODS Investigation Preliminary Determination.pdf

Date and Time Comment Was Submitted: 2014-10-17 14:07:12

No Duplicates.

Comment 8 for ODS Investigation Preliminary Determination (odsinvestigation-ws) - 1st Workshop.

First Name: Patrick
Last Name: Wood
Email Address: patrick@agmethaneadvisors.com
Affiliation: Ag Methane Advisors, LLC

Subject: Comments Re: ODS Investigation Preliminary Determination
Comment:

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Attached please find comments from Ag Methane Advisors, LLC.  Thank
you!
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Attachment: https://ww2.arb.ca.gov/sites/default/files/BARCU/barcu-attach/8-odsinvestigation-ws-AGFQMVQKUW8DYAF1.pdf

Original File Name: Ag Methane Comments re ODS prelim determination 10.17.2014.pdf

Date and Time Comment Was Submitted: 2014-10-17 14:08:51

No Duplicates.

Comment 9 for ODS Investigation Preliminary Determination (odsinvestigation-ws) - 1st Workshop.

First Name: Jeff
Last Name: Cohen
Email Address: jcohen@eosclimate.com
Affiliation: EOS Climate, Inc.

Subject: ODS Investigation
Comment:

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Comments are attached
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Attachment: https://ww2.arb.ca.gov/sites/default/files/BARCU/barcu-attach/9-odsinvestigation-ws-BmNTOgNxBAhXMAh6.pdf

Original File Name: EOS_ARB_Oct 2014.pdf

Date and Time Comment Was Submitted: 2014-10-17 14:01:20

No Duplicates.

Comment 10 for ODS Investigation Preliminary Determination (odsinvestigation-ws) - 1st Workshop.

First Name: Sean
Last Name: Beatty
Email Address: sean.beatty@nrgenergy.com
Affiliation:

Subject: Comments of NRG Power Marketing LLC on Clean Harbors Preliminary Determination
Comment:

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Please see the attached comments in connection with the Clean
Harbors Preliminary Determination.
```

Attachment: https://ww2.arb.ca.gov/sites/default/files/BARCU/barcu-attach/10-odsinvestigation-ws-B2YGclMwUl4KIQBf.pdf

Original File Name: ARB - Comments on Clean Harbors preliminary determination 10-17-14.pdf

Date and Time Comment Was Submitted: 2014-10-17 14:28:05

No Duplicates.

Comment 11 for ODS Investigation Preliminary Determination (odsinvestigation-ws) - 1st Workshop.

First Name: John
Last Name: Kadyszewski
Email Address: jkadyszewski@winrock.org
Affiliation: American Carbon Registry

Subject: ACR comments on ODS preliminary determination
Comment:

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Please see attached.  Thank you for the opportunity to comment.
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Attachment: https://ww2.arb.ca.gov/sites/default/files/BARCU/barcu-attach/11-odsinvestigation-ws-VjdUMQZ1Ag5XMghn.pdf

Original File Name: ACR comments to ARB on ODS ARBOC prelim determination_FINAL.pdf

Date and Time Comment Was Submitted: 2014-10-17 14:43:43

No Duplicates.

Comment 12 for ODS Investigation Preliminary Determination (odsinvestigation-ws) - 1st Workshop.

First Name: Nico
Last Name: van Aelstyn
Email Address: nvanaelstyn@bdlaw.com
Affiliation: Beveridge & Diamond

Subject: ECC Comments on Preliminary Determination of Offset Invalidation Investigation
Comment:

Please see attached comments.

Attachment: https://ww2.arb.ca.gov/sites/default/files/BARCU/barcu-attach/12-odsinvestigation-ws-BTdWYAQ0AmUELFdm.pdf

Original File Name: 2014.10.17 ECC Comments re ARB Preliminary Determination of Offsets Invalidation [With Exhibits].PDF

Date and Time Comment Was Submitted: 2014-10-17 14:47:22

No Duplicates.

Comment 13 for ODS Investigation Preliminary Determination (odsinvestigation-ws) - 1st Workshop.

First Name: Mike
Last Name: Wang
Email Address: mwang@wspa.org
Affiliation: WSPA

Subject: WSPA Comments on ODS Investigation Preliminary Determination
Comment:

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WSPA Comments on ODS Investigation Preliminary Determination,
submitted at 3:27 p.m., Friday, October 17.
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Attachment: https://ww2.arb.ca.gov/sites/default/files/BARCU/barcu-attach/13-odsinvestigation-ws-UyRcKVUkVGYLUlMw.pdf

Original File Name: WSPA Comp Offset Inv ARB 101714FINAL.pdf

Date and Time Comment Was Submitted: 2014-10-17 15:20:23

No Duplicates.

Comment 14 for ODS Investigation Preliminary Determination (odsinvestigation-ws) - 1st Workshop.

First Name: Jeff
Last Name: Sickenger
Email Address: jsickenger@ka-pow.com
Affiliation:

Subject: WSPA Comments on ODS Investigation Preliminary Determination
Comment:

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WSPA Comments submitted in the attached PDF at 3:38 PM on October
17, 2014.
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Attachment: https://ww2.arb.ca.gov/sites/default/files/BARCU/barcu-attach/14-odsinvestigation-ws-WzgHbgdrUnEGXwNs.pdf

Original File Name: Comp Offset Inv ARB 101714FINAL.pdf

Date and Time Comment Was Submitted: 2014-10-17 15:31:06

No Duplicates.

Comment 15 for ODS Investigation Preliminary Determination (odsinvestigation-ws) - 1st Workshop.

First Name: Tod
Last Name: Delaney
Email Address: tod@firstenvironment.com
Affiliation: First Environment, Inc.

Subject: ODS Investigation - Comments of First Environment
Comment:

VIA ELECTRONIC SUBMISSION

California Air Resources Board
Attn.: Executive Officer
1001 I Street
Sacramento, CA 95814

Re: In re October 8, 2014 Preliminary Determination ODS Destruction Clean Harbors Incineration Facility – Comments of First Environment of California, Inc.

Dear Sir/Madam:

On behalf of First Environment of California, Inc. (“First Environment”), we appreciate the opportunity to submit these comments pertaining to the California Air Resources Board’s October 8, 2014 preliminary determination concerning the potential invalidation of ODS offset credits generated as a result of incineration of ODS at the Clean Harbors El Dorado facility.

First Environment is concerned about the scope of the proposed determination and its potential adverse impacts on the ARB cap-and-trade offset program, the verification process, and obligations of accredited verifiers. Accordingly, First Environment offers the following comments for the purpose of advocating greater clarity and predictability in the offset certification process.

First Environment’s knowledge, experience, and expertise in greenhouse gas management is broadly recognized and acknowledged. First Environment was the first company approved to provide greenhouse gas report certification services to members of the California Climate Action Registry (“CCAR”). The firm was also one of the original companies to be recognized as a Technical Assistance provider for CCAR participants. First Environment is accredited as a Validation/Verification Body (“VVB”) by the American National Standards Institute (“ANSI”) and is approved to perform verifications under the Verified Carbon Standard, Climate Action Reserve, Chicago Climate Exchange, and the American Carbon Registry. First Environment is also a recognized Climate Action Reserve and California Air Resources Board verification body for multiple project types. The firm has provided either verification or consulting services for more than half of the ODS projects registered under the Climate Action Reserve in addition to verification services for a number of newly registered projects under the ARB program.

In addition to being an accredited verifier under the ARB cap-and-trade program, First Environment has provided environmental, health and safety (“EHS”) compliance auditing services to hundreds of industrial facilities. It is commonly understood within the audit community that large facilities such as

the Clean Harbors incineration complex at issue can be subject to myriad EHS regulations, and accordingly, non-compliance situations can occur at any time at any place within a large industrial facility, many of these being relatively inconsequential paperwork or minor regulatory discrepancies. Consistent with the professional standard of care for the environmental consulting industry, it is virtually impossible for an auditor, much less a verifier of offset project activities with a narrower scope, to guarantee the absence of non-compliance situations at any point in time, particularly those that are outside the scope of the verification services. A determination by the Executive Officer in this matter that does not recognize the practical realities and limitations of the verification process with regard to fixing a point in time wherein environmental compliance is fully accomplished would undermine the workability of the cap-and-trade program and would be inconsistent with the offset program rules.

In the context of the ARB verification process, ARB's cap-and-trade regulations and the ODS Protocol require the verifier to review the processes that relate to generation of offset credits. That is, the verifier examines the offset project activity. The determination under section 95985 whether an offset project is in accordance with all local, state, or national environmental, health and safety regulations is necessarily focused on, and limited to, activities that are material to the creation of the offset credit and within the scope of the offset project activity. This is reflected in section 95973(b) which provides that "an offset project must also fulfill all local, regional, and national environmental and health and safety laws and regulations that apply based on the offset project location and that directly apply to the offset project." (Emphasis added).

Violations at a facility owned by a third-party service provider such as the incineration facility at issue, and particularly inspection reports, alleged violations, or inchoate enforcement actions, that do not have a proximate nexus with the offset project should not be considered for purposes of verification or ARB invalidation review for several reasons. First, it is not practical for a verifier to determine whether a non-compliance situation has occurred at other times, places or processes within the facility of a third-party service provider. Second, verifiers should not be placed in the position of verifying conditions which are not within the scope of the offset project itself and are unknown or unable to be discovered through reasonable diligence associated with the offset protocols. Third, ARB's authority to invalidate offset credits under section 95985(c)(2) is similarly limited to examination of the offset project activity.

First Environment expresses no position on the merits of the factual circumstances of the Clean Harbors El Dorado matter and has no involvement with the projects subject to potential invalidation. However, in the context of ARB policy, it does not appear that the Clean Harbors facility's handling of byproducts from the incineration process (saturator sludge), whether in fact in compliance or non-compliance with RCRA waste handling requirements, has any proximate connection to the offset project activities. The goal of the ODS offset project is to destroy the subject greenhouse gas by chemically converting ODS into non-greenhouse gas products. The ODS Protocol at section 3.5 applies by its terms to "collection or destruction activities." Certainly, the destruction and incineration process itself is within the offset project scope. However, there is nothing currently in the cap-and-trade regulation or ODS Protocol specifying that verification or invalidation extends to byproduct handling that occurs subsequent to and separate from the incineration process. The only pertinent language in the ODS Protocol refers to "exceedances of permitted emissions limits," which terminology relates to air emissions regulation. There does not appear to be any question in this matter that the incinerator was operating properly and in compliance with laws, nor any question that the ODS was actually

destroyed. Indeed ARB notes that the offsets generated were in fact "real, quantified and verified reductions." It is important for ARB to consider that the brine produced at the El Dorado facility is a quenching fluid and is not a chemical byproduct of the dissociation of ODS compounds. According to the record, the spent brine was reclaimed for subsequent sale for Clean Harbor's benefit and not as a necessary step in the ODS destruction process. The brine or saturator sludge handling process or facility in question would not be considered part of the "destruction facility" within the meaning of section 3.5 of the ODS Protocol for purposes of verification.

First Environment is concerned with the breadth of language used in the October 8, 2014 Preliminary Determination. ARB's proposed expansion of the rule language to "other activities at the facility" is unnecessarily broad and inconsistent with the cap-and-trade rules as currently written. The possible practical consequence of ARB's proposed interpretation for ODS project verification would be that project operators would have to commission a full EHS audit of the entire incineration facility on a cradle-to-grave basis as part of the verification process in order to comply with ARB's demands. Even then, given the dynamics of the environmental regulatory arena, full environmental compliance cannot be necessarily guaranteed or even temporally linked to the time when the verification is conducted.

As an analogy, it would not be warranted under the cap-and-trade rules if ARB were to attempt to invalidate a forestry offset credit where a third-party mechanic were to illegally dispose of oil from trucks used in forest operations, or if offset credits from a livestock methane project were invalidated because of some legal violation elsewhere on the farm such as improperly applying pesticides. Any such violations associated with ancillary activities should of course be corrected and would be subject to enforcement by jurisdictional officials, but these activities are not part of the verification process or within ARB's invalidation authority.

The offset verification process should be confined to ensuring that the ODS material was accurately accounted for, actually destroyed, properly documented and that the incineration equipment was operating properly to ensure destruction within required parameters. If this is done, the environmental integrity of the offset credit is assured. Although it is important that any byproducts are properly handled, the regulation of other activities is appropriately the responsibility of state regulatory officials and relevant enforcement processes. The verification process cannot extend beyond the offset project scope.

Nor should verifiers be put in a position of second-guessing regulatory positions asserted by relevant state or local regulatory authorities. This is particularly of concern in situations such as the Clean Harbors matter, where reportedly facility operations were condoned by the state regulatory authority and no final determination of violation was extant during the relevant time period of the offset project activities. Moreover, because out-of-state facilities participate in the ARB offsets program, straying outside the offset project scope would raise potential jurisdictional and possibly constitutional issues. For example, from the standpoint of interstate comity, it would be inappropriate for California to attempt to impose some legal consequence for alleged violations of waste handling rules in another state, particularly where at the time of the verified activities in question such allegations had not been confirmed through due process.

At a minimum, even if ARB were to expand the scope of project verification, no invalidation of credits should occur due to rule violations unless the credits were generated after the relevant facility or operator's receipt of a formal notice of violation or

similar official action from the relevant regulatory authority. Verifiers should not be asked to take into account potential non-compliance situations unless such notice was disclosed by the facility or otherwise became known to the verifier or project operator. ARB's rules should at least provide project operators the opportunity to protect themselves contractually by requiring prompt notice from the service provider of any known or alleged non-compliance, which they can do only if there is clarity regarding the project scope.

Finally, if ARB proceeds to expand the scope of verification and invalidation liability as intimated in the Preliminary Determination, such requirements should be applied only prospectively. ARB's regulations at section 95985(c)(4)(A) provide that "[a]n update to a Compliance Offset Protocol will not result in an invalidation of ARB offset credits issued under a previous version of the Compliance Offset Protocol." Moreover, as a matter of California administrative law, a change in ARB's interpretation that results in additional substantive obligations on verifiers or project operators must be the subject of rulemaking procedures where, as here, the interpretation would materially alter the current offset program.

Again, First Environment greatly appreciates the opportunity to submit these comments on ARB's proposed action and is available to discuss any of these issues at your convenience.

Respectfully submitted on behalf of First Environment of California, Inc.

David M. (Max) Williamson

cc: Dr. Tod Delaney, President, First Environment of California, Inc.

Attachment: https://ww2.arb.ca.gov/sites/default/files/BARCU/barcu-attach/16-odsinvestigation-ws-UzVXOFAjVnYAclMM.pdf

Original File Name: First Environment Comments - Oct 8 2014 ODS Prelim Determ (10-17-14).pdf

Date and Time Comment Was Submitted: 2014-10-17 16:17:17

No Duplicates.

Comment 16 for ODS Investigation Preliminary Determination (odsinvestigation-ws) - 1st Workshop.

First Name: Jason
Last Name: Armenta
Email Address: jason.armenta@calpine.com
Affiliation: Calpine Energy Services, L.P.

Subject: Preliminary Determination of Invalidation of Ozone Depleting Substances Offset Credits
Comment:

```
Please find attached a public version of the comments of Calpine
Energy Services, L.P., on the California Air Resources Board's
Preliminary Determination of Invalidation of Ozone Depleting
Substances Offset Credits.  A confidential version of these
comments, with unredacted information shown, is simultaneously
being sent via email to the Executive Officer.  Thank you for the
opportunity to submit these comments and for your consideration.
```

Attachment: https://ww2.arb.ca.gov/sites/default/files/BARCU/barcu-attach/17-odsinvestigation-ws-UiJXJAFiBDtQPwFi.pdf

Original File Name: Public Copy of Comments of Calpine Energy Services, L.P., on Preliminary Determination.pdf

Date and Time Comment Was Submitted: 2014-10-17 16:36:23

No Duplicates.

There are no comments posted to ODS Investigation Preliminary Determination (odsinvestigation-ws) that were presented during the Workshop at this time.