



December 14, 2010

***Via Electronic Submission***

Clerk of the Board  
California Air Resources Board  
1001 I Street  
Sacramento, CA 95812

**Re: Proposed Regulation to Implement the California Cap-and-Trade Program**

Dear Chairman Nichols and Members of the Board:

The Carbon Offset Providers Coalition (“COPC”)<sup>1</sup> appreciates this opportunity to provide comments on the Proposed Regulation to Implement the California Cap-and-Trade Program (the “Regulation”) that was issued by the California Air Resources Board (“CARB”) on October 29, 2010. COPC commends the ongoing leadership of CARB and its staff to address global warming. In general, we strongly support the State’s development of a cap-and-trade program and believe that CARB has thoughtfully developed a program that will reduce greenhouse gas (“GHG”) emissions and help the State to meet its mandated emission reduction targets under AB 32. We offer the following comments on the Regulation with a particular emphasis on offsets.

**1. COPC Supports California’s Development of a Cap-and-Trade Program.**

COPC strongly supports the market-based approach to addressing climate change embodied in the Regulation, and welcomes CARB’s commitment to including a rigorous offsets program in California’s cap-and-trade program, as reflected in the Subarticle 13 of the Regulation, “Offset Credits.” COPC members and their many partners and customers (including industrial emitters, manufacturers, technology companies, financial institutions, and individuals) appreciate the role given to offsets to deliver necessary cost containment and early investment in clean technology, carbon-reduction infrastructure, and green jobs. A robust offset supply is essential to delivering these, particularly the cost containment element. In these difficult economic times, it is imperative that there be a robust supply of quality offsets to mitigate the cost of complying with the many

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<sup>1</sup> COPC is a coalition of leading companies in low-carbon and clean technology investments, representing hundreds of clean infrastructure projects, millions of tons of greenhouse gases (“GHGs”) reduced, hundreds of green jobs, and millions of dollars in economic benefit for local and regional communities at project locations in the U.S. and abroad. COPC regularly comments on federal, state and regional regulatory efforts to address climate change, and particularly those that may affect the markets for carbon emission reductions — also known as offsets. More information on COPC and its members is available at [www.carbonoffsetproviders.org](http://www.carbonoffsetproviders.org).



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requirements of AB 32, especially as under CARB’s Scoping Plan only approximately 20% of the State’s GHG emission reductions are to come from market-based mechanisms.

Offsets do not only serve as a critical cost containment mechanism. Offset projects achieve GHG emission reductions *now*. Millions of tons of GHGs have been reduced over the last 15 years in the U.S. through the voluntary offsets market. This practical, on-the-ground experience from thousands of projects has resulted in the development of clean technology and carbon-reduction infrastructure — not to mention green jobs. This experience can be deployed quickly to create a pool of low-cost GHG emissions reductions for covered facilities under the Regulation, thereby promoting many of the goals of AB 32.

**2. Recognition of Early Action Credits Should be Expanded to Include Other Valid Protocols.**

The Regulation awards early actions taken to reduce GHG emissions by accepting offset credits from projects developed using protocols approved by CARB. COPC appreciates that CARB seeks to meet the AB 32 requirement that it give credit to early voluntary reductions in GHGs. Cal. Health & Safety Code § 38562(b)(3). However, COPC believes that CARB has failed to give “appropriate credit” to many early reductions in GHGs by limiting its recognition of early action offsets to those generated under four Climate Action Reserve (“CAR”) protocols. *See* Regulation § 95990(b)(5). While the four CAR protocols expressly recognized for Early Action credit in the Regulation have indeed guided the generation of high-quality offsets, there are other protocols developed both by CAR and by other organizations such as the Voluntary Carbon Standard Association ([www.v-c-s.org](http://www.v-c-s.org)) (“VCS”) and the American Carbon Registry ([www.americancarbonregistry.org](http://www.americancarbonregistry.org)) (“ACR”) that also have guided the development of voluntary offsets that are just as real, additional, permanent, unique and verifiable as those developed pursuant to the four chosen CAR protocols.<sup>2</sup>

Project developers and the purchasers of their voluntary offsets ought not to be penalized years later because the offsets were developed in accordance with other rigorous protocols. By selecting only a few CAR protocols for express early action recognition, the Regulation as drafted will undermine the value of the many high quality voluntary offsets that were developed and purchased in good faith reliance upon AB 32’s core principle of recognizing voluntary early action. Therefore, without endorsing any particular organization or standard, COPC believes that CARB should review and approve for early action credit offsets generated in accordance with other high quality protocols developed by organizations such as VCS and ACR. Not to do so would violate AB

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<sup>2</sup> There are protocols generated by other non-profit organizations that warrant review by CARB as well, such as the Gold Standard for Voluntary Offsets ([www.cdmgoldstandard.org](http://www.cdmgoldstandard.org)), the Climate, Community & Biodiversity Standards ([www.climate-standards.org](http://www.climate-standards.org)), and Plan Vivo ([www.planvivo.org](http://www.planvivo.org)).

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32's mandate that "appropriate credit" be given to voluntary early actions. Cal. Health & Safety Code § 38562(b)(3).

COPC also notes that by recognizing in the Regulation only protocols generated by one third party and not any of the others currently operating in the voluntary market, CARB is sending the wrong signals. It risks appearing to prefer one NGO over another for little apparent substantive reason. In addition, it exposes CARB to the risks inherent in relying only on one organization — *i.e.*, of "placing all its eggs in one basket." COPC has high confidence in CAR, but still it is only one, small organization, and any organization can make mistakes. Quite simply, CARB ought not to be seen to be playing favorites. Instead, it should foster fair competition for the development of the best protocols in as wide a variety of emission reduction technologies as possible. The integrity of CARB's early action program will be vastly strengthened, both in substance and in appearance, if it were to recognize many of the rigorous protocols that have been developed over the last ten-to-fifteen years in the voluntary market.

Finally, if CARB does not expand the number of eligible early action protocols, there is a strong possibility that there will be a shortage in the supply of available offsets in the initial phases of California's cap-and-trade program. To ensure that the price of AB 32 compliance does not rise unnecessarily, CARB should expand the number of protocols expressly recognized in the Regulation under which early action offsets may be generated.

### **3. Recognition of Offset Registries Other than CAR Should be Expressly Encouraged and the Process for Doing so Streamlined.**

In addition to expanding the number of protocols for which early action credit will be granted, CARB should expand the number of registries from which early action offsets may be purchased, provided that they meet CARB standards. Several of the organizations discussed above — most notably VCS and ACR — have established offset registries. CARB should allow cap-and-trade participants to purchase offsets listed by those registries, as well as other registries such as the Chicago Climate Exchange. There is absolutely no reason to limit the authority to list and sell offsets, so long as the offsets are real, verifiable, additional, unique and permanent.

If CARB is unable or unwilling to place those registries on the same footing as CAR by expressly recognizing them in the Regulation, then it should fast-track their approval via executive order under sections 95990(c) and 95986 of the Regulation. That process allows for the approval of other offset project registries, and should be utilized to ensure that high-quality offsets listed by other registries are not excluded from the cap-and-trade program.

### **4. CARB Should Allow High-Quality Offsets Regardless of their Vintage.**

CARB should recognize early action offsets generated prior to January 1, 2005. So long as the credits are real, additional, verifiable, unique and permanent, there is no reason to prevent the use of high-quality offsets generated prior to 2005. As drafted, the Regulation would perversely



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penalize the earliest developers of offsets instead of rewarding them for pioneering cost-efficient and vitally important GHG reduction strategies. Exclusion of these high quality offsets also will reduce the overall volume of quality offsets available to the market, thereby hindering the overall effectiveness of the program.

Rather than drawing a line at January 1, 2005, COPC recommends that CARB simply hold older offsets to the same standards of quality and verifiability as newer offsets. If, however, CARB concludes that a threshold date is necessary, it should move the date back to no later than January 1, 2001, to maintain consistency with recent federal cap-and-trade efforts. For example, the American Clean Energy and Security Act (“ACES”) passed by the U.S. House of Representatives in 2008 permitted the use of offsets from projects that commenced after January 1, 2001. *See* ACES § 740. An earlier date than that contained in the Regulation is especially appropriate for offsets developed under CAR, since the implementing statute for CAR’s predecessor organization, the California Climate Action Registry, was signed into law in 2001. *See* 2001 SB 527.

#### **5. The 8% Cap on the Use of Offsets Should be Lifted.**

COPC welcomes CARB’s lifting of the quantitative offset usage cap to 8% from the 4% level that appeared in the prior Preliminary Draft Regulation. *See* Regulation § 95854. While COPC is encouraged by this recognition that offsets should play a slightly larger role in the AB 32 cap and trade program, we remain concerned by what appear to be arbitrary limits on the use of quality offsets. COPC respectfully submits that CARB’s continued embrace of a quantitative usage limit is fundamentally flawed. Establishing a quantity limitation on the use of offsets does nothing to help ensure the environmental integrity of offsets. That can be addressed far more effectively by addressing it directly — *i.e.*, by focusing on offset quality.

COPC welcomes the efforts by the CARB to ensure that only genuine offsets -- those that are real, additional, verifiable, and permanent -- qualify for the program. Encouraging the development of quality offsets promotes environmental integrity, as offsets make real contributions to the effort to mitigate climate change by reducing GHG emissions *in the near term* and by those without compliance obligations under the cap. They thus serve as an important bridge to the low carbon economy of the future. The use of a quantitative limit will necessitate a shift of vital resources from the development and verification of quality offsets to the policing of an arbitrary limit.

If CARB determines that some type of quantitative usage limit is necessary, then it should be set higher than 8%, especially when one considers that the increase from 4% to 8% simply reflects the amount of offset credits that have been set aside in the Allowance Price Containment Reserve. *See* CARB Staff Report on the Regulation at II-23 - II-24. Such a low limit will severely hinder the ability of offsets to provide the cost containment mechanism that will be necessary to manage the costs of AB 32’s implementation. It also will severely discourage the investment in and development of new offset projects, thereby failing to harness a powerful tool for combating climate change — the offset sector that has the practical experience and ability to begin making the GHG emission reductions that are so urgently needed *now*.

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## **6. Requirements to Prevent Conflicts of Interest.**

COPC urges CARB to streamline the conflict of interest requirements in the Regulation. While elimination of conflicts of interest is of great importance, and COPC supports rigorous rules to ensure that no conflicts exist, CARB should take care to ensure that the burden posed by the conflict of interest requirements does not damage the offset program. COPC believes that CARB's offset program may fail to take into account the fact that the pool of available verifiers is likely to be quite small, especially during early compliance periods. As currently drafted, the conflict rules appear to limit verifiers and project operators to single interactions once every three years. Given the small number of verifiers, this limitation is simply impracticable. To the same end, the requirement that offset project operators change verifiers every six years and not utilize any verifier used by the operator on any project in the past three years will also be impracticable. *See* Regulations § 95979. There is a very real risk that the verification process described in the Regulation will become a bottleneck in the approval of offsets. Overly-aggressive conflicts rules also may lead project developers to utilize less skilled, inexperienced verifiers because the skilled, experienced verifier have been conflicted out. COPC therefore urges CARB to review these provisions with an eye toward streamlining them lest the unintended practical consequences of the program as presently designed overwhelm its functioning. This can be done while still ensuring the integrity of the program.

## **7. CARB Should Conduct a Pilot Program for REDD Credit Utilization During Phase 1.**

CARB has taken an important step in designing its cap-and-trade program to be the first in the world to accept offset credits developed under Reducing Emissions from Deforestation and Forest Degradation ("REDD") programs. CARB's decision to incorporate REDD credits into its cap-and-trade program is extremely encouraging, and rightly garnered much international attention at the recent UNFCCC COP 16 conference in Cancún, Mexico. COPC commends CARB for its leadership, and also concurs with its decision to select REDD as the first sector-based program to be incorporated into California's cap-and-trade program.

As discussed in our August 20, 2010 comment letter on CARB's proposed REDD program, COPC strongly believes that REDD credits should be incorporated into the CARB cap-and-trade system as swiftly as practicable. We are encouraged by CARB's stated goal of including credits from REDD pilot programs at some point during the first compliance period. The recent MOUs that California signed with the Mexican state of Chiapas and the Brazilian state of Acre could provide the vehicles for a pilot program in Phase 1, as we called for in our August 20 letter. We encourage CARB to do so, both in order to help ensure an adequate supply of quality offsets, but also so as to send the much-needed signal to California's subnational partners in the developing world.

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Once again, we thank CARB for this opportunity to submit these comments, and we hope that CARB finds them helpful. We would be happy to provide additional information to CARB. To that end, please feel free to contact COPC's California representative at Beveridge & Diamond, PC, Nico van Aelstyn, at [nvanaelstyn@bdlaw.com](mailto:nvanaelstyn@bdlaw.com) and (415) 262-4008.

Sincerely,

A handwritten signature in black ink that reads "Roger Williams" followed by a stylized initial "W".

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Roger Williams, Chairman  
CARBON OFFSET PROVIDERS COALITION

cc: Mary Nichols (CARB) (via email) ([mnichols@arb.ca.gov](mailto:mnichols@arb.ca.gov))  
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