

**To**: The California Air Resources Board (ARB)   
**From**: The American Biogas Council  
**RE**: AB32 Cap and Trade Regulations  
**Date**: December 15, 2010

As the Air Resources Board reviews comments on the AB32 Cap and Trade Regulations released on Oct. 28th, 2010, the American Biogas Council strongly recommends that the ARB consider three actions:

1. **Apply the biogas compliance exemption in a uniform manner**, such that any facilities which have historically been providing biogas to a California entity remain eligible for the compliance obligation exemption;
2. **Allow facilities whose biogas is being used for electricity production to earn a Renewable Energy Credit (REC)**;
3. **Allow facilities earning offsets under a digester protocol to claim a compliance obligation exemption**

**Why?**  
The ARB has taken significant steps to incentivize the use of biogas and that has been helpful to the biogas community. However, the U.S. has only tapped roughly 2% of the clean energy potential that biogas can provide through the digestion of organic waste. The American Biogas Council is concerned that some of the restrictions ARB has placed on the ability of biomass derived fuels to qualify for the compliance obligation exemption will have the unintended affect of limiting the nascent growth of the biogas industry. By hampering growth, California will not be able to benefit from the jobs created by building and operating digesters that make biogas, the emissions reductions from eliminating uncontrolled methane production from landfills and the valuable clean energy that renewable natural gas provides.

**Detailed Reasoning:**

1. **Apply the biogas compliance exemption in a uniform manner**

Under §§ 95852.1 and 95852.2 of the Proposed Regulations and § 95131(i) of the proposed revised Mandatory Reporting Rule (MRR), the compliance exemption for biomass-derived fuels is limited to: (1) fuel production that was obligated under contract to a California operator prior to January 1, 2010; and (2) fuel that is “associated with an increase in the biomass-based fuel producer’s capacity.”

This restriction, however, does not account for facilities which transport gas to California, but are not specifically under a contract. If an operator can provide concrete evidence (and a verifier can verify) that the output from a biomass derived fuel was historically flowing to California, then that fuel is equally deserving of the compliance obligation exemption.

In addition, the language requires that fuel producers that have sold biomass-derived fuel to a California operator before 2010 to continue selling to the *same* operator in order to retain the compliance exemption. This holds the biomass derived fuel production facility captive to one buyer and gives that buyer an inordinate amount of market power. It unnecessarily restricts biomass derived production capacity that has historically supplied the state from being able to sell to another California buyer, when doing so would have no net impact on emissions or the cap. As long as a verifier can verify that a contract existed with *a* California buyer, there should be no requirement for the biomass derived fuel facility to continue to sell to the same entity in order to be eligible for the compliance obligation exemption.

Furthermore, we urge ARB to clarify that a facility which was previously flaring its biogas and now re-directs that gas into productive use (or increases efficiency in its use of biogas) would also qualify for the compliance obligation exemption.

1. **Allow facilities whose biogas is being used for electricity production to earn a Renewable Energy Credit (REC) under the state Renewable Portfolio Standard (RPS)**

§ 95131(i) of the proposed revised MRR states that “the verification team shall determine that no entity in the chain of custody has applied for or received credit for the use of biomass-derived fuel in offset credits or any other credits for greenhouse gas reductions in another voluntary or regulatory project.”

This provision could call into question the ability of biomass derived fuels to be considered as an eligible renewable resource and earn a REC under the state RPS. While it may not have been the intention of ARB staff for the provision to apply to RECs, the ABC urges the ARB to clarify this explicitly so that beneficial use projects are undertaken and not dis-incentivized. Indeed, both the California Energy Commission and the California Public Utilities Commission already recognize the ability of pipeline bio-methane and biomass energy to qualify as an eligible renewable resource under the RPS – as such these projects should not face any restrictions from being able to claim a REC.

1. **Allow facilities earning offsets under a digester protocol to claim a compliance obligation exemption.**

The American Biogas Council believes that biogas from manure digester offset projects is carbon neutral, and should qualify for the same compliance obligation exemption provided for other biogenic sources. In an offset project, an upstream offset is awarded for the conversion of methane to carbon dioxide (CO2). The compliance obligation exemption, on the other hand, is awarded on the basis that the emissions from biomass derived fuel are biogenic. These are two distinct attributes and should be treated as such.

If ARB must make an adjustment to account for the emissions from combustion of biomass derived fuel, it is preferable that this adjustment be made in the manure offset protocol. The ARB could take into account the project emissions from combusting CO2 and award a smaller number to offsets, such that the downstream compliance obligation exemption is preserved. This approach is preferable to having a compliance obligation on the gas, which would make it more difficult to market and thereby limit the number of projects undertaken, and the benefits to the State. In addition, since ARB has imposed a quantitative limit on the number of offsets (lowering their value relative to an allowance), being required to surrender allowances from combustion emissions and receiving additional upstream offsets are not equivalent. In this circumstance, receiving a compliance obligation and earning fewer upstream offsets would be a better alternative.

It is important to note that the American Biogas Council does not advocate an approach whereby fewer offsets are awarded. Indeed bio-methane economics often require revenue streams from both offsets as well as the ability to sell the biogas. Reducing the number of offsets received would limit the number of projects undertaken, further inhibiting offset supply and preventing meaningful GHG reductions from taking place. However, this approach is the preferred alternative to requiring compliance obligations for combusting biogas.

1. **Adopt an organic waste compliance offset protocol**

The American Biogas Council believes that compliance offset protocols should include organic waste digester projects. The current compliance offset protocols for Urban Forest Projects, U.S. Ozone Depleting Substances, Livestock Manure (Digester) Projects and U.S. Forest Projects originated from project protocols developed by Climate Action Reserve (CAR) and later adopted by the ARB for early action projects. The American Biogas Council urges ARB to follow a similar path in developing an organic waste digestion compliance offset protocol. CAR developed an Organic Waste Digestion Project Protocol which was adopted by its Board on October 9, 2009. Furthermore, the United Nations Framework Convention on Climate Change through the Clean Development Mechanism has adopted offset protocols for organic waste digestion. We are confident that organic waste digestion offset projects can meet the strong accounting and real GHG reduction standards and requirements of AB32 and thus should be included.

The American Biogas Council again appreciates the attempts ARB has made to promote the use of biogas and the development of renewable energy projects. We believe that biogas can play a key role in helping California to meet its AB32 obligations while generating renewable power from a waste resource—garbage to green energy. We thank you for your consideration, and look forward to staying engaged in the regulatory process going forward.

Best regards,

Paul Greene, Chairman and the 66 members of the American Biogas Council

***About the American Biogas Council (ABC)****The ABC is the nation’s largest and only non-profit advocacy group for the biogas industry. Its 66 members promote the production of biogas through anaerobic digestion of organic matter and the beneficial use of the biogas and other wet and dry by-products of the digester process. The biogas industry creates rural and urban American jobs, clean energy and reduces harmful methane and ammonia emissions.* [*www.AmericanBiogasCouncil.org*](http://www.AmericanBiogasCouncil.org)