



restore the balance

August 11, 2011

Ms. Mary D. Nichols  
Chairman, California Air Resources Board  
Via web submission

RE: Comments regarding the Cap-and-Trade Proposed 15-day Regulatory Changes

Chairman Nichols and Members of the Board:

TerraPass is a San Francisco-based company whose mission is to combat climate change by enabling consumers and businesses to understand and take responsibility for their greenhouse gas emissions. Over the past 7 years, TerraPass has had more US domestic offset projects issue credits on high-quality registries such as the Climate Action Reserve than anyone else. We have served well over 350,000 individual and business customers, about 25% of whom live in California. We also count some of the world's largest financial institutions and multi-national corporations among our customers and partners.

We are pleased to offer the following comments on the Proposed 15-day Changes to the Cap and Trade Regulation:

**Section 95852.1.1(b), eligibility of biomass-derived fuels:** We appreciate the revision to this section to provide additional clarity. Unfortunately our conversations with other stakeholders over the past few weeks lead us to believe that the section is still subject to wide and contradictory interpretations. The following modification to the second sentence would clear up much of the confusion:

- Generation of Renewable Energy Credits, and generation of carbon offset credits from methane-related emission reduction activities, is allowable.....”

**Section 95976(f)(2)(D), interim data collection procedures:** It is not obvious how to make “A demonstration that no feasible alternative procedure exists that would provide more accurate emissions data.” As written, this requirement assumes knowledge of all possible data collection procedures, from which one could make feasibility determinations for the case at hand. An alternative wording which requires project owners to be less omniscient while still achieving the objective, is:

- (D) A demonstration that the proposed data collection procedure is conservative; that is, the proposed data collection procedure and any accompanying calculation methods will necessarily result in fewer verifiable emission reductions than the

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standard data collection method would have provided given identical project performance.

**Section 95985(b)(6), invalidation of ARB offset credits:** We recognize the effort made to create a shorter period of liability for the invalidation of offset credits. However, we remain concerned that the liability provisions as presently written will deter emitters from using offset credits as a compliance option, because emitters will neither be able to estimate nor control the resulting financial exposure.

Further, while we might expect emitters to contractually assign the liability to other parties, this practice will not eliminate the liability nor the cost, as the ARB would still enforce against the emitter and legal action would be required for the emitter to attempt to recoup its costs from other parties in the offset chain of custody.

We therefore recommend that the Board adopt some mechanism by which an offset credit can be deemed permanently valid as soon as possible after the verification period. We have several suggestions along these lines:

- Eliminate future liability for credits that undergo simultaneous (or directly subsequent) verifications by two different verifiers, and submit both verifications to the ARB prior to issuance. This would give buyers and project developers an option to eliminate the invalidation risk for a given vintage or project at additional cost; or
- In addition to releasing liability after three years of issuance and a subsequent verification by a new verifier as currently proposed, release liability after 1 year of issuance and a subsequent verification by a new verifier, if that the new verifier audits the previously verified credits. Specifically, the new verifier would be required to conduct a desk review and as warranted a full re-verification of the previously verified credits, using the same rules as specified for the re-verification of Early Action offset credits.
- With this suggestion in mind, we recommend that Early Action offset credits which are transferred to the ARB having undergone a second verification (once for the original offset program, and once for the ARB compliance review) should not carry any risk of invalidation.

If the ARB is concerned that certain invalidation factors may only come to light after a period of time, we suggest that the ARB separate the requirement to replace invalidated credits from the ARB's other enforcement capabilities:

- We recommend that initial double verifications or subsequent re-verifications as described above release any credit holder from a requirement to replace those credits if they are invalidated thereafter.

- In such case, the ARB could retain the right under its pervasive enforcement authority to take actions against the offset project developer, the offset verifier, or the offset project owner, all of whom will have submitted themselves to ARB jurisdiction, should the project's credits become suspect. At its option, the ARB could choose to levy fines sufficient to purchase replacement credits, or could require the surrender of replacement credits in addition to fines and other penalties levied in such enforcement actions.

**Section 95990(f)(4), regulatory verification of Early Action offset credits:** Because offset projects cannot transfer registration to the ARB prior to 2013, we expect many projects will submit re-verified credits to the ARB for transfer on more than one occasion. For example, a project developer may submit all credits through vintage 2011 during 2012, and then submit vintage 2012 credits during 2013.

With this in mind, the proposed language is not clear as to the implications of the second (in our example, 2013) desk review on credits which have already been transferred to the ARB. Specifically, it is not clear whether credits which have already been transferred successfully and issued as ARB offsets must be re-reviewed (again) if any subsequent regulatory re-verification finds a material misstatement in a later vintage.

We recommend that if an Early Action offset credit has successfully completed a desk review and has been converted to an ARB offset, that no further reviews or re-verifications be automatically triggered if a subsequent desk review of later vintages is found to require a full regulatory verification with site visit. That is to say, once an ARB offset credit has been issued from an Early Action offset credit, that ARB offset credit should not be subject to re-verification as a result of subsequent Early Action offset credit transfer activities.

Thank you for your ongoing work on the critical issue of addressing climate change, and the opportunity to comment here.

Sincerely,

Erin Craig  
Chief Executive Officer  
TerraPass Inc.