



September 27, 2011

James Goldstene and Members of the California Air Resources Board  
 CA Air Resources Board (CARB)  
 P.O. Box 2815  
 Sacramento, CA 95812

**RE: Comments on the 2<sup>nd</sup> Proposed (15-day) Revisions to Cap-and-Trade Regulation – Offsets**

Dear Mr. Goldstene, Chair Nichols and CARB Board Members:

We, representatives of the undersigned organizations, thank you again for the opportunity to respond to the proposed changes to the cap-and-trade regulation under AB 32. We appreciate the inclusion of selected revisions to the regulation that strengthen CARB's explicit oversight procedures over the program, namely specifying that CARB will conduct performance reviews of verifiers and registries prior to reaccreditation, as well as periodic reviews of offsets protocols. We believe these reviews are necessary to ensure that offsets credits generated under CARB's offsets program meet the criteria outlined in the regulation. It is important for those being evaluated to be made aware of the review procedures they can expect.

While these revisions are important, other modifications are necessary in order to adequately ensure the integrity of the offsets program. Further enhancements to verifier and registry oversight are needed to ensure that offset project developers do not over-estimate the emission reductions from their projects. Furthermore, it is essential to define basic terms for reviews of new and existing protocols to ensure they are not likely to generate credits from non-additional activities. We lay out below some of the most important changes that we believe are still needed to the draft regulation or, perhaps in some instances, in a formal supplemental document to better ensure the integrity of CARB's offsets program.

As you know, the track record of various offset programs has been poor with regard to the quality of the credits for greenhouse gases or for other gases. While the proposed CARB regulation is structured to potentially have better results than other offsets programs, there are still additional protections and oversight provisions needed. Given that the total number of offsets allowed for compliance under California's cap-and-trade program cumulatively through 2020 equals approximately 80% of cumulative emission reductions required under the program, the integrity of those offsets is critical to the effectiveness of the market-based program as a whole.

## **FURTHER STRENGTHENING VERIFIER AND REGISTRY OVERSIGHT**

Without strong program oversight and penalties, offset project data reports could easily over-estimate reductions from offsets projects. Offsets are particularly vulnerable to such over-estimation because of conflicts of interest inherent in the relationships between the offsets developers and the verifiers, compounded by the large physical distance between CARB and many of the offsets projects they will oversee around the country and the continent. At present, offsets developers directly hire verifiers to verify the reductions they claim to have made. We put forward the following suggested additions to the verifier and registry oversight provisions in the draft regulation that we believe are important for further strengthening the oversight elements of the regulation.

- All Offset Project Data Reports should be made publicly available. This enables stakeholders and other experts a chance to catch inaccuracies in the data reports, providing CARB with another avenue for catching misstatements. Under the Kyoto Protocol's offsets program, the Clean Development Mechanism, all data reports (project design documents and monitoring reports) are made publicly available along with validation and verification reports. This has been an important source of information for the CDM governing bodies in overseeing the program and discovering reporting problems.
- Regarding the added performance review of registries, we believe that a single review every ten years is insufficient. There should be ongoing oversight over the work of participating registries and a review at least every five years.
- We recommend that CARB periodically review and evaluate the relationships between verifiers and verification bodies and project developers and consider a system where the Executive Officer assigns verifiers or verification bodies for each project.

## ASSESSMENTS OF NEW AND EXISTING PROTOCOLS

According to the AB 32 statute, offsets must be additional to any greenhouse gas emission reduction that would otherwise occur. It is this additionality that is so difficult to determine. As such, the use of offsets as a compliance instrument, *not* inherent to a cap-and-trade system, presents substantial risks of not genuinely achieving the emissions reductions called for in AB 32.

When offsets credits are generated by business-as-usual projects that were going forward regardless of the offsets payments, the companies under the cap are able to emit more than the cap, but equivalent additional emissions aren't reduced elsewhere. The companies are simply paying project owners outside of the cap to do what they were doing anyway. The cap-and-trade program would therefore be effectively weakened by the number of non-additional business-as-usual offset credits allowed for compliance.

We strongly recommend that the regulation include a requirement that an **additionality assessment** be conducted of new protocols prior to adoption, and periodically on all existing protocols.

- These additionality assessments should be made publicly available.
- Each additionality assessment should evaluate whether the protocol is likely to meet CARB's requirements that all credits are real and additional using the following evaluation criteria (in addition to other criteria already in the draft regulation):
  - There is a very high degree of confidence that the total number of credits generated by projects under the protocol will not exceed the total amount of reductions enabled by that protocol in addition to what would have happened without that protocol,
  - The project types that qualify under the protocol, absent being eligible as part of the compliance offset protocol, are not likely to be pursued, are likely to result in reductions that are negligible in number, or would likely have been pursued at significantly lower rates; and
  - The protocol conservatively accounts for uncertainty in quantification factors for the offset project type.
- In addition, periodic reviews of existing protocols should assess the influence that the protocol has already had on new project development.

Moreover, a review should be triggered when any of the following would result in substantial changes in the estimation of emissions reductions from offset projects:

- Research advancements on quantifying emissions reductions from protocol project types;
- Updates to related registry protocols that lead to more accurate or conservative measurement of emissions reductions;
- Significant changes in market conditions affecting the rate at which projects would be developed without the offset protocol; or
- Changes in the baseline.

## OFFSETS QUANTITY

We propose that section 95854 of the revised regulation be modified so that, in the second and third compliance periods, the percentage of total emissions that would be permitted to come from

offsets is reduced. We propose that no more than two percent of total emissions in the second compliance period and no more than one percent of total emissions in the third (and any subsequent) compliance period be permitted to come from any type of offset credit. This would be equivalent to roughly one-third of the emission reductions required in the 2<sup>nd</sup> compliance period, and approximately 15% of emission reductions required in the 3<sup>rd</sup> compliance period.

These modifications in quantity will help promote technological innovation in the highest-emitting sectors, increase opportunities for in-state co-benefits (including air quality benefits), and reduce the risk that a high proportion of compliance credits might not represent real and additional reductions in emissions.

Thank you for the good work that CARB staff has done to date. We look forward to working with staff on continuing that good work to reduce the risk that non-additional and non-real offset credits could be used for compliance and to fully realize the opportunities for technological innovation and co-benefits for California residents.

Sincerely,

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