



December 10, 2010

California Air Resources Board
California Air Resources Board
1001 I Street
Sacramento, CA 95812

RE: Proposed Regulation to Implement California Cap and Trade

Dear Chairwoman Nichols, Members of the Board, and ARB staff:

The Center for Clean Air Policy (CCAP) appreciates the opportunity to provide comments on the draft cap and trade regulation issued by the California Air Resources Board (ARB) staff on October 29, 2010. CCAP commends California and ARB for their continuing leadership in addressing climate change. California's leadership provides critical support to U.S. and global climate protection efforts. The proposed cap-and-trade regulation promises emissions reductions through a market-based mechanism that will supplement California's other innovative climate policies aimed at spurring clean technology development, ensuring healthy and resilient communities, and maintaining strong economic growth statewide. We offer the following comments on the proposed regulation and offer our assistance to work with ARB on the recommendations we suggest.

Summary of Recommendations:

- 1) CCAP supports California's further development of specific provisions for the recognition of sectoral credits including emission reductions from deforestation and forest degradation (REDD);
- 2) CCAP recommends further clarification of ARB's role with respect to offsets; and
- 3) CCAP recommends further development of safeguards against market manipulation and further clarification of compliance and enforcement mechanisms.

Sectoral Crediting and REDD

CCAP specifically applauds ARB for provisions of the draft regulation which establish a framework for the future recognition of sectoral credits REDD. Especially in the absence

of a national market for emissions trading in the United States, California's acceptance of sectoral credits from developing countries would provide a much needed driver and financing mechanism for continued forward movement on global emissions reductions and clean development. While the framework provided in the draft regulation contains helpful general requirements for the approval of sector-based crediting programs, further work will be needed to carefully define more specific requirements to ensure such programs maintain the highest levels of environmental and social integrity. Because of significant differences among countries, sectoral programs need to be tailored to the circumstances of individual countries. Developing countries are still currently developing the capacity to implement sectoral programs, but sector crediting is likely to become important in the immediate post-2012 period.¹

Clarification of ARB Role With Respect to Offsets

As currently drafted, the respective roles of ARB and "Offset Project Registry" (as that term is defined in the proposed regulation) are not clearly and precisely defined. For instance, as currently drafted, the proposed rule alternately refers to "ARB Offset Credits", "ARB offset credits", "Offset credits", and "offset credits" as terms that are sometimes used interchangeably and sometimes used to indicate distinct and separate meanings. The language in Sections 95980, 95981 and 95985 of the proposed regulation should be cross-referenced and clarified to explicitly indicate that ARB retains final authority over the issuance and invalidation of offset credits for use in the California cap and trade program. Providing this type of clarification will help further the transparency, accountability, legitimacy and success of the program.

Enhancing Program Safeguards and Compliance and Enforcement Mechanisms

CCAP commends ARB on the inclusion of holding limits and other mechanisms to limit market manipulation and the inclusion of provisions ensuring compliance and program integrity while retaining the flexibility of a market-based program. Further safeguards against manipulation and other forms of fraudulent behavior would be beneficial, including additional provisions to guard against double counting of offsets in multiple systems. While Section 95985(a) partially addresses this concern, further restrictions may be necessary to prevent the same offset credits from being sold more than once in different markets. Linkage agreements and coordination efforts between CA and other programs may help address this concern, as well as the requirement of an additional attestation from Offset Project Operators regarding this concern.

CCAP also recommends additional clarification of compliance and enforcement mechanisms including, but not limited to:

- Provisions for the disposition of allowances in relation to insolvency, dissolution or downscaling of covered entities.

¹ Global Sectoral Study: Final Report, The Center for Clean Air Policy, May 2010.

The staff report accompanying the proposed regulation notes that allowances might be included in assets subject to the claims of other creditors besides ARB in the course of bankruptcy proceedings; CCAP recommends the cap and trade regulation include a lien mechanism, at least with respect to any allowances distributed through free allocation, to allow ARB to recover outstanding allowances to protect the integrity of the cap and trade program.

- Further clarification of dispute resolution procedures and time frames surrounding surrender obligations:

While the proposed regulation provides a useful 30-day period to cure identified untimely surrenders not otherwise satisfied by Section 94857 (c) (2-3), it would also be helpful to provide an explicit time frame in which the Executive Officer will assess timely surrender of obligations. It would also be helpful to clarify any dispute resolution procedures, including accompanying time frames, with respect to surrender obligations. These types of provisions will enhance regulatory certainty for both covered entities and implementing agencies.

The Center for Clean Air Policy thanks ARB for the its tremendous effort and leadership in developing the proposed cap and trade regulation. If you have any questions regarding this letter, please contact Ann C. Chan at achan@ccap.org.