Clerk of the Board, Air Resources Board

1001 I Street

Sacramento, California 95814

December 14, 2010

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

Dear Sir/Madam:

MGM Innova thanks you for the opportunity to submit the following comments on the State of California Air Resources Board’s (“ARB”) proposal to develop an emissions cap-and-trade program targeting greenhouse gas abatement under the California Global Warming Solutions Act of 2006 (Assembly Bill 32; 2006, Chapter 488) (“AB 32”). In particular, our comments are focused on the “Proposed Regulation to Implement the California Cap-and-Trade Program, PART I, Volume I, Staff Report: Initial Statement of Reasons,” dated October 28, 2010 (the “Proposal”).

In PART 1, Volume I, III.A.5, four different compliance offset protocols are discussed including destruction of ozone depleting substances (“ODS”) within the United States. PART I, Volume I, III.A.7.c further notes that “Staff plans to evaluate how the four protocols being taken to the Board can be expanded to include projects in Mexico and Canada.” This statement contains the following footnote on page III-11:

 **35 Staff does not intend to evaluate an ODS protocol for offset projects in Mexico because the substances covered under the protocol have not yet been phased out in developing countries.**

Our research indicates that this statement is not factually correct. Specifically, the Montreal Protocol requires all Article 5 countries, including Mexico, to phase-out production of all Annex A, Group 1 Substances by January 1st, 2010[[1]](#endnote-1)[[2]](#endnote-2). These substances include Chlorofluorocarbons (“CFCs”) covered under the Proposal. Mexico went above and beyond this requirement, and agreed to phase-out all production of CFCs by the end of August, 2005[[3]](#endnote-3).

On May 5, 2010, MGM Innova received a letter from Augustin Sanchez Guevara, Coordinador de la Unidad de Proteccion of Mexico’s Secretaria de Medio Ambiente y Recursos Naturales (“SEMARNAT”) which confirmed the following:

1. Mexico phased out production of CFCs in August, 2005. Since that date, production of CFCs, and imports of feedstock of Carbon Tetrachloride has been banned in Mexico.
2. Since January 1, 2010, Mexico has banned imports of CFCs including for use in Metered Dose Inhalers, as Mexico did not request essential use exemptions for any purpose under the Montreal Protocol.
3. Mexico does not have regulations requiring the destruction of virgin or recovered ODS of any kind, including CFCs.

MGM Innova would be happy to provide ARB with a copy of this letter if more clarification is needed.

While Mexico can still produce HCFC-22, and HCFC-141b which are both considered as potential ODS sourced from foam under ARB’s Compliance Offset Protocol for U.S. Ozone Depleting Substances Projects, it is worth noting that HCFC-22 can still be produced in the United States for use in equipment manufactured before January 1st, 2010[[4]](#endnote-4). Finally, given the important role Climate Action Reserve (“CAR”) has served in helping to develop ARB’s compliance offset protocols, MGM Innova would also like to point out that CAR’s Article 5 Ozone Depleting Substances Project Protocol Version 1.0 is limited to CFCs produced for the refrigerant market, and does not include HCFCs.

It is our recommendation that ARB strongly consider the development of a compliance offset protocol for ODS destruction projects for ODS sourced from Mexico. In line with this recommendation, MGM Innova suggests utilizing CAR’s Ozone Depleting Substances Project Protocol Version 1.0 as a proxy for Mexico offset protocol development and a potential source of early action offsets from Mexico. The CAR Article 5 Protocol has stringent point-of-origin documentation requirements, monitoring requirements, and destruction facility requirements. Furthermore, the Article 5 Protocol negates perverse incentives related to production of ODS given the requirement that ODS be produced prior to the Montreal Protocol phase-out date[[5]](#endnote-5). A Mexico ODS destruction protocol has the potential to deliver significant environmental benefits given the high global warming potential of CFCs. Finally, drawing upon its extensive experience working as a consultant across a wide range of emission reduction projects located in North America, MGM sees a significant risk that the compliance protocols currently listed on the Proposal will not be able to produce the quantity of offsets anticipated by ARB. The inclusion of a Mexico ODS protocol and other project types that meet ARB’s environmental integrity standards will mitigate the risk of offset supply deficiencies.

MGM thanks the Board for its time and attention and hopes that these comments are well received.

1. United Nations Environment Programme, Ozone Secretariat (1987 and subsequent amendments), The Montreal Protocol on Substances that Deplete the Ozone layer. [↑](#endnote-ref-1)
2. United Nations Environment Programme, Ozone Secretariat, List of Parties categorized as operating under Article 5, paragraph 1 of the Montreal Protocol. [↑](#endnote-ref-2)
3. http://www.un.org/News/Press/docs/2005/unep312.doc.htm [↑](#endnote-ref-3)
4. http://www.epa.gov/ozone/title6/phaseout/hcfc.html [↑](#endnote-ref-4)
5. Climate Action Reserve Article 5 Ozone Depleting Substances Project Protocol Version 1.0 issued on February 3, 2010. [↑](#endnote-ref-5)