

## Comments Re: Possible Revisions to the C&T Regulation

May 9, 2018

To Whom It May Concern:

Thank you for the opportunity to provide comments related to the April 26, 2018 Workshop to Discuss Possible Revisions to the Cap-and-Trade Regulation. Ag Methane Advisors supports dairies around the country in reducing their methane emissions, including more than 13 compliance offset projects that participate in CARB's Compliance Offset Program.

These comments are in response to CARB's invitation of potential revisions to:

1. invalidation provisions to further narrow types of activities or actions that could result in an invalidation,
2. offset project activities within scope of regulatory compliance evaluation list to... further clarify assessments and timing of noncompliance, and
3. recent discussions about the implementation of the direct environmental benefits (DEBs) criteria of AB398.

We support the work of CARB to help ensure that offset projects meet local, regional, and national environmental and health and safety laws and regulations. We understand that the intent of Sections 95973(b) and 95985 of the current Cap-and-Trade regulation is to prevent CARB compliance offset projects that have project activities with adverse environmental and health and safety consequences from being rewarded for those activities through the generation of offset credits. We respect this intent and agree that it is necessary and valuable.

The current language in Appendix E, Section (b), however, is broad and has been interpreted to penalize projects for regulatory compliance issues that have no direct bearing on the offset project or the integrity of the generated offsets. Dairy producers across the country, and California in particular, operate within an extremely complex regulatory structure. Many of the associated regulations have no direct bearing on the GHG and other benefits provided by livestock anaerobic digestion projects. One way to narrow the types of activities or actions that could result in an invalidation or to further clarify the scope of regulatory compliance issues that can impact offset production would be to include the following criteria in the forthcoming Cap-and-Trade regulation. CARB can use these criteria to simultaneously test regulatory compliance in a practical and reasonable way that avoids rewarding projects (which have adverse impacts), and recognizes projects that are diligent in their regulatory compliance:

1. **Causation:** Regulatory violations should only impact issuance of ARB offset credits if they were caused by project related activities. If project activities did not cause the violation they are not "directly applicable". For example, if an engine generator running on project

derived biogas is operated in a manner that violates air quality regulations this would be caused by the anaerobic digestion project because without the project the violation would not have occurred.

In contrast, a manure spill that occurs during land application and downstream of the effluent pond would not be necessarily caused by operation of the anaerobic digestion project. Any farm managing manure whether there is a digester present or not could have a manure spill. Just because the manure passed through the digester enroute to the manure storage lagoon and ultimately the field does not mean that the violation is "directly related" to the project. If the project did not cause the violation it should not be penalized via invalidation or denial of offset issuance.

2. **Narrow the scope of project activities:** The above principle of causation appropriately limits the scope of project activities that are directly applicable to the project. For livestock anaerobic digestion projects, project activities can be interpreted as those associated with manure collection and disposal, and methane collection and destruction. Furthermore, CARB can clarify that the interpretation of "manure disposal" occurs in the post digestion effluent pond.
3. **Material adverse impact:** Only violations which result in material adverse environmental or health and safety impacts should have issuance of ARB offset credits denied. Administrative or clerical violations and violations which do not result in material adverse environmental impacts should not lead to invalidation nor prevent issuance of ARB offset credits.

Therefore we propose that CARB revise Appendix E: Offset Project Activities Within the Scope of Regulatory Compliance Evaluation, Section (b) as follows: (proposed amendments are shown with underlined text).

Projects Using a Compliance Offset Protocol in Section 95973(a)(2)(C)2. All project activities associated with the installation and operation of the biogas control system that captures and destroys the methane must be in compliance with all requirements that have a bearing on the integrity of the generated offsets. Project activities begin at waste collection and end at onsite biogas usage and the disposal of associated digester effluents in the project's effluent pond. Farm operations relating to the removal, transport or land application of manure from the post digestion effluent pond are not considered directly related to the Project and therefore do not have a bearing on the integrity of the generated offsets. The project is out of regulatory compliance if the project activities caused material adverse environmental or health and safety impacts and were subject to enforcement action by a regulatory oversight body during the Reporting Period. Administrative or clerical non-compliance and non-compliance that has no material adverse environmental or health and safety impact will not cause invalidation nor prevent an offset project from issuing offsets.

Regarding DEBs, we support the previous comments made by other stakeholders that DEBs criteria should not be retroactively applied to offset credits issued prior to 2021. We support clear language in the forthcoming regulation that clarifies how previously issued offset credits could be exempted from or automatically meet the DEBs standard. Furthermore, offset projects which commenced in advance of the implementation of a DEBs standard should be able to complete their crediting periods exempted from or automatically meeting the DEBs standard. Given that projects are developed based on revenue expectations across the length of the crediting period it would be appropriate to maintain the status of the incentives through the crediting period, and not retroactively apply a standard with substantial financial repercussions which was not in place when the projects were developed. CARB has precedent for maintaining the status of incentives through the crediting period in that regulatory additionality criteria in place at project commencement continues to apply through the crediting period even when regulatory mandates change during the crediting period.

We look forward to working with CARB to specify potential revisions to the Cap-and-Trade regulation. We are confident that the program can provide offsets with exceptional integrity and efficiently reward complaint projects that reduce GHGs and provide beneficial economic, energy and environmental outcomes.

Thank you for your consideration of these comments.



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