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RE: Comments from Maas Energy Works, Inc on the Air Resources Board's Staff Proposal Addressing Clean Power Plan Compliance Through the Cap-and-Trade and Mandatory Greenhouse Gas Emissions Reporting Regulations Released on February 24th, 2016.

INTRODUCTION

Maas Energy Works (MEW) was founded in 2010 as a developer, owner, and operator of dairy manure digester facilities (www.maasenergy.com). Including digesters owned by Farm Power Northwest LLC, MEW operates ten dairy manure digester facilities with many more in development. All of these facilities produce greenhouse gas emissions reductions under various protocols, resulting in over 130,000 tons of CO-2e reduced per year.

MEW's comments herein relate primarily to the issue of invalidation and regulatory compliance. MEW supports the work of ARB to ensure that offset projects meet local, regional and national environmental and health and safety laws. The current strict and inflexible requirements for regulatory compliance, however, create a significant risk for anyone considering an investment in a digester. Speaking as a developer whose job it is to convince farmers that digesters are a solid investment, it is very difficult to convince them to invest time and money when a whole year's carbon revenue could be invalidated through a minor, unrelated permit infraction elsewhere on the dairy.

RECOMMENDATIONS

MEW recommends the California Air Resource Board rewrite Section 95973(b) of the regulation to create additional flexibility in the application "regulatory compliance" requirements to encourage the financing and adoption of anaerobic digesters.

Section 95973(b) of the regulation currently reads,

> *The project is out of regulatory compliance if the project activities were subject to enforcement action by a regulatory oversight body during the Reporting Period. An offset project is not eligible to receive ARB or registry offset credits for GHG reductions or GHG removal enhancements for the entire Reporting Period if the offset project is not in compliance with regulatory requirements directly applicable to the offset project during the Reporting Period.*

Because digesters are usually part of Concentrated Animal Feeding Operations that face a large number of environmental, health and safety regulations, this language creates significant risk for anaerobic digesters. MEW recommends the following modifications to the language:

1) *Narrow the definition of regulatory compliance as it relates to livestock projects.*

To support the financing and adoption of anaerobic digesters, MEW recommends the California Air Resource Board specify a narrow definition for the "project activities" associated with anaerobic digesters. Many digesters are developed, owned and operated by third parties that are separate from the owners of the dairy or swine farm. These projects generally have explicit Manure Supply Agreements that make it clear at what point the digester owns manure and at what point it no longer owns manure. If an enforcement action occurs due to the management of manure at a time or location where the manure was not owned or processed by the digester facility, it should not be considered to be part of the "project activities." For example, at most livestock facilities manure is eventually land applied whether or not the livestock facility has an anaerobic digester. This land application therefore should not be considered to be part of the project activities. ARB should interpret manure disposal to be complete after manure is sent to the post-digestion effluent pond or once ownership of the manure is transferred back to the livestock facility. To do otherwise would be to make the digester project responsible for other manure activities that would occur on the dairy whether or not it hosted a digester.

2) *Limit a violation of environmental regulatory compliance to those enforcement actions that are a result of material adverse environmental impacts.*

In addition, the regulation should give the California Air Resource Board the flexibility to determine which enforcement actions result in material adverse environmental impacts. Only those enforcement actions with material adverse impacts should trigger a violation of regulatory compliance. Material issues must be treated differently than minor administrative violations. In many cases, regulators will issue an enforcement action only to direct changes to the operations (a "fix-it ticket") and the regulator has no intention to impost a monetary penalty, or to impose only a very minor fine. But the consequences such an enforcement for a dairy that has a digester may be orders of magnitude larger than for a dairy without a digester. This outcome tends to impede digester development. In fact, it will only take a few large, high profile losses of a full year's carbon credits to spread word around the grapevine of dairy farmers that digesters are too risky and the carbon revenue can't be counted on. This result will have even broader ramifications among lenders, who will not want to use future carbon revenue forecasts as reliable future income for loan repayment.

3) *Allow for temporal flexibility to only eliminate those credits that are generated during the actual violation, not all those generate throughout the reporting period.*

As outlined in Section 95973(b), the entire Reporting Period is ineligible to generate credits if a violation of regulatory compliance occurs at any point throughout the reporting period. Eliminating an entire reporting period roughly eliminates 10% of the offsets a livestock project is expected to generate over a ten-year period. This is a significant reduction in revenue to financially marginal projects with

significant greenhouse gas benefits. In MEW's mind, a much more defensible punishment would be to eliminate the project from generating credits for the period in which the violation is active. Violations that occur over a week should only eliminate the crediting for that week, not the entire reporting period.

4) The offset protocols have materiality thresholds to determine their accuracy built into them.

It seems unnecessary and inefficient for ARB to require that every protocol discrepancy even those that are non-material and conservative (under estimated offset volume) be changed.

5) The requirement for "wet signatures" on various ARB forms is inefficient and out of date.

There are many ways in which electronic signatures of various types are used to conduct business in credible and safe ways. We encourage ARB to pursue these in order to streamline the administrative steps of the offset program.

Thank you for your consideration and the opportunity to comment. Please let me know if any additional information or clarification would be helpful.

Respectfully Submitted,

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