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May 10, 2018

Rajinder Sahota,
Asst. Division Chief
Industrial Strategies Division
California Air Resources Board (CARB)
1001 I Street
Sacramento, CA 95814

RE: Preliminary Discussion Draft of Potential Changes to the Regulation for the California Cap on Greenhouse Gas Emissions and Market – Based Compliance Mechanisms

Dear Ms. Sahota:

California Bioenergy LLC (CalBio) appreciates the opportunity to submit comments on the potential revisions to the Cap & Trade Regulation.

Regulatory Compliance (Section 95973(b) and Appendix E)

During the April 26, 2018 Workshop to Discuss Possible Revisions to the Cap-and-Trade Regulation, ARB staff invited the public to provide input on the evaluation and assessment of regulatory compliance violations as they pertain to offset project activities. CalBio would like to offer suggestions in the paragraphs below:

As it is currently written, the regulatory compliance standard is overly onerous and presents a huge risk to project developers. Although improvements have been made to reduce the scope of violations (i.e. shortening the time frame), the regulation does not go far enough to limit the risk borne by project developers. One area that can be improved is to provide a clear definition of violations that “have a bearing on the integrity of the offset credits” and those that do not.

For instance, it is possible for a project to be issued a Notice of Violation by a regulatory agency for something as minor as submitting a late source test report. It is not uncommon for many months to elapse before the project developer is even notified that a violation has been issued. In such a case, the project developer is left without an opportunity to respond or address the issue in a timely manner. Based on the current language in the regulation, ARB would have no choice but to withhold credit issuance for the entire duration of the non-compliance period.

Recommendation: The regulation should be made explicit that violations that are “administrative” in nature are not subject to the regulatory compliance and invalidation rules. In addition, ARB should introduce a clause in which violations that have a “de minimus” impact on the integrity of the credits, ARB has the discretion to reduce the loss of credits to be



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commensurate with the severity of the violation. Projects could still be penalized a nominal amount (ex: 5% of total credits generated) for situations that are beyond the control of the project developer.

Another example where improvement can be made is the definition of project boundary in Appendix E, where project activities are defined as beginning with waste collection and ending “at onsite biogas usage and the disposal of associated digester effluents.” There is ambiguity around where exactly the boundary ends. ARB has historically interpreted this to extend beyond the digester effluent pond and include activities such as irrigation and land application to the surrounding crop fields. For digester projects, the project developer has no control over the manure wastewater once it is deposited into the effluent pond, however this interpretation means they are liable for any wastewater violations which may be related to post-digested manure. The problem with this is twofold: 1) The GHG Assessment Boundary ends at emissions from the effluent pond, and thus all sinks, sources, and reservoirs have already been accounted for. This means that a violation downstream of the effluent pond should not have “a bearing on the integrity of the offset credits” by the protocol’s own accounting standards; and 2) Any violation that occurs downstream of the effluent pond would have occurred in the absence of the project, and therefore cannot be a result of the project. Lastly, if a violation were to be issued for wastewater violations, it would appropriately be issued to the dairy and not to the project developer. In such a case, this should remove culpability from the project developer since they are not the responsible party and ARB should rely on the governing agency to enforce its own rules, fines, and enforcement mechanisms to resolve any wrongdoing.

Recommendation: CalBio proposes that the regulation define the project boundary to be changed to the following: “Project activities begin at waste collection and end at onsite biogas usage and the disposal of associated digester effluents at the point it exits the digester. The digester project is not subject to the invalidation of credits due to a violation of the dairy’s water permit based on application of post-digested manure to its own land.”

Global Warming Potential of Methane (Section 959802)

The Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (MRR) was recently updated (Effective January 1, 2018) to include an updated definition for Global Warming Potential (GWP).

"Global warming potential" or "GWP" means the ratio of the time-integrated radiative forcing from the instantaneous release of one kilogram of a trace substance relative to that of one kilogram of a reference gas, i.e., CO₂. For 2011 through 2020 data years, the GWP values used for emissions estimation and reporting are as specified in Table A-1 to Subpart A of Title 40, Code of Federal Regulations (CFR) Part 98 as published to the Federal Register on 10/30/2009.



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For data years 2021 and onward, the GWP values are as specified in the Table A-1 to Subpart A of Title 40 Code of Federal Regulations Part 98 as published to the CFR on 12/11/2014, which is hereby incorporated by reference.

CalBio urges ARB to consider adopting this definition to bring the Cap & Trade regulation up-to-date and consistent with the MRR, the IPCC 4th Assessment Report (2007), and ARB's GHG Emissions Inventory.

Sincerely,

Andrew Craig
Director of Greenhouse Gas Reduction Initiatives

