To: California Air Resource Board
From: Peter Weisberg, Senior Investment Manager, The Climate Trust
Date: March 11, 2016
Subject: Recommendations for 2016 Cap and Trade Regulation Amendments to change the application of "regulatory compliance" and procedures for invalidation for offset projects

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The Climate Trust was founded in 1997 as a nonprofit organization to assist new fossil-fueled power plants comply with the Oregon Carbon Dioxide Standard—the nation's first legislation to curb emissions of carbon dioxide. Since that time, The Climate Trust has committed $31.7 million to greenhouse gas offset projects, including investing in thirteen biogas projects throughout the United States. The Climate Trust has launched a new carbon fund currently investing in the construction of livestock digesters in return for partial ownership of the resulting carbon credits. In this way, The Climate Trust is financing projects based on their ability to generate and sell carbon credits.

As mentioned in our previous comments on invalidation, The Climate Trust 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 barrier to the much needed development of anaerobic digesters.

The Climate Trust recommends ARB rewrite Section 95973(b) of the regulation to create additional flexibility in the application of "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 related to, and in some cases 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. The Climate Trust 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, The Climate Trust 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 developer owns or services manure and at what point it no longer owns or services manure. If an enforcement action occurs due to the management of manure at a time when the digester developer does not own or service the manure, it should not be considered to be part of the digester's "project activities" and therefore should not trigger a violation of regulatory compliance at the offset project. Furthermore, 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 digester project activities. The Climate Trust recommends ARB 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.

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.

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

Most importantly, additional temporal flexibility is sorely needed. 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. The Climate Trust recommends ARB only 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.

The Climate Trust recommends ARB replace its current approach to invalidation with a mechanism that is similar to Quebec's Environmental Integrity Account.

Regulatory compliance issues are central to ARB's rigorous process of monitoring, verification, review by a third-party registry, and final review by ARB. The Climate Trust believes this procedure for credit issuance is sufficient to ensure the integrity of credits. After offsets are issued, offset project owners continue to face the risk that credits will later be invalidated. Quebec uses a fundamentally different approach to replacing credits later found to be invalid, the Environmental Integrity Account (EIA) mechanism. Under the EIA, all participants in the market pay into a buffer pool that can be drawn on in the event of invalidation. In this way, invalidation risk is shared with all market participates.

Thank you for your consideration. Please let me know if any additional information or clarification would be helpful.