



April 28, 2017

ELECTRONIC SUBMISSION

Clerk of the Board
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Solvay Chemicals Inc. Comments on Second 15-Day Amendment Text to Proposed Amendments to the California Cap-and-Trade Regulation

Dear Chair Nichols and Members of the Board:

Solvay Chemicals Inc. (“SCI”) is pleased to submit the following comments on the California Air Resources Board’s Second 15-Day Amendment Text to the Proposed Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanism (the “Cap-and-Trade Regulation”) issued on April 13, 2017. SCI supports the extension of the Cap-and-Trade Program beyond 2020 and allowing covered entities to meet a portion of their compliance obligation with offsets that reflect real and verifiable greenhouse gas emission reductions.

Background

SCI operates an active, underground trona mine and soda ash processing facility in Southwest Wyoming. Soda ash is a key ingredient in everyday products such as glass and baking soda. SCI is proud to have pioneered waste mine methane (“WMM”) technology by designing, building, and operating the first gob vent gas capture and incineration process at an operating underground mine in the United States. Since 2010, the project has evolved so that SCA can put the thermal energy contained in WMM to beneficial use in our mineral processing facilities.

SCI was an active participant in the development of the Compliance Offset Protocol Mine Methane Capture Projects: Capturing and Destroying Methane from U.S. Coal and Trona Mines adopted by the Board in April 2014. SCI’s WMM Project has generated Early Action Offset Credits and has been a registered WMM Project under the Mine Methane Capture Compliance Offset Protocol since 2015.

Offset Credit Invalidation

AB 32 requires that offsets used for compliance purposes must be real, permanent, quantifiable, verifiable, and enforceable. The Cap-and-Trade Regulation provides a mechanism for invalidating previously issued offset credits if an offset project is not in “regulatory compliance.” Cap-and-Trade Regulation § 95973(b). The language of the provision is unclear and this ambiguity has created significant uncertainty among Offset Project Operators and Authorized Project Designees, along with covered entities who use offsets to meet their compliance obligation.

In the current rulemaking, the Board is proposing to amend § 95973(b) with the addition of new paragraphs (1), (2), (3) that provide additional detail as to the period of time an offset project would be considered to be out of compliance for purposes of invalidating offset credits. SCI supports the proposed amendments which provide necessary clarification and certainty to Offset Project Operators and Authorized Project Designees. However, SCI would encourage the Board to expand the evidence an Offset Project Operator could provide to demonstrate the start and end date of any regulatory non-compliance.

Proposed Amendment to § 95973(b)(1)(A). With respect to the beginning date the Board will consider an offset project out of compliance, proposed § 95973(b)(1)(A) states that an offset project would be considered out of compliance either based on the date of the last inspection that did not show regulatory non-compliance or documentation from a local, state or federal regulator that “identifies the precise state date” of non-compliance with supporting evidence.

Given the need to provide evidence showing the date an offset project went out of compliance, the need for documentation from the relevant local, state or federal regulatory oversight body is duplicative and potentially problematic. The relevant local, state or federal regulatory oversight bodies, like the Board and the Board’s staff, have tremendous workloads and very limited resources to fulfill their many varied statutory obligations. SCI can foresee a situation where it is very difficult, if not impossible, for an Offset Project Operator or an Authorized Project Designee to secure the required documentation from the relevant local, state or federal regulatory oversight body thereby requiring that the start date be considered the last inspection or start of the reporting period – either of which may be grossly inappropriate.

Accordingly, SCI would propose that the Board allow an Offset Project Operator or an Authorized Project Designee to provide *either* a letter from a regulatory oversight body specifying the start date *or*, alternatively, evidence that indicates the date when the offset project went out of compliance (CEMS or other monitoring data, engineering estimates, satellite imagery, witness statements or other reasonable method). This could be accomplished by splitting § 95973(b)(1)(A)1. into two separate subparagraphs and adding an “or” so it would read as follows:

1. A letter ~~Documentation~~ from the relevant local, state, or federal regulatory oversight body that expressly identifies the precise start date of the offset project being out of compliance; or

2. ~~Documentation must include~~ Evidence of the start date such as CEMS or other monitoring data, engineering estimates, satellite imagery, witness statements, or other reasonable method to aid in the identification of the precise start date; or

Proposed Amendment to § 95973(b)(1)(B). Similarly, with respect to the end date of any regulatory non-compliance, proposed § 95973(b)(1)(B) requires documentation from the relevant regulatory oversight body showing the offset project is deemed to have returned to regulatory compliance or, in the absence of such documentation, the end of the reporting period will be considered the end of non-compliance. The Board should not impose this affirmative obligation on other regulatory bodies. Rather, SCI would propose that the Board accept other indicia that an offset project has returned to regulatory compliance. This evidence could include the data, information or certification filed by the Offset Project Operator or Authorized Project Designee at the relevant regulatory oversight body attesting that the offset project has returned to regulatory compliance or a written determination by the oversight body of compliance. SCI would recommend that § 95973(b)(1)(B) be amended to read as follows:

(B) For determining the end date when the offset project returned to regulatory compliance, the Offset Project Operator or Authorized Project Designee must provide documentation ~~from the relevant local, state, or federal regulatory oversight body stating~~ demonstrating that the offset project is back in regulatory compliance. This documentation can include a copy of the data, information, or certification the Offset Project Operator or Authorized Project Designee is required to provide to the relevant local, state, or federal regulatory oversight body in order for the oversight body to conclude the offset project is in regulatory compliance or a written determination by the oversight body as to the date when the offset project returned to regulatory compliance. ~~The date when the offset project is deemed to have returned to regulatory compliance is the date that the relevant local, state, or federal regulatory oversight body determines that the project is back in regulatory compliance. This date is not necessarily the date that the activity ends or the device is repaired, and may include time for the payment of fines or completion of any additional requirements placed on the offset project by the regulatory oversight body, as determined by the regulatory oversight body. If the relevant regulatory oversight body does not provide a written determination regarding the date when the project returned to regulatory compliance to the satisfaction of ARB, then~~ In the absence of such documentation or written determination, for purposes of the applicable Reporting Period, the Offset Project Operator or Authorized Project Designee must use the end of the Reporting Period for the end date when the offset project returned to regulatory compliance.

The Board should have confidence that the local, state or federal regulator over the offset project would exercise their enforcement authority if an Offset Project Operator or Authorized Project Designee files wrong or inaccurate data or information or fraudulently certifies that an offset project is in compliance. The Board can therefore rely on that data, information or certification for its purposes of establishing an end date for regulatory non-compliance.

Moreover, the Board has its own enforcement authorities to go after an Offset Project Operator or Authorized Project Designee who misleads them with respect to the beginning or end date for a period of non-compliance. The Board's enforcement power is in addition to that of the local, state or federal regulator of the offset project. Pursuant to the Subarticle 15 (Enforcement and Penalties), an Offset Project Operator or Authorized Project Designee has consented to the jurisdiction of the Board. At the same time, as a voluntarily associated entity, the Executive Officer may "suspend, revoke or place restrictions" on the Holding Account of an Offset Project Operator or Authorized Project Designee. SCI believes the Board's separate enforcement authority further ensures that an Offset Project Operator or Authorized Project Designee will accurately represent to the Board the commencement and end dates of any period of regulatory non-compliance for an offset project.

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SCI appreciates the opportunity to submit these comments and welcomes the opportunity to discuss these issues with Board staff if doing so would be constructive.

Sincerely,



Todd Brichacek
Senior Vice President & Site Manager
Green River Operations