

Climate Change Program
California Air Resources Board
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Sacramento, CA 95812

COMPLIANCE OFFSET DEVELOPERS ASSOCIATION

Contact:
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Date: March 11, 2016

Subject: Amendments to the California Cap and Trade Program

To whom it may concern:

The Compliance Offset Developers Association (CODA) appreciates the opportunity to comment on proposed changes to the California Cap and Trade Program. CODA is an association comprised of six of the leading developers of emission reduction projects designed for compliance in the California Cap and Trade program. CODA's membership has substantial experience in the implementation of projects designed to result in emission reduction offsets, and represents a majority of the offset projects listed with the program.

CODA believes opportunity for substantial program improvements exists with respect to the invalidation and regulatory compliance provisions.

Invalidation

CODA disagrees generally with both the utility and the necessity for the concept of invalidation as a whole, and particularly where the cause of invalidation is related to any form of regulatory non-compliance. **It is CODA's belief that the possibility of invalidation creates an inefficient market and increases costs for California's taxpayers, without serving a meaningful purpose with respect to the quantification of emission reductions resulting from the overall program.** Neither of the two invalidation investigations which have occurred related in any way to the actual quantification of the emission reductions credited. Instead, both investigations centered on regulatory compliance issues-issues which are under the jurisdiction of other regulatory bodies, and for which the parties involved in the investigations could have been subject to fines and other penalties for the alleged violations. ARB's imposition of the additional financial penalty of offset invalidation, in the case of the Clean Harbors investigation, invalidated credits which were "real, quantified, and verified", and therefore served only as an additional extra-jurisdictional penalty on top of any penalties imposed by the appropriate regulators for the particular issue. In summary, CODA believes that the program could be substantially streamlined by removing regulatory compliance as a cause of invalidation and returning regulatory enforcement to the jurisdictions charged with enforcing the regulations.

CODA would support an alternative approach to preserve program and environmental integrity. We note that other jurisdictions with both existing and potential links to California's program are taking other approaches that substantially reduce market risk and reduces costs.

If ARB should choose to retain invalidation provisions, there are several simple steps which could be taken to at least provide greater clarity and equitability:

- **The potential invalidation period should be limited to 3 years, and provisions regarding initial 8 year periods, as well as second regulatory verification procedures, should be removed** from the Regulation. During the course of verification and issuance, the project reporting is reviewed by a third-party verifier, a registry, and ARB. A second regulatory verification provides no additional value and substantially increases project and program costs. 8 years is an arbitrary

statute of limitations, and 3 years should be more than adequate to uncover and investigate potential nonconformities.

- CODA encourages ARB to build into the invalidation provisions **the ability to discuss potential invalidations with the developer in advance of launching a public invalidation investigation.** CODA believes that informal discussions could avoid the massive time and expense involved in a full investigation proceeding in some instances.

Regulatory Compliance

Regulatory compliance requirements are present both in the invalidation provisions as well as the issuance process for new offset credits. As stated above, it is our strong belief that regulatory compliance issues should be addressed by the regulators who have jurisdiction over the project activities and facilities. Regulatory compliance is an ongoing achievement that project operators strive for in their dynamic and complex operations. As such, occasional instances of noncompliance are not representative of malintent or poor environmental stewardship. Regulatory compliance is of course important in a general legal sense, but is ultimately irrelevant in a strict accounting and verification of the project activities for the purposes of quantifying emission reductions.

If ARB chooses to retain some form of regulatory compliance requirements, then we urge ARB to limit such requirements in the following important ways:

- **Regulatory compliance, both with respect to invalidation and to general reporting period eligibility, should only disqualify crediting during the exact period of time in which the project or facility is out of compliance-** the entire reporting period should not be disqualified because of a violation during a single day or short period of time which is quickly resolved. By tying the period of ineligible crediting to the period of noncompliance, the ARB would actually be providing an incentive for project operators to return to full compliance as quickly as possible. Removing a noncompliance interval from the emission reduction calculations within a reporting period is not difficult to quantify or verify, nor would it affect the integrity of the remaining emission reductions unencumbered by noncompliance. CODA suggests that the last sentence of Section 95973(b) be rewritten as follows:

*“An offset project is not eligible to receive ARB or registry offset credits for GHG reductions or GHG removal enhancements **achieved during the period of non-compliance** if the offset project is not in compliance with regulatory requirements directly applicable to the offset project.”*

- **Regulatory compliance requirements should be very narrowly defined and construed.** A clear logical test would to determine whether the presence of the offset project caused or contributed to the regulatory non-compliance- a “but for” analysis. For example, Were the project activities the proximate cause of the non-compliance, or is the project simply present at a facility that was not in compliance?
- During the verification process, **requirements for demonstration of regulatory compliance should be limited to only those actually under the control of the developer-** some example issues to consider-
 - For ODS projects, developers are currently asked to demonstrate that the refrigerants they purchased and later destroyed were recovered by an EPA-certified technician. This type of request for post-hoc, third party documentation is somewhat unheard of- there is no legal reason why the purchaser of refrigerants would have this documentation or should have asked for it.
 - Similarly, for ODS projects, there seems to be currently a move toward requirements regarding documentation for transportation companies involved in the transport of

refrigerants- how, and why, would we reasonably expect project developers to be responsible for the proper licensing of third-party service providers? As in any other business, developers should rely on the relevant authorities to enforce regulations on our third-party providers.

- **Rules for Rotation of Verification Bodies** should not disallow alternation. The language in Section 95977.1(a) has been applied in such a way as to disallow contracting with verification bodies after selecting a different verification body. We recommend altering the language of Section 95977.1(a) to specify that an offset project “shall not have more than six Reporting Periods verified by the same verification body or offset verification team member(s) within a 9 year span, unless otherwise specified in section...”

Thank you for your efforts to continue to improve this landmark program.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Townsend", with a long, sweeping flourish extending to the right.

Kevin Townsend, Blue Source LLC

CC: Jonathan Stack, A-GAS Americas
Charles Purshouse, Camco Clean Energy
Derek Six, ClimeCo Corporation
Brandi Webster and David Couchot, Diversified Pure Chem, LLC
Nick Facciola, Origin Climate Inc.