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Comments of Chapel Street Environmental, LLC

Re: Public Workshop on potential revisions to ARB's Regulation for the Mandatory Reporting of Greenhouse Gas Emissions and the Cap-and-Trade Regulation

 We have several comments concerning Section 95973 of the Regulations:

§ 95973. Requirements for Offset Projects Using ARB Compliance Offset Protocols states:

“… An offset project must also fulfill all local, regional, and national environmental and health and safety laws and regulations that apply based on the offset project location and that *directly apply to the offset project*, *including as specified in a Compliance Offset Protocol*. 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. …” (Emphasis added).

1. The loss of all credits for an entire reporting for any violation occurring during the reporting period, no matter how small or limited temporally is unduly harsh and punitive.  At most, a project should only be at risk for loss of credits during the portion of the reporting period that the project is out compliance.
2. The language does not differentiate between administrative violations and non-administrative events.  Administrative reporting violations are fairly common for a number of reasons, and many agencies treat these lapses as *de minimis* violations and commonly do not pursue enforcement actions.  The regulation should provide sufficient flexibility for staff and project operators with regard to violations that are largely administrative in nature so as not to unduly punish inadvertent and technical errors.
3. The definition of “… directly apply to the off-set project, including as specified in the Compliance Offset Protocol …” could include any activity within the project “boundary”. Project boundaries within the agricultural livestock protocol can include large parts of farming operations that may be outside the control of the Off-set Project Operator.  From a technical perspective the protocol captures the parts of the farming operation that produce, process and discharge manure waste streams, however, while these activities could be construed to “… directly apply to the off-set project …” the project operator may only have control over issues related to the digester or just a fraction of the project boundary.  Project operators should not be penalized for events beyond their control.  The regulation should have sufficient flexibility to recognize the portion of the boundaries that the operator has control over and which directly apply to the capture and destruction of anthropogenic gases.