

**To:** California Air Resource Board

**From:** N. Ross Buckenham, California Bioenergy LLC (“CalBio”)

**Date:** March 11, 2016

**Subject:** Comments Re: 2016 Cap and Trade Regulation Amendments to the application of “regulatory compliance” requirements

Thank you for the opportunity to submit comments related to CARB’s 2016 Cap and Trade Regulation Amendments. As a project developer focused on working with dairies to build and operate methane capture from manure digesters we offer comments focused on the offset program.

CalBio supports the work of ARB to ensure that offset projects meet local, regional and national environmental and health and safety laws, however we believe the current requirements for regulatory compliance create a significant barrier to the much needed development and deployment of anaerobic digesters. We offer these suggestions to assist the ARB to achieve its goal of having 200 dairy digesters installed on California’s largest dairies over the next several years as a key component in reducing California’s short lived climate pollutants.

We strongly suggest three adjustments to ARB’s offset program regulations, which will substantially encourage the deployment of environmentally beneficial digester projects.

1. **For livestock protocol projects the “directly applicable” regulatory compliance envelope should relate only to the methane capture and destruction operations (“Project Activities”).**

Regulatory violations impact issuance of ARB offset credits if they are caused by activities directly applicable to Project Activities.

For dairy anaerobic digester projects, we believe it would be a mistake for “Project Activities” to be broadly interpreted to cover the **dairy farm operations** (e.g. the milking parlor, the free-stall operations, calf growing, silage and corn farming, manure collection and manure disposal amongst other operations) PLUS the **methane collection and destruction operations**.

We build, own, operate and raise capital to install methane mitigation projects on dairies. Often a new entity is established bringing in the investors, lenders and developer to build and operate the methane capture project, and this company has no control over dairy operations. The project costs are very high and the future value of the CCOs or the LCFS credits is a critical element in the project’s financing.

The regulatory risk of something outside the control of the project operator and outside the project activity boundary causing loss of carbon offset credits or preventing an annual verification from occurring is too significant for any lender, investor or developer to accept.

To support the financing and adoption of anaerobic digesters on dairy farms we recommend the California Air Resource Board specify a definition for the “Project Activities” to be those incremental activities added to the dairy solely for the purpose of collecting and destroying the fugitive methane.

2. **Limit a violation of environmental regulatory compliance to those enforcement actions that are a result of material adverse environmental impacts.**

Only violations which result in material adverse environmental impacts should result in denial of otherwise properly verified ARB offset credits. Administrative violations and violations which do not result in material adverse environmental impacts should not prevent issuance of ARB offset credits

The offset program should give the California Air Resource Board the flexibility to determine which enforcement actions are both material and result in an adverse environmental impact. 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.

We understand the local air, water and county regulatory agencies issue notices of violation that they generally consider, if addressed in a timely fashion with fines paid, not to be examples of material regulatory violations. We would ask ARB to discuss this matter with its own enforcement officers at the air district level for confirmation.

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

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 results in a significant reduction in revenue to these already financially marginal projects dependent on the greenhouse gas benefits.

We suggest that for the period of a violation with a material adverse environmental impact to the project exclude credits created for that same period in which the violation is active. For example, a violation that occurs and is remedied within one month should result in the elimination of any credits for that one-month period or fraction thereof, not for the entire reporting period, typically a year.



Plugging dairies into a renewable future.

Thank you for your consideration of these suggestions on how to improve the offset program.

Sincerely,

A handwritten signature in blue ink, appearing to read "N. Ross", is written over a light blue horizontal line.

N. Ross  
Buckenham  
CEO