

Via: Electronic Submission

October 22, 2018

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

Re: Proposed Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms

Dear Board Members and CARB Staff:

The following comments are respectfully submitted on the California Air Resources Board's (CARB) proposed amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms, published September 4, 2018.

We wish to provide comment on the proposed changes to the regulation regarding circumstances where compliance offset projects cannot demonstrate fulfillment of all local, regional, state, and national environmental and health and safety laws and regulations for some portion of a reporting period.

The relevant text from the proposed amendments at §95973(b)(1)(B) states:

New Jersey

California

Georgia

Illinois

Mississippi

New York

Puerto Rico

Canada

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 that the offset project is back in 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 regulatory oversight body does not provide a written determination regarding the date when the project returned to regulatory compliance to the satisfaction of ARB, the Offset Project Operator or Authorized Project Designee may provide documentation to ARB clearly identifying the date the project returned to regulatory compliance. Documentation should be dated, official correspondence, with the relevant regulatory agency, such as a consent decree, inspection report, or other such documentation, identifying that the project has returned to regulatory compliance. 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, and the Offset Project Operator or Authorized Project Designee is unable to provide documentation clearly identifying the date the project returned to regulatory compliance to the satisfaction of ARB, then 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.

It is common that regulatory bodies with jurisdiction over an offset project will issue notices of violation retroactively. Further, clear communication from the regulatory body documenting dates of non-compliance is not available in all instances. These factors complicate the determination of regulatory compliance for facilities hosting offset projects, in particular identification of the specific date and time that a facility falls out of and returns to compliance.

For these reasons, we support the proposed revisions above because they provide means for ARB staff to determine dates of non-compliance when notification from the regulatory body lags the offset project reporting and verification process or is non-existent altogether. It is our interpretation that under the proposed amendments cited above, a facility could provide monitored data to ARB to demonstrate when offset project operations fulfilled or did not comply with relevant environmental and health and safety laws and regulations. Such documentation provided by the offset project facility would allow ARB to make a determination about the specific period of non-compliance during which the offset project is ineligible to receive credits.

Compliance offset projects play a crucial role helping ARB achieve its emission reduction targets for the State as well as incentivizing GHG emission reduction economy-wide. The proposed amendments to determining dates of non-compliance are necessary in order to reduce uncertainty amongst potential market participants and provide confidence to Offset Project Operators that they will be able to assess dates of non-compliance at the time of verification. §95973(b)(1)(B) as currently written potentially discourages participation in the Compliance Offset Program from facilities located in jurisdictions that do not routinely provide correspondence or documentation explicitly stating the dates of facility non-compliance. The proposed amendments above would create a level playing field for all offset project facilities wishing to participate in the Compliance Offset Program.

How the proposed amendments pertain to an ODS destruction facility. Under the Compliance Offset Protocol: Ozone Depleting Substances Projects (November 14, 2014), a destruction facility must demonstrate regulatory compliance for the duration of a destruction event. Any non-compliance at the facility that coincides with a destruction event may invalidate the offsets associated with the event. Because destruction facilities participating as offset project hosts also destroy numerous non-ODS material during their course of business, the potential for non-compliance is omnipresent and thus a clear procedure is needed to determine dates of non-compliance if a violation is discovered.

Non-compliance at such facilities is typically determined from continuously monitored emissions data, as compiled in facility Title V emission reports, and submitted to the relevant regulatory agency on an ongoing basis. Regulatory bodies may aggregate violations from reported emissions exceedances into a single notice issued many months after such exceedances occurred and potentially after relevant offset project reporting and verification deadlines have passed. Further, such violations may not explicitly identify dates

and times of non-compliance complicating the determination of whether any overlap ODS destruction events.

In this context, it is nearly impossible for the destruction facility to demonstrate regulatory compliance consistent with the standard that “the offset project is deemed to have returned to regulatory compliance” when “the relevant local, state, or federal regulatory oversight body determines that the project is back in regulatory compliance.” We support the proposed amendments to §95973(b)(1)(B) as a solution to this issue.

If accepted, the proposed amendments would allow an ODS destruction facility to provide ARB with air emissions reports provided to local regulatory bodies to demonstrate conformance (and non-conformance) with jurisdictional air quality and facility permit requirements.

If our interpretation of the proposed amendments is incorrect, we request that CARB include additional language in the proposed revisions or provide written clarification to confirm a process such as that outlined above for a destruction facility to demonstrate regulatory compliance would be permissible. The following sentence in the amendments could be augmented to explicitly identify Title V reporting as additional evidence that could be submitted to ARB to demonstrate that a facility has returned to regulatory compliance: *“Documentation should be dated, official correspondence, with the relevant regulatory agency, such as a consent decree, inspection report, or other such documentation, identifying that the project has returned to regulatory compliance.”*

Such revision will provide clarity to facilities offering ODS destruction services to the market and help to ensure that any destruction events undertaken and the associated offsets generated meet ARB’s standards for integrity in the Cap and Trade and Compliance Offset Programs. We encourage ARB’s efforts to make the Compliance Offset Program more accessible to market participants and welcome the proposed amendments in furtherance of this objective.

First Environment appreciates the opportunity to provide these comments on the proposed amendments to the Cap and Trade Regulation. If ARB staff has any questions regarding these comments, First Environment would be pleased to discuss the concerns raised in these comments in greater detail.

Sincerely,

FIRST ENVIRONMENT, INC.

A handwritten signature in black ink, appearing to read "Jay Wintergreen", written in a cursive style.

Jay Wintergreen
Senior Associate