



BP America, Inc.

Ralph J. Moran
1201 K Street, Suite 1990
Sacramento, CA 95814
(916) 554-4504

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Via Email

Rajinder Sahota
California Air Resources Board
1001 I Street, P.O. Box 2815
Sacramento, CA 95812

Subject: BP Comments on the 15 Day Package for Amendments to the Cap and Trade Regulation, as Posted on 10/2/14

Dear Rajinder:

BP America, Inc. submits these comments on the proposed amendments to the Cap and Trade Regulation as contained in the 15-day package of changes posted by CARB on October 2, 2014. Our comments are focused on the regulatory language around offset invalidation and on the ODS Destruction Protocol. Our comments also refer to the existing language in what we believe to be the most current version of the cap and trade regulation – which is an “unofficial electronic version” dated August 2014.

BP shares the view that a robust and liquid market for offsets is critical in order to provide cost containment for the cap and trade program. We also share CARB’s objective that all offsets are real and verifiable. We believe there are significant opportunities to improve the regulatory language that deals with Requirements for Offsets Projects (Section 95973), Invalidation of Offset Credits (Section 95985) and the related sections of the offset protocols – specifically the ODS protocol. Taking advantage of these opportunities would bring clarity and consistency to the regulation – and would focus CARB’s resources on material risks concerning offset validation.

The language contained in the Cap and Trade Regulation dated August 2014 clarifies the compliance requirements for offset projects (Section 95973) making it clear that the project must comply with the relevant health, safety and environmental regulations that “directly apply to the offset project”. The changes also made it clear that any protocol specific compliance requirements must be followed, such as those in the ODS protocol which extends compliance to the destruction facility.

However, the provisions relating to invalidation of CARB offset credits (Section 95985) remain inconsistent with the requirements above and suggests any non-compliance with

relevant health, safety and environmental laws could lead to invalidation. The inconsistency between Section 95973 where compliance is directly related to the project activity and Section 95985 where compliance is not limited to the project activity will continue to make it difficult for developers to interpret and rely on the regulations and for CARB to provide consistent application of the rules.

BP understands the intention of CARB is to ensure compliance of the offset project during the reporting period for all project types. We also appreciate the issues associated with large waste disposal facilities that may be destroying ODS as part of their waste stream, hence the Early Action offset protocols and the first release of the Compliance Protocol have extended the compliance for ODS projects to the entire facility. We understand the need for CARB to protect the integrity of the program and the environmental integrity of the offset credits. As such, we offer the following recommended amendments to the regulation.

For reference, we include the existing regulatory language (dated August 2014) for Section 95973:

Regulation Section 95973: Requirements for Offset Projects Using ARB Compliance Protocols

(b) Local, Regional, and National Regulatory and Environmental Impact Assessment Requirements. An Offset Project Operator or Authorized Project Designee must fulfill all local, regional, and national requirements on environmental impact assessments that apply based on the offset project location. In addition, 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.

The text shown below is the proposed Cap and Trade Regulation and ODS Protocol in the 15-day package with BP's recommended amendments included. Proposed additions are underlined and deletions shown as strikethrough.

Regulation Section 95985: Invalidation of ARB Offset Credits

(c) (2) The offset project activity and implementation of the offset project was not in accordance with ~~all~~ local, state, or national environmental and health and safety regulations during the Reporting Period for which the ARB offset credit was issued as required under 95973 (b); or

Compliance Offset Protocol Ozone Depleting Substances Projects Section 3.8: Regulatory Compliance

(a) An offset project must meet the regulatory compliance requirements set forth in section 95973(b) of the Regulation.

(b) The regulatory compliance requirements that directly apply to the project under 95973 (b) apply to the include for a project apply to the collection, recovery, storage, transportation, mixing, and destruction of ODS, including disposal of the associated post-destruction waste products. The regulatory compliance requirements extend to the destruction facility during the time ODS destruction occurs.

(c) The regulatory compliance requirements in relation to 95973 (b) and 95985 (c) (2) extend to the destruction facility in relation to significant non-compliance with local, state, or national environmental and health and safety regulations (as defined by the relevant agency) during the Reporting Period.

The rationale for the changes to Section 95985 is to ensure that as a starting point, for all project types, the compliance requirements are consistent between the requirements for offset projects (Section 95973) and invalidation (Section 95985). This would clarify an important point that Section 95973 covers the entire project including invalidation rather than invalidation being a separate part of the process. This results in invalidation provisions (Section 95985) applying to compliance requirements that are directly applicable to a project activity, unless the protocol extends the compliance scope.

The rationale for the changes to the ODS protocol is to make a clear distinction between the two types of violations:

1. A non-compliance that is directly applicable to the ODS destruction project that occurred during the Reporting Period and either was known prior to issuance (captured under Section 95973 (b)) or was determined after issuance (captured under Section 95985 (c) (2))
2. A non-compliance that is **not** directly applicable to the ODS destruction project that occurred during the Reporting Period and either was known prior to issuance (captured under Section 95973 (b)) or was determined after issuance (captured under Section 95985 (c) (2))

Where there is a violation that is **not** directly applicable to the project, there should be some form of qualifier to ensure that minor violations that do not affect the environmental integrity of the credits or the integrity of the emission reductions do not lead to invalidation of credits.

The proposed amendments would provide an improved framework for managing compliance across all project types while maintaining the extended compliance scope for ODS. A minor non-conformance at an ODS destruction facility that is not applicable to the

project would not trigger the invalidation process, providing a more efficient process for CARB with a focus on significant violations.

In order for offsets to provide their full cost containment benefit, it is vital that the rules around offset requirements and invalidation strike the proper balance between clarity, consistency, reasonableness and the ability to ensure that offsets are real and verifiable. Offset project developers, compliance entities and the market must have a clear understanding of the requirements for offset projects and be able to clearly understand the process around invalidation investigations and risk. Moreover, the cap and trade program would benefit from a regulation that allows regulators to focus on significant and material risks and that more clearly defines the process for offset invalidation investigations. We believe incorporation of the proposed amendments contained in this letter would provide valuable clarity, consistency and focus to the regulation in this regard.

We would be happy to discuss the above recommendations in more detail. Please don't hesitate to contact me should you have questions regarding this correspondence.

Sincerely,

Ralph J. Moran
Sr. Director, Government & Public Affairs
BP America, Inc.

cc (via email): Richard Corey
Edie Chang
Virgil Welch

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