

Climate Change Program
California Air Resources Board
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COMPLIANCE OFFSET DEVELOPERS ASSOCIATION

Contact:
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Date: September 19th 2016

Subject: Proposed Amendments to the California Cap and Trade Program

Dear Chairman Nichols:

The Compliance Offset Developers Association (CODA) appreciates the opportunity to comment on the proposed amendments to the California Cap and Trade Program as described in the Discussion Draft dated August 2, 2016.

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. As well as managing existing projects, members are actively seeking out and deploying capital and resources into new project opportunities with the aim of generating offsets for use in the 3rd and post-2020 compliance periods.

Broadly, CODA supports the proposed modifications to the offsets program. The changes will help to further refine and clarify offsets regulations and build on the largely successful, now established, offset regulatory framework. The proposed modifications to regulatory compliance provisions in particular will help to incentivize certain project types, in the case of non-conformances, to return to conformance as quickly as possible. For these project types, the change also makes equitable a penalty which CODA has long argued is out of proportion to the extent of a non-compliance. As we note below, this modification should be extended to all project types to provide fair treatment across all offset projects similar to how ARB has designed the regulations in the past.

Our comments on the proposed amendments relate to the offsets and CITSS sections of the regulation. One of the purposes of the proposed amendments is to improve the efficiency and operability of the offsets program and to that end we also provide some suggestions on improvements we believe could be made but which may require regulatory or protocol changes. We provide comments under similar headings to what ARB used in its Initial Statement of Reasons.

Early-Action

Portions of the amendments are proposing to remove many of the references to the Early-action offsets program now that the deadline for registering early-action projects has passed (or in the case of rice-cultivation will soon pass). CODA would like to extend its thanks to ARB for establishing and implementing the process for recognizing offsets from early-action projects and thus rewarding actions taken by first-movers in the offsets space. CODA also appreciates the efforts expended by ARB staff to work through the instances where further clarification and guidance was required to process early-action projects.

Modifications to Reporting Requirements

CODA supports the proposed modification to reporting requirements but requests that ARB add an additional provision allowing for a project to submit a zero credit reporting statement in the event that the project has not been running / operating for the majority of a reporting period. Projects which operate over a 10-year crediting period may in some cases temporarily shut-down or modify operations, resulting in zero offsets being generated (or a minimal number of offsets being generated). Under the current regulations it is not clear how this situation should be handled. It seems to make little sense to require an OPO to undertake a verification (and pay costs) if a project is not operating or trying to restructure. For projects that are already registered, having the option to forgo the verification (without having to verify) whilst still maintaining future eligibility would be beneficial, it would also reduce unnecessary work reviewing OPDRs and verification reports where zero offsets are being claimed.

Modifications to Regulatory Compliance

CODA largely supports the proposed modifications and believes that aligning the period of non-compliance with the period of non-crediting appropriately accounts for instances where a project is out of regulatory compliance. It will also incentivize project owners to resolve any non-compliance issue as quickly as possible.

CODA encourages ARB to extend this proposed modification to all project types. Page 56 of the Statement of Reasons states that "Other project types cannot be included in this proposal because there is no quantification mechanism within the applicable protocols to identify and remove crediting of partial Reporting Periods". CODA disputes this blanket assertion. We believe that ARB should maintain the flexibility to allow forestry, ODS, and Rice Cultivation projects the *opportunity to demonstrate* that a regulatory non-compliance period limited to a particular time period during the reporting period did not impact the entire reporting period's achievements. For example, in ODS projects, CEMS data would clearly delineate the amount (mass) of ODS fed in and destroyed during any given brief period of non-compliance, and that amount (mass) could be removed from the reporting period. Likewise, if a forestry project was found to be out of regulatory compliance, the carbon sequestration represented in the forest growth and the wood products generated (if any) during the period of non-compliance could be subtracted from the reporting period. This can be accomplished to a high degree of accuracy by accounting for the precise growth and harvesting activities that may have taken place during a period of non-compliance. Furthermore, all offset project types should be given the same regulatory treatment wherever possible, consistent with previous changes to the regulations (for example, when responsibility for invalidated forest carbon offsets shifted from the Forest Owner to the holder of the credits in the 2014 regulatory amendments in order to provide equivalence across all protocols).

While most of the new language proposed in Section 95973(b) adds clarity and specificity to indicate when a project will or will not be eligible to receive offset credits, the statement, "whether enforcement action has occurred is not the only consideration ARB may use in determining whether a project is out of regulatory compliance," would appear to undermine the additional clarity by making every potential regulatory compliance issue - whether or not any official regulatory notification has been received by the OPO - subject to interpretation by ARB staff. OPOs and APDs need to have a clear understanding of the regulatory compliance requirements so they may objectively evaluate any potential regulatory issue and manage the resolution prior to reporting and verification. This type of subjective language will burden ARB with numerous case-by-case interpretations best handled by local and state entities and may allow ARB staff in some cases to override the appropriate judgement of local regulatory oversight

bodies. Moreover, it opens the door to discretionary determinations and increases the likelihood of inconsistent rulings on potentially identical scenarios over time.

While OPOs, APDs and VBs will undoubtedly evaluate a project's regulatory compliance status through a review of any and all notifications issued by the applicable regulatory oversight bodies, the proposed language in Section 95973(b) allows ARB staff to consider other factors beyond what is considered official. For example, ARB staff may believe that enforcement action is *likely* to occur, *should* occur, or may simply deem a project out of compliance even in the absence of such notice by the applicable oversight body.

We ask that ARB strike the language stating, "whether such enforcement action has occurred is not the only consideration ARB may use in determining whether a project is out of regulatory compliance," so that OPOs and APDs can navigate the non-compliances in a manner consistent with their governing jurisdictions and a systematic, repeatable, and predictable fashion, while reducing the amount of time that ARB staff would spend making case-by-case interpretations.

Modifications to Verification Requirements

CODA supports the proposed modifications, particularly the change to verifier rotation, which would permit greater flexibility by allowing a verifier to verify consecutive reporting periods.

One change here which could allow all parties to a verification a little more time to consider an ARB request, would be to extend the time period for the verification body to respond to a request to change an offset verification report. The proposed modifications state that a verifier will have 15 calendar days to respond to any change requests. This should be extended to at least 30 days to allow sufficient time for the verification body to interact with all of the necessary parties (OPR, OPO, APD etc..), for any changes to the report to be reviewed within the verification body and by the OPO / APD, and if appropriate, to further discuss any changes with ARB. In the experience of CODA members, 15 days is too short a time period for the above to occur, especially if the request from ARB is unclear or requires the provision of further information.

Modifications to Issuance Requirements

CODA supports the changes to allow APDs to request issuance of offsets provided authorization has been received from the OPO. This should help to streamline the issuance process.

CITSS Changes

CODA supports the modifications which would exempt OPOs from the corporate disclosures requirement. For ARB and OPOs this should reduce work load while still maintaining ARB's ability to review corporate disclosures if required. We would like ARB to clarify that existing OPOs who have already made corporate disclosures will be able to opt into this change to avoid having to continually disclose any changes to their corporate structure going forward.

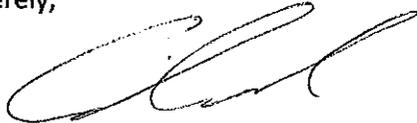
Additional Changes

CODA has continually advocated for increased transparency in regards to how ARB staff review projects, where projects are in the review process and making it easier for market participants to review ARBOC issuance and project future issuances. For example:

- We would like to see transparency around ARBs bi-weekly meetings with OPRs. This could take the form of inviting OPOs / APDs to part of the call where any non-project specific updates are discussed and/or publishing meeting minutes;
- Provide an easily accessible and searchable format showing project and issuance information and latest project information. The current format, whereby parties need to manually search three different OPRs which display different information and transcribe information manually from ARBs website makes this process challenging; and
- Provide further information on the project review process. ARB appears to have a process for reviewing documentation / project issuance requests. If all or part of this process were able to be made public then OPOs, APDs and verifiers would be better able to prepare information so that ARB could review more efficiently.

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

Sincerely,



Charles Purshouse, Camco International Group, Inc.

CC: Jonathan Stack, CoolGas, Inc.
Nick Facciola, Origin Climate Inc.
Derek Six, ClimeCo Corporation
Paul Caponigri, Diversified CPC International
Kevin Townsend, Blue Source, LLC