

December 15, 2014

Chair Mary Nichols
California Air Resources Board
1001 I Street
Sacramento, CA 95812

RE: Comments on Proposed Revisions to U.S. Forests Projects Compliance Offset Protocol and Verifier Guidance of Regulatory Compliance

Dear Chair Nichols:

Ruby Canyon Engineering, Inc. (RCE) appreciates the opportunity to provide comments on the California Air Resources Board's (ARB) proposed Regulatory Review Update to the Compliance Offset Protocol (COP) for U.S. Forest Projects that was proposed on October 28, 2014. In addition, RCE would like to comment on further verifier guidance and clarification of regulatory compliance requirements for all Compliance Offset Protocols under California's Global Warming Solutions Act (AB 32). We would like to thank the Board in advance for the time and effort it will invest in considering our comments.

RCE is a leading verifier and consultant in North American GHG markets as well as an accredited verification body (H2-12-008) under the California Cap-and-Trade Program. In addition, the founders of RCE, Michael Coté and Ronald Collings, are internationally-recognized coal mine methane (CMM) experts who have been working to advance economically viable CMM projects on behalf of the U.S. EPA's Coalbed Methane Outreach Program since 1998.

RCE broadly support ARB's proposed Regulatory Updates. However, RCE would like to comment on the following items:

- 1. U.S. Forests Project Compliance Offset Protocol (Protocol) revisions**
 - a. Modified methods for establishing minimum baseline level (MBL) for IFM projects with initial carbon stocking (ICS) above Common Practice (CP) (Protocol Chapter 5.2.1(d)(1)).
- 2. Regulatory Compliance requirements for all Compliance Offset Protocols**
 - a. Clarify "project activities" definition
 - b. Violation threshold

1. Modified methods for establishing minimum baseline level (MBL) for Improved Forest Management (IFM) projects with initial carbon stocking (ICS) above Common Practice (CP) (Protocol Chapter 5.2.1(d)(1))

The new method for determining minimum baseline level (MBL) for IFM projects with initial carbon stocking (ICS) above common practice (CP) greatly increases the effort required on the part of verification bodies to confirm the MBL for such projects. To date, these projects represent the majority of projects verified under the protocol. The increased verification effort stems from the need to confirm age class

distribution, carbon stocking levels and basal area retention standards on a forest owners landholdings outside of the project boundary. Furthermore, unlike the guidance provided in Chapter 8 of the protocol for verifying inventories within the project area, no guidance is provided on acceptable methods of verifying these items outside of the project area - possibly leading to a disparity in effort applied across verification bodies to review these items. Verifying these items on lands outside of the project boundary increases the scope of verification, in some cases significantly.

RCE proposes that the previous Protocol's method of establishing MBL for IFM projects with ICS above CP (equation 6.5 of the current Protocol) should be maintained and incorporated into the revised Protocol in place of equation 5.5. As both the existing and proposed protocols already require "sustainable long-term harvest practices" (certification, renewable long-term management plan, etc.) be maintained on all land holdings controlled by a Forest Owner, concern over potential unsustainable harvests occurring outside a project's bounds should be adequately addressed without the introduction of further complexity in determining a project's baseline.

2. Regulatory Compliance requirements for all Compliance Offset Protocols

The recent final decision of the Clean Harbors investigation has introduced a great deal of uncertainty to the market as to how regulatory compliance will be applied to all project types. As a verification body, RCE understands the burden of reviewing and confirming regulatory compliance for projects. To that end, RCE requests ARB provide additional guidance to further clarify the required process for determining regulatory compliance. We believe additional guidance will benefit all COPs, but will be especially important for all Mine Methane Capture (MMC) projects given the large number of citations and violations that are issued by MSHA at U.S. mines each year. RCE offers the following suggestions:

Clarify "Project Activities" Definition

RCE realizes that there are a variety of potential methods for limiting the scope of regulatory compliance to "project activities," as defined in §95973(b). RCE is supportive of any method that reasonably reduces the scope of regulatory compliance to project activities, while still ensuring that the environmental integrity of the offset project is maintained.

From a verification perspective, without a clear boundary for project activities, the verification process for confirming regulatory compliance is extremely difficult and will become untenable for MMC projects. Using the example of an MMC project – if a verification body must review all notices from regulatory oversight bodies (citations, alleged violations, etc.) for the mining activities where a project is located, it would require an exceedingly time consuming process while greatly increasing the cost and duration of verifications. A single mine can easily have over 100 citations/violation per year; in fact, MSHA issued over 80,000 citations/violations to U.S. mines in 2012 alone. We believe a full review of regulatory compliance at coal mines is beyond the scope of verification for an offset project.

In addition, specific guidance on what project activities to include within the scope of review would provide much needed certainty to verifiers during our verification process. Given the large number of potential citations/violations at mines and, it will be extremely difficult for verification bodies to correctly

interpret what violations are directly applicable to project activities without additional guidance from ARB. While our professional judgment might lead us to one interpretation, this interpretation might not concur ARB's. If clear guidance is not given on what is directly applicable and how project activities are defined, RCE is concerned that expert judgment by us (non-legal experts) will lead to incorrect determinations in addition to frequent requests for guidance and clarification from OPRs and ARB on a case-by-case basis.

Violation Threshold

We are supportive of the establishment of a minimum threshold for citations and violations that would cause an offset project to be out regulatory compliance. As noted above, mines are frequently cited with violations, many of which are minor in nature. Examples of minor violations include record keeping errors, missed inspections on fire extinguishers, unclean bathrooms, or missing lock washers on mine equipment. None of these items cause significant environmental harm or would impact the integrity of any offset credits generated, but all would be official violations.

Even if we assume that the boundary for project activities is clarified, for example, to remove mine operations, there could still be minor violations that occur related to project activities. We believe items such as these should be excluded from what can cause an offset project to be out of regulatory compliance. The removal of these minor items from the verification review process would improve verification efficiency and save costs. In addition, we also view this issue as one where there will be numerous requests by verifiers for guidance to OPRs and ARB if no clarifications are issued beforehand.

Thank you again for the opportunity to provide our recommendations on these important issues.

Sincerely,



Michael Coté
President
Ruby Canyon Engineering, Inc.

cc:

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