

September 19, 2016

California Air Resources Board Members and Staff
Air Resources Board, California Environmental Protection Agency
1001 I Street
Sacramento, CA 95812

RE: Comments on Proposed Amendments to Cap-and-Trade Regulation

Dear Chair Nichols and Members of the Board:

Ruby Canyon Engineering, Inc. (RCE) appreciates the opportunity to provide comments on the California Air Resources Board's (ARB) proposed amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation (Regulation). RCE is a leading verification body (VB) and consultant in North American GHG markets as well as an accredited verification body under the California Compliance Offset Program (H2-16-008) and Mandatory GHG Reporting Program (H-15-168). We would like to thank the board and staff for the time and effort it will invest in considering our comments.

§ 95973(b) Regulatory Compliance

RCE is concerned about the addition of the language "although whether such enforcement action has occurred is not the only consideration ARB may use in determining whether a project is out of regulatory compliance." The rationale provided in the Initial Statement of Reasons is that "ARB has the discretion to find regulatory noncompliance where noncompliance exists but has not been subject to enforcement action by a regulatory oversight body."

This language creates significant large uncertainty and risks for offset project operators (OPOs) as well as VBs.

Our job as a VB is to confirm whether a project has been subject to any violations or enforcement actions during the reporting period. The verification of regulatory compliance includes contacting the applicable regulatory oversight body, typically state environmental agencies. RCE and other VBs do not conduct full environmental compliance audits, which is beyond the scope of offset verification services. This is a clear verification standard - VBs confirm regulatory compliance with the appropriate agency, and we do not make compliance determinations ourselves. This standard clearly defines, for both VBs and OPOs, the process to confirm the regulatory compliance of a project.

If the amended Regulation allows ARB the discretion to make its own determination of regulatory compliance (above and beyond the applicable regulatory oversight body), this creates an unclear and inconsistent regulatory compliance standard. For example, if ARB decides that a project has violated its

permit (even if the oversight body has not issued a violation), it is impossible for the VB to verify the project to the requirements of §95973(b) without sending all project environmental and health & safety information to ARB for a compliance review.

RCE is concerned about whether it would be possible to verify against the revised regulatory compliance language. RCE would not be comfortable signing a verification statement unless ARB has confirmed its determination of regulatory compliance for a project's reporting period. If ARB does not confirm that a project is in regulatory compliance, it is unclear how a VB would be able to verify that a project has met the requirements of § 95973(b).

RCE encourages the removal of this language.

§ 95973(b)(1) Regulatory Compliance

RCE believes that **Forestry, ODS and Rice Cultivation** projects should also have the ability to demonstrate whether regulatory noncompliance is limited to a certain time period. As a VB, we see no issue with verifying the required information for these projects types in addition to livestock and mine methane capture. It is not clear why these project types have been excluded, and RCE believes that all project types should be reviewed similarly for regulatory compliance.

§ 95977.1. (a) Rotation of Verification Bodies

RCE fully supports the more flexible "six out of nine" rotation requirement for VBs. This helps ensure that conflict of interest provisions are maintained, while also allowing more flexibility for OPOs and VBs. RCE also supports the clarification that commencement dates determine "consecutive projects" for ODS projects.

§ 95977.1. (b) Rotation of Verification Bodies

RCE supports allowing verification services to begin 10 calendar days after the submittal of the NOV and COI forms to ARB and the OPR. However, RCE would like to request clarification on the site visit 30 calendar day wait period. As the NOV submittal and COI approval will occur on different dates: **Is it 30 calendar days from whichever occurs later 1) NOV submittal or 2) COI approval by ARB/OPR?**

§ 95977.1. (b)(3)(D)(1) and (2) Site Visit Requirements

RCE supports allowing certain activities to be conducted as part of a desk review and not at the actual site visit.

§ 95977.1. (b)(3)(R)(8)

RCE would like to request that the length of time to submit a revised OVR and OVS to ARB/OPR be **increased to 30 calendar days**. While in most cases the proposed 15 calendar days would be sufficient for a VB response, issues sometimes require additional information from OPOs which can require

additional time before a resubmittal of the OVR and OVS. In addition, if a request by ARB/OPR occurs during vacation by VB staff or OPO staff, meeting the 15 calendar day requirement could be difficult.

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

Sincerely,



Zach Eyer
Vice President, Greenhouse Gas Programs
Ruby Canyon Engineering, Inc.