



# CLIMATE ACTION RESERVE

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October 17, 2014

Richard Corey, Executive Officer  
California Air Resources Board  
1001 I Street  
Sacramento, CA 95814

Dear Executive Officer Corey:

The Climate Action Reserve (the "Reserve") is pleased that the California Air Resources Board (ARB) has issued a Preliminary Determination in connection with the Clean Harbors Regulatory Compliance Investigation, and appreciates the opportunity to provide comments.

This determination is the first instance in which ARB has opined on the matter of regulatory compliance and so ARB is setting a precedent for how future determinations regarding regulatory compliance should be made. As such, it is important that project developers, verifiers, and offset project registries have a clear understanding of this decision and clear guidance on how to evaluate such questions in the future.

Based on our understanding of the Preliminary Determination, it appears that ARB is interpreting regulatory compliance in the context of Ozone Depleting Substances (ODS) destruction projects as follows:

- *Scope of Regulatory Compliance:* ARB is focused on those violation(s) that have a bearing on the integrity of the generated offsets or that resulted in negative environmental impacts. Because ARB has explicitly stated that the integrity of the offsets generated at the Clean Harbors facility was not in question, ARB's rationale for invalidating the ODS credits appears to be based on the significance of the violation(s). Specifically, it appears that only those alleged violations that had the potential to result in significant negative environmental impacts triggered regulatory non-compliance at the Clean Harbors facility. In this case, only the alleged violations related to the disposal of material



## Climate Action Reserve Comments on ARB ODS Investigation Preliminary Determination

from the facility were deemed to meet this test and the regulatory non-compliance period ceased when the disposal ceased. If this is, in fact, ARB's rationale in establishing the two-day invalidation period, we would respectfully ask that ARB make that explicit so as to guide future ODS project verifications. Indeed, we would request that ARB provide a full explanation of its rationale in making this determination and provide criteria for assessing the violations such that we can more clearly guide future project reviews.

- *Commencement Date of Invalidation:* When establishing the commencement of the invalidation period, ARB appears focused on the date the ODS destruction facility received a written report or other written notice of actual or alleged violations from a regulatory agency or entity with authority over the facility.
- *End Date of Invalidation:* When determining the end date of the violation, ARB appears to have focused on the date when the destruction facility ceased shipment/disposal of the associated post-destruction waste products. This cessation date makes sense in light of preventing negative impacts on the environment; that is, only the violation that resulted in potentially significant negative environmental impacts triggered the regulatory non-compliance period in the first place, so once this violation ceased, the regulatory non-compliance period ended as well.

Therefore, based upon this understanding of the facts and circumstances described in the Preliminary Determination, the Reserve intends to update the guidance it provides to offset project operators and verifiers reviewing regulatory compliance at ODS destruction facilities as follows:

- *Scope of regulatory compliance required:* Regulatory compliance explicitly includes the disposal of byproducts of the ODS destruction process.
- *Period of regulatory non-compliance:* Commences upon receipt of a written report or other written notice of actual or alleged violations by the destruction facility from a regulatory agency or entity with authority over the facility. The violation period terminates when violations with a potentially significant impact on the environment cease at the facility.

To ensure that the Reserve only registers and issues Registry Offset Credits to ODS projects that comply with ARB's regulatory compliance requirements, we plan to advise verifiers to ask the following questions during the verification process:

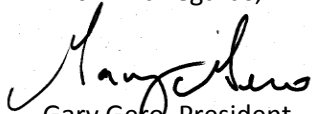
- *Has the facility received any written reports or notices of actual or alleged environmental and/or health and safety violations associated with the collection, recovery, storage, transportation, mixing, and /or destruction— including the disposal of the associated post-destruction waste products— from any government agency with regulatory jurisdiction over the facility?*

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- *Have these violations resulted or do they have the potential to result in significant negative impacts on the environment?*
- *If yes, to the above two questions, have there been any instances of continued non-compliance after receipt of a written notice of violation?*
- *If yes, describe the instances and duration of continued non-compliance after receipt of a written notice of violation.*
- *What steps have been or are being taken to remedy the violations alleged in the written notice of violation?*

We look forward to our continued work together with ARB on making the California cap-and-trade program a model for effective climate change action.

With kind regards,

  
Gary Geto, President  
Climate Action Reserve