



Clean Harbors  
400 Arbor Lake Drive  
Suite B-900  
Columbia, SC 29223

803-691-3427  
www.cleanharbors.com

October 17, 2014

Clerk of the Board  
Air Resources Board  
1001 "I" Street  
Sacramento, California 95814

RE: Comments concerning 15-day Notice of Public Availability of Modified Text and Availability of Additional Documents for the Proposed Amendments to the California Cap on Greenhouse Gas Emission and Market-Based Compliance Mechanisms

Dear Sir/Madam:

Clean Harbors Environmental Services, Incorporated (Clean Harbors), headquartered in Norwell, Massachusetts, is pleased to offer the following comments and recommendations concerning the 15-day Notice of Public Availability of Modified Text and Availability of Additional Documents for the Proposed Amendments to the California Cap on Greenhouse Gas Emission and Market-Based Compliance Mechanisms.

Clean Harbors is North America's largest Environmental and Industrial Services provider with special emphasis on the destruction of a wide variety and regulated wastes within our network of five highly regulated, permitted and licensed High-Temperature Incineration Facilities. Of note, Clean Harbors' El Dorado, Arkansas Incineration Facility is the primary facility for destruction of Ozone Depleting Substances (ODS) and has been since the beginning of the Montreal Protocol in the early 1990's. The El Dorado Facility has played a key role in world-wide efforts to protect our fragile Stratospheric Ozone Layer and, most recently, the World Health Organization, the USEPA and NASA formally announced that the ozone layer is not only healing but is expanding principally because of international efforts to curb emissions of ODS, of which, our El Dorado Facility played a vital role.

Clean Harbors has a keen interest in California Air Resources Board's (ARB) proposed amendments to the State's Cap and Trade Program, and especially those provisions that affect the Definitions of a Destruction Facility and Regulatory Compliance under California's Cap and Trade Program Rules and Regulations. ARB proposes to re-define an "Eligible Destruction Facility" within Attachment 2 at Chapter 2.1 of the Proposed 15-Day Modifications to the Compliance Offset Protocol for Ozone Depleting Substances Projects. Here is the proposed definition:

*"2.1. Eligible Destruction Facilities*

*(a) The end fate of the ODS must be destruction at either:*

- (1) An approved HWC subject to the RCRA and with a RCRA permit for the ODS destruction facility stating an ODS destruction efficiency of at least 99.99%; or*
- (2) A transformation or destruction facility that meets or exceeds the Montreal Protocol's TEAP standards provided in the Report of the Task Force on Destruction Technologies.*

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- (A) *A facility must demonstrate DRE of 99.99% and emission levels consistent with the guidelines set forth in the TEAP report.*
- (B) *A facility must have been certified by a third party no more than three years prior to the offset project commencement date and must show that it maintains its operational status as stated in the certification.*
- (b) *A destruction facility must meet any applicable requirements under CAA and NESHAP standards, as well as all applicable federal, state, and local laws.*
- (c) *At the time of ODS destruction the destruction facility must have a valid Title V air permit, if applicable, and any other air or water permits required by local, state or federal law to destroy ODS and document compliance with all monitoring and operational requirements.*
- (d) *Any upsets or exceedances must be managed in accordance with an authorized SSMP."*

Clean Harbors submits that the definition of Destruction Facility should be limited to only those aspects of a facility that directly apply to the actual destruction of the ODS, which would be the actual ODS Destruction Unit that meets the provisions outlined in Chapter 2.1.(a). In other words, ***the Hazardous Waste Incineration Unit, where the ODS injection takes place, and where destruction of the ODS occurs, should be defined as the Destruction Facility.*** This amendment would add clarity to the Cap and Trade Program, consistent with the Legislative Intent embodied in AB-32 and numerous other definitions in the Cap and Trade Regulations

We also note that the meaning of the word "Destruction Facility" within Chapter 2.1. is highly important in the context of the Definition of Project and Destruction Facility Regulatory Compliance outlined in Chapter 3.8. entitled "Regulatory Compliance" noted below:

### *"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 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. "*

Clean Harbor's Hazardous Waste Incineration Facilities are subject to a wide variety of Local, State and Federal Laws, Rules and Regulations. For example, our Facilities utilize personal communications devices that are licensed by the Federal Communications Commission (FCC). It would seem highly inappropriate, in fact, nonsensical for the ARB to propose that a lapse on Clean Harbors' part to renew its FCC License, in a timely manner, would trigger invalidation of ODS Cap and Trade Project Credits. Similarly, if one of Clean Harbor's employees working at an ODS Destruction Facility injures himself or herself, triggering a State or Federal Occupational or Health and Safety Administration Investigation and the Company is subsequently fined \$500 for a violation of Health and Safety Code, Regulation or Statute, would that violation also trigger invalidation of an ODS Cap and Trade Project that was being compliantly managed, within the Destruction Unit, at the time of the infraction? We don't believe that the California State Legislature ever envisioned that AB 32 would grant authority to ARB to hold any ODS Destruction Facility or any Project Developer to such an arbitrary and capricious standard of compliance.



Clean Harbors offers the following recommended change to the proposed definition of destruction facility incorporated under Chapter 1.2. entitled "Definitions" in the Proposed ARB Amendment to resolve the ambiguity that still exists in ARB's proposed amendment:

- (6) *"Destruction Facility - shall mean the Destruction Unit where ODS is injected for the purpose of compliant destruction of ODS, in conformance with all regulatory requirements, permits and operating conditions applicable to the safe and compliant operation of the Destruction Unit."*

Clean Harbors also recommends that the meaning of "Regulatory Compliance", as outlined in Chapter 3.8. of ARB's Proposed Amendment to the Protocol, be further amended as noted below:

*"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 for a project that directly apply to the project under 95973(b) apply to the collection, storage transportation, mixing, and destruction of ODS in a Destruction Unit as defined under Chapter 1.2(6), that are directly applicable to the ODS destruction project activities. The regulatory compliance requirements that extend to the destruction facility in this section apply to the ODS Destruction Unit, as defined in Chapter 1.2 of the protocol."*<sup>Note (1)</sup> *Non-compliances which result solely due to administrative issues are considered immaterial.*

*Note 1: (incorporating the proposed amendments offered by Clean Harbors)*

Clean Harbors believes that it is critical for the ARB to "get it right" as the Board progresses with Modifications and Amendments to its Compliance Offset Protocol, for ODS Projects. The Fate of AB-32 rests with ARB employing common sense and wisdom as they deliberate on modifications to the Protocol. We offer these revisions to the Proposed Amendments to the Protocol based upon our direct experience compliantly destroying ODS, under the ARB's Cap and Trade Program.

If you have any questions concerning this correspondence, please do not hesitate to contact me directly by telephone (803-691-3427) or, via email, [retallick.phillip@cleanharbors.com](mailto:retallick.phillip@cleanharbors.com).

Sincerely,

A handwritten signature in black ink, reading "Phillip G. Retallick".

Phillip G. Retallick, Senior Vice President  
Compliance and Regulatory Affairs  
Clean Harbors environmental Services, Incorporated