

Ms. Rajinder Sahota
California Air Resources Board
1001 I Street,
Sacramento, CA 95814
Via web submission

July 5, 2018

RE: Comments in response to the June 2018 *Preliminary Discussion Draft of Potential Changes to the Regulation for the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms* and ARB staff's June 21st workshop

3Degrees Group, Inc. ("3Degrees") appreciates this opportunity to provide comments to the California Air Resources Board ("ARB") in response to the *Preliminary Discussion Draft of Potential Changes to the Regulation for the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms, June 2018* ("PDD") and ARB staff's ("staff's") *Workshop to Continue Informal Discussion on Potential Amendments to the Cap-and-Trade Regulation* held on June 21, 2018. 3Degrees is a leading offset project developer based in San Francisco and has been working with dozens of domestic livestock offset projects to issue credits into ARB's Cap-and-Trade program.

3Degrees supports the ongoing improvements to the program and would like to offer comments in response to requests from staff at the April 26th and June 21st workshops for feedback on process improvements related to regulatory compliance and invalidation of offsets. 3Degrees comments are based on our routine interactions with the program from an OPO/APD perspective.

Response to April 26th and June 21st Workshops

At both the April 26th and June 21st workshops, 3Degrees, along with other stakeholders, requested that ARB consider revisions to the Cap-and-Trade regulation to narrow the types of activities or actions that could result in an invalidation. In response, staff requested feedback from stakeholders on how project related activities that could result in invalidation can be better defined so as not to include activities that have no bearing on the integrity of the generated offsets nor those that are not associated with the installation and operation of the project. We understand that staff received feedback from a number of stakeholders, and we appreciate staff's willingness to review and engage on this issue.

During the June 21st workshop, in response to the concerns raised by stakeholders, staff discussed a focus on refining regulatory noncompliance as it relates to forest offset projects. Specifically, on slide 28 of the workshop presentation, staff wrote that it is considering proposals on how "forest offset projects that have minor regulatory noncompliances could be issued CARB offset credits consistent with the provisions previously adopted for livestock, MMC, and ODS projects". While we recognize and appreciate the focus staff has put on bringing the forest offset project requirements in line with those of other offset project types, 3Degrees would like to

emphasize that stakeholders are concerned about regulatory compliance processes as they relate to **all** offset project types. Specifically, the scope of regulatory compliance for offset credit issuance is too broad. 3Degrees encourages staff to consider making updates to both the Cap-and Trade regulation and the 2015 guidance document (*California Air Resources Board Offset Credit Regulatory Conformance and Invalidation*) to address stakeholders' concerns related to regulatory noncompliance beyond those that exclusively affect forest offset projects.

Recommended Updates to Regulatory Compliance Requirements

Scope of regulatory compliance

3Degrees recommends that ARB use this rulemaking as an opportunity to limit the scope of regulatory noncompliance. In Appendix E of the Cap-and-Trade regulation and in the February 2015 offset guidance (*California Air Resources Board Offset Credit Regulatory Conformance and Invalidation Guidance*), ARB states that offset projects must be in compliance with "all requirements that have a bearing on the integrity of the (generated) offset," but does not define a standard against which to evaluate this requirement. As a result, the scope of noncompliance issues that can result in invalidation has been interpreted to be quite broad, and therefore includes noncompliance findings for activities that truly do not have a bearing on the integrity of the offset project or its emissions reduction benefit.

For example, in the context of livestock projects, the scope of regulatory compliance has become conflated with crop farming simply because crops are irrigated with manure. The implementation of a digester is not impacted by, and does not impact, a farm's extensive crop nutrient management plan. The irrigation of the fields owned by a farm draws from the onsite storage basins that are comprised of raw manure or digester effluent--whichever is available--and oftentimes a fair amount of stormwater runoff as well. This is true whether or not the digester exists. In fact, the irrigation practices and decision-making are completely unchanged by the presence and operation of an anaerobic digester. Further, it is very likely that the personnel involved with the operation of the anaerobic digester and related project equipment have no operational control or visibility into the crop farming and irrigation practices. Yet a noncompliance finding related to crop farming can result in invalidation of offset credits from the project.

In our experience, every inquiry into alleged noncompliance results in a significant number of hours spent by the OPO, the Verifier, and ARB staff to investigate how it may affect the ability to generate ARB offset credits. In addition, it poses risks to the OPO who has limited control over the activities covered by a scope this broad, leading to significant regulatory compliance risk.

Recommendation: 3Degrees recommends that the ARB take this rulemaking opportunity to narrow the scope of noncompliance requirements such that only activities that are directly related to the ability to reduce GHG emissions and/or the activities *directly* related to the offset project are included in the scope of regulatory compliance. In order to address these concerns, 3Degrees recommends that ARB consider incorporating the principals that VERA discussed in its May 10th letter to ARB¹, outlined below:

1. ARB should consider a project out of regulatory compliance only if the project activities were subject to enforcement action by a regulatory oversight body.
2. ARB should place the initial burden of regulatory compliance review upon the

¹ Available here: <https://www.arb.ca.gov/lists/com-attach/1219-ct-4-26-18-wkshp-ws-UWRVfIzZmVTYGLQQ1.pdf>.

verification bodies which are already directed to make such confirmation according §95977.1(b)(3)(D)2.f.

3. ARB should avoid investigation into immaterial issues that have no bearing on the integrity of offsets and focusing only on enforcement actions that:
 - a. Result in an overstatement of GHG reductions or GHG removal enhancements by more than 5%.
 - b. Are not resolved through the relevant enforcement action procedures of a regulatory agency.

Additional Regulatory Compliance Recommendations

3Degrees has attached our comments from the March 15, 2018 comment period, which outline further recommended regulatory compliance process improvements. These improvements include:

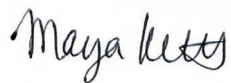
1. Updating how days are removed when a project is out of regulatory compliance, such that the days of noncompliance are removed from not only the “modeled or measured project baselines” but also the project emissions.
2. Improving transparency around when the 45-day review period for ARB begins after the Request for Issuance form is submitted so that an OPO/APD can estimate when the issuance of Registry Offset Credits will occur.

Our March 2018 comments also outlined a few needed corrections to the Livestock Compliance Offset Protocol. 3Degrees looks forward to bringing these forward in the future when the offset protocol(s) are opened for revisions.

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3Degrees thanks you for your ongoing work on the continued improvements to this program. We look forward to continuing to engage with staff on these issues and will be happy to provide more input as requested.

Best,



Maya Kelty
Senior Manager, Regulatory Affairs

Attachment: Comments on the possible revisions to the cap-and-trade regulation, preliminary discussion draft, February 2018, 3Degrees, March 2018



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Ms. Rajinder Sahota
California Air Resources Board
1001 I Street,
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Via web submission

March 8, 2018

RE: COMMENTS ON THE POSSIBLE REVISIONS TO THE CAP-AND-TRADE REGULATION, PRELIMINARY DISCUSSION DRAFT, FEBRUARY 2018

3Degrees Group, Inc. (“3Degrees”) appreciates this opportunity to provide comments to the California Air Resources Board (“ARB”) in response to the *Preliminary Discussion Draft of Potential Changes to the Regulation for Cap-and-Trade, February 2018* (“PDD”). 3Degrees is a leading offset project developer based in San Francisco and has been working with dozens of domestic livestock offset projects to issue credits into ARB’s Cap-and-Trade program.

3Degrees supports the ongoing improvements to the program and would like to offer the following comments in light of our routine interactions with the program from an OPO/APD perspective.

How days are removed when a project is out of Regulatory Compliance

3Degrees greatly appreciates ARB’s 2017 revision to the Cap-and-Trade regulation regarding §95973(b) to allow for removal of noncompliance periods under certain protocols. We have, however, identified problematic language in 95973(b)(1)(E). It dictates that days of noncompliance must be removed out of the “modeled or measured project baselines,” which seems fair except that the days of noncompliance *should also be removed out of the project emissions*. The effect of removing the baseline emissions while including project emissions from the same period inflicts a double penalty to projects. Rather than zeroing out a portion of the reporting period, they will lose even more credits, depending on how big the project emissions rate is:

For example, a project has 5,000 MTCO₂e/month in the baseline and 4,000 MTCO₂e/month in the project scenario, resulting in 1,000 ARBOCs for that month and 12,000 ARBOCs/year. One month of noncompliance should cause the project to lose 1,000 credits. But the language in 95973(b)(1)(E) is causing the project to lose the 1,000 credits from that month *and also* subtract the 4,000 MTCO₂e of project emissions off the reporting period total - in effect increasing the penalty far out of proportion to the intended removal.

This can be easily remedied by revising the language to specify that the days of noncompliance must be removed from metered emission reductions, from the modeled baseline emissions, and from the project emissions. We believe this is what was intended but verifiers have been using a strict interpretation of the language in the Regulation.

Process Improvements & Transparency

The following are suggestions aimed at improving routine processes for issuing offset credits, while increasing transparency where possible.

1. The duration between the issuance of Registry Offset Credits and the start of the 45-day period for ARB to determine the applicable requirements have been met, per §95981(c), should be shortened to the extent practical. We have found the start date of the 45-day period to be unclear and unpredictable, making it difficult to estimate the timing of ARB Offset Credit issuance. It would be ideal for an OPO/APD to expect the 45-day period to begin promptly upon the submittal of a Request for Issuance form and a complete data package, subject to the usual confirmation that all documentation is received.
2. We understand that ARB cannot notify the OPO/APD of determination of Issuance of Offset Credits prior to the public notification every 2nd or 4th Wednesday of the month, but it would be helpful if ARB could indicate to the OPO/APD what stage the review is in at least once during the review process. For example, ARB staff might consider communicating one or two key milestones so that the OPO/APD knows if a project is moving through the process as expected. Transparency at this stage of the process would be very useful information for project owners working on cash-flow projections. Alternatively, ARB staff could communicate to the OPO/APD once a project has moved to the desk of management for final approval. To address both (1) and (2), staff could communicate once they determine that they have received complete and accurate information and are ready to start the clock for their 45 calendar days of review in §95981(c).

Protocol errata and clarifications

While we understand this open comment period is directed toward the Cap-and-Trade regulation itself, 3Degrees would like to take this opportunity to identify a few needed corrections to the Livestock Compliance Offset Protocol. If these cannot be addressed during this revision process, we urge ARB staff to consider opening a future process to address the growing list of needed protocol updates and revisions.

- Section 5.2(e): The site-specific biogas destruction efficiency (BDE) should be optional rather than required every reporting period. While it may be appropriate for some projects to optionally replace default values with site-specific BDE every year, some projects have destruction devices that simply are not listed in table A.6 and it can seem

impractical and costly to routinely engage a third-party stack test on an annual basis solely to meet this protocol requirement. We recommend that the site-specific test results that have been approved by the Executive Officer be allowed in a project's GHG emission reductions/removals for a period of 5 years or more. It is worth noting that the protocol does not specifically mention the need for annual approval.

- Table B.1 specifies that for a missing data period greater than one week the data must be substituted and a zero BDE applied. This is a harsh penalty for projects that continue to destroy methane in the interim and can prove evidence of operational activity but are required to effectively include untrue venting of methane in their calculations. We recommend the substitution methodology allow for a BDE greater than zero when the operational activity can be proved. In our opinion, the 99% lower/upper confidence limit already discounts the number of emission reductions. Perhaps applying a 10% discount to the BDE for uncertainty would be more appropriate than zeroing out periods that can prove continuous destruction.
- Section 6.2(d): Portable instrument calibration requirements should not be specified as "at least once during each reporting period." Rather, the project data should only be considered valid when taken within 1 year of calibration. The difference between these two is subtle but important. The revision would make no difference in terms of the integrity of the reporting, and it would reduce the number of Qualified Positive Opinions issued. It is particularly troublesome to apply this requirement to a device owned and operated by a third-party service provider, who used such a calibrated device just once at a project facility but did not happen to calibrate within the project's reporting period.

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3Degrees thanks you for your ongoing work on the continued improvements to the program. We look forward to continuing to engage with the staff on these issues and will be happy to provide more input as requested.

Sincerely,



Nick Facciola

Director, Carbon Projects