

March 10, 2016

Comments Re: 2016 Cap and Trade Regulation Amendments

Dear CA Air Resources Board:

Thank you for the opportunity to comment on proposed changes to the Cap and Trade Regulation and to suggest additional improvements to the Regulation. As a developer of numerous ODS Destruction and Livestock Methane Capture offset projects, ClimeCo's comments and suggestions focus on the offsets portion of the Regulation.

ClimeCo believes that opportunities for improvements exist in three general areas:

1. Invalidation provisions
2. Regulatory Compliance
3. General offset project listing, verification, and issuance issues

#### Invalidation Issues

ClimeCo disagrees generally with both the utility and the necessity for the concept of invalidation as a whole, and particularly where the cause of invalidation is related to any form of regulatory non-compliance. **It is ClimeCo's belief that the possibility of invalidation creates an inefficient market and increases costs for California's taxpayers, without serving a meaningful purpose with respect to the quantification of emission reductions resulting from the overall program.** As evidence, ClimeCo notes that there have been two invalidation investigations thus far in the history of the program, and that neither was related in any way to the actual quantification of the emission reductions credited. In fact, it was noted by ARB in each of the investigations that ARB believed the emission reductions to be "real, quantified, and verified" (Bos Dairy Offset Investigation FAQs, 9/29/2015). Instead, both investigations centered on regulatory compliance issues- issues which are under the jurisdiction of other regulatory bodies, and for which the parties involved in the investigations could have been subject to fines and other penalties for the alleged violations. ARB's imposition of the additional financial penalty of offset invalidation, in the case of the Clean Harbors investigation, invalidated credits which were "real, quantified, and verified", and therefore served only as an additional extra-jurisdictional penalty on top of any penalties imposed by the appropriate regulators for the particular issue. In summary, ClimeCo believes that the program could be substantially streamlined by removing regulatory compliance as a cause of invalidation and returning regulatory enforcement to the jurisdictions charged with enforcing the regulations.

***ClimeCo would also note that other jurisdictions with both existing and potential links to California's program, have chosen a different tactic to address fraud or material misstatement in offset project issuances- a simple percentage of all offset issuances is held back as a reserve in case of such instances.*** This approach substantially reduces market risk and reduces costs. ClimeCo would strongly support a move to this system as way to replace the concept of invalidation.

If ARB should choose to retain invalidation provisions, there are several simple steps which could be taken to at least provide greater clarity and equitability:

- **The potential invalidation period should be limited to 3 years, and provisions regarding initial 8 year periods, as well as second regulatory verification procedures, should be removed from**

the Regulation. During the course of verification and issuance, the project reporting is reviewed by a third-party verifier, a registry, and ARB. A second regulatory verification provides no additional value and substantially increases project and program costs.

- **Regulatory compliance, both with respect to invalidation, and with respect to general reporting period eligibility, should only disqualify crediting during the exact period of time in which the project or facility is out of compliance-** the entire reporting period should not be disqualified because of a violation during a single day or short period of time which is quickly resolved
- **Regulatory compliance requirements should be very narrowly defined and construed.** A clear logical test would to determine whether the presence of the offset project caused or contributed to the regulatory non-compliance- a “but for” analysis- **were the project activities the proximate cause of the non-compliance, or is the project simply present at a facility that was not in compliance?** In such an analysis, it seems clear that neither the Clean Harbors investigation nor the Bos Dairy investigation would have been necessary.
- **Invalidation liability should be on the Project Developer, or some form of set-aside pool, not on the holder of credits.** The buyer of offset credits has neither the responsibility for the violation, nor the capacity to conduct diligence on the project directly. “Buyer Liability” increases costs for California’s ratepayers and taxpayers, and distorts the offset market mechanism.
- ClimeCo encourages ARB to build into the invalidation provisions **the ability to discuss potential invalidations with the developer in advance of launching a public invalidation investigation.** ClimeCo feels that informal discussions could have addressed the Bos Dairy investigation and avoided the massive time and expense involved in a full investigation proceeding.

### Regulatory Compliance

Separate from the question of invalidation provisions, there is also the regulatory compliance requirement as it pertains to the issuance of new offset credits. ClimeCo would reiterate its comments from above- it is our strong belief that regulatory compliance issues should be addressed by the regulators who have jurisdiction over the project activities and facilities. Regulatory compliance is of course important in a general legal sense, but is ultimately irrelevant in a strict accounting and verification of the project activities for the purposes of quantifying emission reductions.

If ARB chooses to retain some form of regulatory compliance requirements, then we urge ARB to limit such requirements in the following important ways:

- As noted above in our comments regarding invalidation, **regulatory compliance requirements should be very narrowly defined and construed.** A clear logical test would to determine whether the presence of the offset project caused or contributed to the regulatory non-compliance- a “but for” analysis- did the project contribute to the non-compliance, or is the project simply present at a facility that was not in compliance?
- **Regulatory non-compliance should only disqualify crediting during the exact period of time in which the project or facility is out of compliance-** the entire reporting period should not be disqualified because of a temporal violation during a single day or short period of time which is quickly resolved
- During the verification process, **requirements for demonstration of regulatory compliance should be limited to only those actually under the control of the developer-** some example issues to consider-
  - For ODS projects, developers are currently asked to demonstrate that the refrigerants they purchased and later destroyed were recovered by an EPA-certified technician. This type of request for post-hoc, third party documentation is somewhat unheard of- there is no legal reason why the purchaser of refrigerants would have this documentation or should have asked for it.

- Similarly, for ODS projects, there seems to be currently a move toward requirements regarding documentation for transportation companies involved in the transport of refrigerants- how, and why, would we reasonably expect project developers to be responsible for the proper licensing of third-party service providers? As in any other business, developers should rely on the relevant authorities to enforce regulations on our third-party providers.

#### General Offset Project Issues

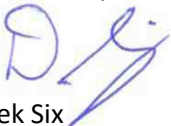
ClimeCo is pleased to offer some additional miscellaneous comments and suggestions for improvement to the general process:

- ClimeCo agrees with others who have submitted comments related to the requirement that some offset document submissions be “wet-signed”- **we urge ARB to accept scanned/emailed submissions without requirements for submission of “wet-signed” documents**- this requirement wastes paper and increases both time and costs in the process
- ClimeCo agrees with others who have commented on the materiality thresholds. ClimeCo believes that materiality is an important concept for the efficiency of the program, and notes that **the additional requirement to make all possible corrections directly conflicts with the concept of materiality.**
- ClimeCo agrees with others who have commented on the process for engaging verifiers and beginning the verification process- **ClimeCo suggests that the engagement and approval of a verifier for a project reporting period could be done in advance of the end of a reporting period**, and does not require that the OPDR be completed.

Thank you for the opportunity to comment on potential improvements to the offset portion of the Cap and Trade Regulation. ClimeCo looks forward to working with ARB to create an efficient, equitable program which ultimately addresses the two important needs of California’s citizens- real emission reductions, and cost containment.

Sincerely,

ClimeCo Corporation



Derek Six  
Senior Vice President