



restore the balance

**TerraPass Comments to the California Air Resources Board
Regarding the June 22, 2010 Public Workshop on Cost Containment and Offsets
July 13, 2010**

TerraPass Inc., a San Francisco-based company with more than 20 voluntary greenhouse gas emission reduction projects under management in the United States supported by more than 200,000 individual and business customers, is pleased to submit comments on the items discussed at the June 22 public workshop on cost containment and offsets.

Summarizing our recommendations, we propose:

- That ARB establish an alternative “online date” additionality screen for projects which meet certain criteria;
- That ARB prioritize staff time so as to analyze the CAR landfill methane protocol for ARB adoption this calendar year;
- That ARB create a limited exception to the program linkage requirements, so as to accept verified credits of certain qualified historic vintages from ARB-eligible projects, even if a formal linkage with the issuing body has not been established.

More detail on each of these points is below.

Qualifying Criteria for ARB-Issued Offsets

ARB staff described two systems for owners of unregulated emission sources to establish emission reduction efforts as offset projects for use in the cap and trade system: 1) registering the projects directly with the ARB, using ARB-approved protocols; and 2) registering the projects with a public or private authority with which the ARB has established a formal linkage for this purpose. This section focuses on ARB-issued offset processes.

a) Additionality – Eligibility Date

ARB should make an alternative timing screen available for projects with older online dates; this alternative screen should make projects which established themselves under a carbon monetization system soon after coming online eligible for consideration under ARB-approved protocols.

As we’ve noted in earlier comments, establishing an online date criterion is a good first-order additionality screen. Projects which started operating earlier than the selected date are presumed to have been established without reference to the incentives provided to unregulated sources by

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the cap-and-trade system; it is assumed that they would have been implemented “anyway” and do not represent emission reductions beyond business as usual.

Based on TerraPass’ experience evaluating hundreds of domestic emission reduction projects over the past five years, we continue to assert that January 1, 2006 is a more appropriate eligibility screen date, as the Chicago Climate Exchange cap-and-trade system was fully operational at that time and regulatory carbon cap-and-trade systems had been proposed and debated in a number of jurisdictions, sufficient to provide project investors with a promise of carbon revenue.

Still, we emphasize that online date is a rough-hewn screen for additionality. In particular, the more recent the selected date, the more likely the screen will harm project investors who acted early and in good faith to create emission reduction projects with the underlying belief that at least one of several cap-and-trade systems under consideration would provide an economic return for their investments.

For this reason, we recommend a simple, easily verifiable alternative “timing screen” be available to establish eligibility of projects with online dates earlier than the general cut-off date ultimately selected by the Board. Specifically, this alternative screen would require that:

The project owner/developer took definitive action to monetize the project’s emission reductions according to a published carbon standard within two years of project startup.

Definitive actions could include: engaging a verifier to conduct a verification according to a published carbon verification protocol; signing a VER sale or marketing contract; or establishing the project on a public carbon offset registry.

Note that this screen would be to establish eligibility of the *project* only; it would not proffer any other benefits (i.e., it would not render any early vintage emission reductions eligible for the AB32 cap and trade system, it would not extend the crediting period), nor would it exempt the project from any aspect of ARB review. The Voluntary Carbon Standard uses a two-year screen similar to the one described here for all projects, not just for older projects).

Based on our experience, project developers who invest with the expectation and requirement for a financial return from the project’s carbon credits act quickly and decisively to realize that return. By contrast, project owners who discover carbon credits after project decisionmaking or implementation demonstrate very little urgency in monetizing those credits.

[Indeed the only reason for recommending two years as opposed to some shorter timeframe, is that most monetization efforts begin after a full year’s worth of emission reductions are generated. Add to that year the project startup period (several months without any verifiable reductions is common), and the time it takes to select and contract with a verifier, buyer or marketing partner; and two years becomes a reasonable cutoff.]

Given the likelihood of offset supply shortages in the early years of the program, we believe this alternative means of qualifying will provide much-needed supply while ensuring quality by subjecting older projects to a this more stringent additionality screen.

b) Landfill methane emission reductions as an ARB-eligible project type

There was considerable discussion at the meeting regarding the status of landfill methane capture projects as a potential project type for ARB-issued offsets. This is not surprising as landfills represent the plurality of all offset projects registered on domestic offset project databases, as well as a potentially important source of near-term offset supply.

Staff explained that they had not considered asking the Board to adopt a landfill methane emission control protocol during 2010 because several policy issues needed to be resolved and the staff did not believe they had sufficient time to handle these policy questions. We strongly urge the Board to re-prioritize staff time so as to resolve these issues and present recommendations for landfill methane emission control systems alongside agricultural methane, forestry, and other protocols slated for consideration this year.

With this in mind, we offer the following policy discussion on issues staff raised regarding landfill methane control projects. Underlying these issues is the fact that California is implementing stringent landfill methane control regulations as an AB32 Early Action Measure.

***Issue 1:** If out-of-state landfill methane control systems are eligible as offset projects, will landfill companies preferentially site landfills outside California or otherwise compete with California landfills, raising border competitiveness, interstate waste transport and leakage concerns?*

In short, our analysis shows that landfill companies already have incentives to operate outside California when possible. Companies who choose this route do so with large landfills to achieve economies of scale; such landfills would not be eligible for offsets in any case. **Offset revenue is unlikely to inspire landfill companies to build small (offset-eligible) landfills to accept out-of-state waste. Nor is offset revenue sufficient to change the cost structure of existing small landfills so as to enable reduced tipping fees to attract waste from far afield** (as the offset revenue is, by definition, necessary to pay for the methane control system itself).

Due to California's stringent regulatory practices compared to neighboring states, and in particular due to California's comparatively stringent air and groundwater quality rules, the regulatory playing field has been uneven in the landfill industry for some time. As a result of the regulatory situation and other factors (cost of land and operations, for example), there are several out-of-state landfills which accept California waste such as the Lockwood landfill near Reno.

The most recent evidence of pre-Early Action Measure incentives to site landfills out-of-state comes from California-based Recology's work to permit a landfill for California waste near Winnemucca, NV. This landfill (not yet approved/permitted) was proposed in 2006 and sized to

hold more than 50 million tons of waste. This is more than 25 times greater than the federal size threshold for landfill methane control, and not surprisingly the landfill was proposed with a methane control system from the very beginning and would not be eligible for offsets.

Indeed, landfill methane offset projects are predominantly developed on small, publically-owned landfills. (Two-thirds of projects listed on the Climate Action Reserve with online dates later than 1/1/2006 are on publically-owned landfills.) These landfills do not typically accept waste beyond their jurisdictional control areas and are unlikely for this reason, as well as their small size and economics, to become competitors to landfills in California.

Issue 2: If out-of-state landfill methane control systems are eligible as offset projects, will other jurisdictions be less likely to regulate landfill methane emissions?

Uncertain interests served. First, we are uncertain as to why the Air Resources Board has a compelling interest in influencing how other jurisdictions choose to achieve greenhouse gas emission reductions, given decisions already made via the Scoping Plan which assert and protect California's environmental and economic interests. California's policy as articulated in the Scoping Plan is to achieve a majority of all emission reductions directly at regulated emitters, and to control the effect on California's economy by allowing lower-cost unregulated emission reductions to fulfill a minority of emission reduction requirements. Further, the Board has already decided that these lower-cost emission reductions may occur out-of-state.

With these decisions, it is a foregone conclusion that emission reductions across many industry sectors will occur outside California. **It is unclear what purpose would be served by supplemental policy decisions intended to influence the baseline emission landscape in other jurisdictions, so as to (indirectly and without any certain effect) lean those governing authorities toward highly specific regulatory choices which favor certain emission control mechanisms over others.**

We recognize that all jurisdictions will benefit from widespread reductions in greenhouse gas emissions, and that any jurisdiction implementing greenhouse gas regulations has a general interest in other jurisdictions following suit. Certainly, we very much hope that other jurisdictions decide to control greenhouse gas emissions. Assuming they do, we expect each authority to make geographically- and politically-specific decisions regarding methods and targets.

Will California-driven offset projects affect *how* other jurisdictions choose to execute their desired reductions? Perhaps, and we view this as a uniformly positive effect. If landfill methane is being controlled effectively via offset projects, jurisdictions can turn to other sources to achieve their desired reductions. If those emissions are not being effectively controlled, then the source is available for targeted reductions.

We struggle to see the logic in policy choices which harm near-term California interests for a highly uncertain impact in one industry sector *outside* of California, because of an

unsubstantiated fear that providing incentives to reduce emissions immediately will have a negative long-term political effect.

Regulatory Processes are Slow. Second, one of the least heralded benefits of emission reduction projects at unregulated sources, is speed. Speed in implementing emission reductions is universally positive for the environment. For this reason alone, we are very concerned that the ARB staff is expressing an implicit belief that direct regulation of landfill emissions is the preferred path all across North America, as compared to offset project implementation.

Direct regulatory approaches are very slow even once political consensus has been reached that regulation of a given source is appropriate. Recent landfill emissions control regulation histories prove this out:

US EPA New Source Performance Standard for Landfills:

- Rule Proposed May 30, 1991;
- Final Rule adopted after litigation and extensions: November 9, 1999;
- Control systems required (generally) during 2002

⇒ **11 years** from proposal to effective date

California Landfill Methane AB32 Early Action Measure:

- Control measure noted in 2006 Climate Action Team report;
- Final Rule effective March 2010
- Control systems required September 2012

⇒ **6 years** from proposal to effective date (with earlier work by CIWMB)

British Columbia Landfill Gas Management Regulation:

- Plans introduced November 2007;
- Final Rule adopted November 2008;
- Control systems required January 1, 2016

⇒ **9 years** from proposal to effective date

By contrast, landfill gas projects facilitated by influxes of carbon investment range from as little as 9 months (at private landfills) to 4 years (at the slowest-moving public landfills) from inception to implementation. Two years is a common timeframe. With this in mind, **we do not agree with the staff's implicit assertion that directly limiting landfill gas emissions is a preferable emission control strategy that the state should attempt to protect at the expense of high emissions for an indeterminate period of time into the future.**

Performance standards established for offset protocols facilitate periodic reviews for course correction. Finally, **we urge the ARB to take full advantage of the flexibility which offset protocols based on performance standards provide.** Performance standards are developed based on sector-wide research. After the initial standard is developed, periodic reassessments must be performed to take into account new technologies, increasingly common practices, regulatory regimes, and other factors. These periodic reassessments are not as resource-intensive

as the initial study, and will enable the ARB to change the offset rules based on actual on-the-ground effects as opposed to speculative possibilities. We urge the ARB to rely upon these reassessments rather than risking the viability of the cap-and-trade system as a whole by unnecessarily constraining the supply of offsets for fear of highly uncertain outcomes.

Issue 3: If out-of-state landfill methane control systems are eligible as offset projects, should they only be allowed if their collection system goes beyond California's requirements (or the requirements of some other jurisdiction)?

This question on a California regulatory benchmark reflects the same thinking described above: that California bears a responsibility to other jurisdictions to prevent emission reduction projects from being implemented at landfills in those jurisdictions so as to keep emissions high and thus provide incentives to regulate.

As explained in detail above, we do not believe high landfill emissions represent a lynchpin in the effort to directly regulate greenhouse gases elsewhere; we are not convinced that such direct regulation is a universally positive outcome worthy of protection; and finally we do not believe the ARB bears a responsibility to those other jurisdictions which trumps its responsibility to Californians.

Lastly, remember that **direct regulation and offsets can work well together**. The ability to secure offset revenue even for a short time before a regulatory requirement becomes effective is a powerful incentive to act *quickly* rather than treating the regulatory deadline as the target date for system implementation.

Program Linkages

The second system for owners of unregulated emission sources to establish emission reduction efforts as offset projects for use in the cap and trade system is to register the projects with a public or private authority with which the ARB has established a formal linkage for this purpose. This section focuses on Linkages.

a) Eligible Vintages

No staff thinking has yet been shared regarding credit vintages that will be eligible for use in the cap-and-trade system, with the limited exception of certain California-based projects on the Climate Action Reserve. This raises significant questions regarding the most appropriate course of action *today* for project owners and developers.

Most important and most confusing to marketplace actors, is the treatment of existing projects which are likely to meet all the requirements of ARB's adopted protocols but are currently being monitored and verified under a different program which may become linked (such as the Climate Action Reserve or the Voluntary Carbon Standard). A simple, clear path of action for these

projects is needed as soon as possible to prevent price shocks and ensure liquidity as the market's opening nears.

TerraPass recommends the following treatment of such projects:

- ARB should focus its own offset-issuance system on vintages 2011 or 2012 and later. This will give the ARB time to establish its system, and relieve the ARB of the one-time challenge of deciding how to provide for historic verifications.
- When ARB adopts a protocol created by another standards body, there will be a subset of existing projects using that protocol that also meet ARB's eligibility requirements. Credits from all vintages should be allowed in the cap-and-trade system for this subset of projects. For example, if the ARB adopts the CAR agricultural methane protocol and furthermore declares that projects must have online dates of 1/1/2006 or later, then all vintages 2006 and later from eligible projects should qualify for use in the cap-and-trade system.
- For simplicity and to assure early supply, ARB should accept verified credits for vintages up until 2011 or 2012 from credit issuing authorities whose protocols are adopted, *even if a formal linkage is not established*. For example, if the ARB adopts the CAR ag methane protocol, then the ARB should accept CRTs generated by ARB-eligible projects for vintages 2006 – 2011. ARB may wish to impose a desk review or other process over the top of CAR's CRT verification and issuance processes to facilitate this arrangement. This limited exception to ARB's linkage requirements would provide much-needed certainty to project owners while limiting risks associated with the lack of a linkage agreement.

Thank you for the opportunity to comment, and we look forward to further participation.

Submitted by:

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