

Proposed Language for 2016 Cap and Trade Regulation Amendments

June 9, 2016

Thank you for the opportunity to provide comments for the 2016 Cap and Trade Regulation Amendments. Ag Methane Advisors helps dairies around the country reduce their methane emissions, including supporting digesters that participate in CARB's C&T program.

We support the work of CARB to help ensure that offset projects meet local, regional, and national environmental and health and safety laws and regulations. We understand that the intent of Section 95973(b) of the current C&T regulation is to prevent CARB compliance offset projects that have project activities with adverse environmental and health and safety consequences from being rewarded for those activities through the generation of offset credits. Dairy producers across the country, and California in particular, operate within an extremely complex regulatory structure. Many of the associated regulations have no direct bearing on the GHG and other great benefits provided by livestock anaerobic digestion projects.

We respect this intent and agree that it is necessary and valuable. The current language in 95973(b), however, is broad and potentially could be interpreted to penalize good projects for an entire year in instances where regulatory compliance issues have no material adverse impact, no direct relationship to the project, and/or are of limited duration.

This document proposes DRAFT language related to regulatory compliance of carbon offset projects (livestock anaerobic digestion project in particular) for CARB staff and Board to consider integrating into the amendment process.

CARB can use the following criteria to simultaneously test regulatory compliance in a practical and reasonable way that avoids rewarding projects, which have adverse impacts and recognizes projects that are diligent in their regulatory compliance:

1. **Causation:** Regulatory violations should only impact issuance of ARB offset credits if they were caused by project related activities. If project activities did not cause the violation they are not "directly applicable". For example, post digestion manure is usually stored in an effluent pond. From there manure is eventually land applied. A manure spill that occurs downstream of the effluent pond during land application would not be caused by operation of the anaerobic digestion project. Any farm managing manure whether there is a digester present or not could have a manure spill.
2. **Scope of Project Activities:** The above principle of causation appropriately limits the scope of Project Activities that are "directly applicable" to the project. For livestock anaerobic digestion projects, Project Activities can be interpreted as those associated with

manure collection and disposal, and methane collection and destruction. Furthermore, CARB can interpret manure disposal from the project as occurring in the post digestion effluent pond. Manure land application activities not caused by project activities should not be considered directly applicable to the project.

3. **Material adverse impact:** Only violations which result in material adverse environmental impacts should have issuance of ARB offset credits denied. Administrative violations and violations which do not result in material adverse environmental impacts should not prevent issuance of ARB offset credits.
4. **Limited duration of violations:** Only penalize projects by preventing the creation of credits for the duration of the actual regulatory non-compliance. Projects that have a non-compliance of limited duration (i.e. a number of hours, days, or weeks) should be allowed to create credits for the period of the reporting period during which they were in compliance with all environmental and health and safety regulations.

Therefore we propose that 95973(b) of the regulation be amended as follows:

...an offset project must also fulfill all local, regional, and national environmental and health and safety laws and regulations that apply based on the offset project location and that directly apply to the offset project, including as specified in a Compliance Offset Protocol. The project is out of regulatory compliance if the project activities caused material adverse environmental or health and safety impacts and were subject to enforcement action by a regulatory oversight body during the Reporting Period. Administrative non-compliance and non-compliance that has no material adverse environmental or health and safety impact will not prevent an offset project from receiving ARB or registry offset credits for GHG reductions and GHG removal enhancements. An offset project is not eligible to receive ARB or registry offset credits for GHG reductions or GHG removal enhancements for the portion of the Reporting Period during which the offset project is out of regulatory compliance requirements directly applicable to the offset project during the Reporting Period. The ineligible portion of the Reporting Period is limited to the duration of time that a project is out of regulatory compliance. Regulatory non-compliance with requirements not directly applicable to an offset project shall not render a project out of regulatory compliance. Requirements relating to the removal, transport or land spreading of manure is not directly applicable to Compliance Offset Protocol Livestock Projects if the methane destruction associated with the project has occurred prior to such removal, transport or land spreading.

We look forward to working with CARB to specify the current language. Together we are confident that the program can ensure complaint projects and we can avoid substantially hindering projects that reduce GHGs and provide beneficial economic, energy and environmental outcomes.

Thank you for your consideration of this proposed language.



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