August 11, 2011

James Goldstene and Members of the California Air Resources Board
CA Air Resources Board (CARB)
P.O. Box 2815
Sacramento, CA 95812

Re: **Comments on Proposed (15-day) Revisions to AB 32 Cap-and-Trade Regulation – Offset Credits, Compliance Offset Protocol Requirements and Offsets Verification**

Dear Mr. Goldstene, Chair Nichols and CARB Board Members:

We, representatives of the undersigned groups and associations, submit the following comments on the revised cap-and-trade regulation under AB 32. Specifically, we offer recommendations on the Offsets Credits provisions of the 15-day modified document in order to strengthen the regulation and reduce risks associated with the expansive use of offsets.

According to the AB 32 statute, offsets must be additional to any greenhouse gas emission reduction that would otherwise occur. It is this additionality that is so difficult to determine. As such, the use of offsets as a compliance instrument, *not* inherent to a cap-and-trade system, presents substantial risks of not genuinely achieving the emissions reductions called for in AB 32.

When offsets credits are generated by business-as-usual projects that were going forward regardless of the offsets payments, the companies under the cap are able to emit more than the cap, but equivalent additional emissions aren't reduced elsewhere. The companies are simply paying project owners outside of the cap to do what they were doing anyway. The cap-and-trade program is effectively weakened by the number of non-additional business-as-usual offset credits allowed for compliance.

Furthermore, by allowing most of the cap-and-trade emission reductions to come from offsets, the state substantially reduces opportunities to realize in-state co-benefits from AB 32.

OFFSETS QUANTITY

We propose that section 95854 of the revised regulation be modified so that, in the second and third compliance periods, the percentage of total emissions that would be permitted to come from offsets is reduced. We propose that no more than 2.5 percent of total emissions in the second compliance period and no more

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than one percent of total emissions in the third (and any subsequent) compliance period be permitted to come from any type of offset. This would be equivalent to roughly one-third of emission reductions from business as usual in the 2nd compliance period and 12% of emission reductions in the 3rd compliance period.

These modifications in quantity will help promote technological innovation in the highest-emitting sectors, increase opportunities for in-state co-benefits (including air quality benefits), and reduce the risk that a high proportion of compliance credits do not represent real and additional reductions in emissions.

We oppose any suggestion to have one offset usage limit through 2020. Limits on offsets should remain as a per compliance period percentage and not be counted cumulatively across compliance periods.

OFFSETS QUALITY CONTROL

Fulfilling the mandate that all emission reductions from offsets be real and additional protects the integrity of the AB 32 market-based program by ensuring that the reductions required by the capped sectors are only avoided, or offset, by true reductions outside of the cap. Given that approximately 85% of cumulative reductions under the cap-and-trade program through 2020 can be met through offsets, the integrity of those offsets is critical to the effectiveness of the market-based program as a whole.

While CARB is structuring its offsets program to potentially have much better results than the Kyoto Protocol's offsets program, the current procedures in CARB's 15-day modified draft regulation do not incorporate the procedures needed to ensure projects allowed to generate offset credits are real and additional. In fact, two protocols adopted by CARB last December allow non-additional projects to generate offset credits.

Our recommended changes to the draft regulation and to CARB's procedures described below lay out what we understand are needed to ensure offset credits are real and additional, to minimize gaming and fraud, and to avoid bad publicity that could harm efforts to spread climate action to other states and regions.

OFFSET PROTOCOL REQUIREMENTS

We are emphasizing the importance of performing rigorous analysis on proposed and existing offsets protocols to evaluate the extent to which the offset projects that are eligible under the protocols are very likely to create compliance credits that are real and additional. We urge CARB to use conservative assumptions and estimates when analyzing new protocols.

We recommend the following protocol requirements be added to the regulation. These requirements are essential to fulfill the meaning of "real" and "additional" and are more specific than the criteria in the draft regulation:

Protocols should only be adopted, and should only remain valid for new projects, if:

- there is a very high level of confidence that the number of credits that will be generated under the protocol will not exceed the reductions enabled by that protocol;
- the project types credited under the protocol are not likely to be pursued, or would be pursued at significantly lower rates, absent being eligible as part of a compliance offset protocol;
- the business-as-usual reductions that are inadvertently credited under the protocol are counter-balanced by conservative methods to calculate emissions reductions.

The regulation should incorporate specific procedures for adopting new protocols and periodically reviewing existing protocols consistent with the above criteria. At a minimum, for the project types allowed to generate credits under offset protocols, CARB should thoroughly assess the following:

- the factors that influence project development decisions;
- the expected influence of AB 32 offsets credits on those decisions;
- the business-as-usual activities that are likely to go forward regardless of the ability to generate offsets credits;
- whether the protocol is likely to result in any unintended negative environmental consequences; and
- whether the business-as-usual reductions that are inadvertently credited under the protocol are counter-balanced by conservative methods to calculate emissions reductions.

Moreover, periodic reviews of existing protocols should assess the influence that the protocol has already had on new project development.

We also believe that offset projects registered under an approved protocol should not cause significant adverse effects on human health or the environment—regardless of the location of the project.

VERIFICATION OVERSIGHT

In the revised 15-day modified document, CARB has taken some steps to strengthen and elaborate on the procedures it will use, and the authority it has, to oversee the quality of offset project verification. For example, offset project developers would now be required to disclose if reductions from their project are also being credited under another voluntary or mandatory greenhouse gas program. While it is a positive improvement that developers must disclose if their projects are generating credits under another GHG program, to ensure that developer statements are correct and that offset credits are not double counted, we strongly recommend that <u>CARB also formally reach out to other voluntary and mandatory carbon crediting regimes to track registered reductions and investigate possible instances of double counting</u>.

We propose the following additional regulatory modifications dealing with offset verification:

- Institute a regular and detailed performance review of verification bodies. The results of performance reviews should of course be factored into the reaccreditation process.
- In order to protect against gaming and conflicts of interest, there should be a periodic review the relationships between verifiers and project developers. CARB should consider a system where the CARB executive officer assigns a verification body—or a list of three verification bodies from which to choose—to each offset project.

Thank you for the good work that CARB staff has done to date. We look forward to working with staff on continuing that good work to bring this market-based regulation to a point where the risk of non-additional offset credits being used for compliance is minimal and the opportunities for technological innovation and the realization of co-benefits for California residents becomes a meaningful reality.

Sincerely,

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African American Environmentalist Association

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American Lung Association in California

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