

**STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
AIR RESOURCES BOARD**



P. O. Box 2815
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January 6, 2010

**Transmittal
Of
ARB Staff Rule Review Comments**

To: Ms. Bridgette Tollstrup
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The following draft rules are scheduled for a public workshop to be held by your District staff on January 7, 2010 and were received by us on December 14, 2009, for our review:

Rule 250	Sacramento Carbon Exchange Program
Rule 350	Greenhouse Gas Program Fee

We have reviewed the rules and have the comments on the following pages. We think that our comments are important to the effectiveness and enforceability of Rules 250 and 350.

If you have any questions about our comments, please contact Mr. Kevin Kennedy, Assistant Executive Officer, at (916) 322-6964.

Rule review comments are on the following 3 pages

Date: January 6, 2010

Air Resources Board Staff Comments on
Sacramento Metropolitan Air Quality Management District
Draft Rule 250 - Sacramento Carbon Exchange Program
Draft Rule 350 – Greenhouse Gas Program Fee

Introduction and Background

On March 23, 2006, the Sacramento Metropolitan Air Quality Management District (District) Board of Directors established the District Climate Change Protection Program (DCCPP) to address climate change by providing:

1. outreach and education;
2. data collection and analysis;
3. technical assistance;
4. review and comment on proposed legislation;
5. support and leadership for local efforts to reduce emissions;
6. mitigation measures such as “Cool Community” actions; and
7. participation in the California Climate Action Registry

The proposed Rule 250, the Sacramento Carbon Exchange Program (Program), is part of the District’s efforts under the DCCPP. The proposed Rule 350, the Greenhouse Gas Program Fee, is to recover the District’s costs to implement Rule 250.

The proposed rule would create a District-administered greenhouse gas (GHG) emission reduction credit banking program intended to be used for several potential purposes, including:

1. registering GHG emission reductions that can be retired to provide project mitigation under the California Environmental Quality Act (CEQA);
2. providing a mechanism for the trading of registered GHG emission reductions;
3. registering GHG emission reductions that could be used for compliance with the upcoming ARB Cap-and-Trade Regulation;
4. promoting the early reduction of GHGs and their associated criteria and toxic pollutants in Sacramento County;
5. providing a measure of certainty for registered GHG emission reductions lacking in some other GHG registries due to the District’s extensive experience in banking criteria pollutant emissions; and
6. providing a mechanism for persons to purchase and retire banked GHG emission reductions for societal benefit.

Our comments on the District's proposed rule language are based on ARB's Cap-and-Trade Preliminary Draft Regulation released on November 24, 2009 and could evolve as part of the rule development process.

General Comments: ARB staff commends local air districts that have already taken a leadership role in addressing GHG emissions in their communities by encouraging early voluntary reductions. The ARB Climate Change Scoping Plan acknowledges that local air districts will play a key role in encouraging GHG emissions reductions at the regional and local government level, and in providing technical assistance to quantify and verify those reductions. As ARB begins to institutionalize mechanisms to certify and verify GHG emissions reductions, staff will continue to work with districts to smoothly transition to a cohesive statewide program with consistent technical standards.

Transferability to a State Cap-and-Trade Program: We appreciate the District's initiative to encourage voluntary early reductions of GHG emissions, especially for sources not covered by the California Cap-and-Trade Regulation (non-capped sources). Nevertheless, in all likelihood any offsets that capped sources use to comply in a California program (compliance offsets) would need to be approved by and registered with ARB according to the program's regulatory provisions. An offsets registry administered by a district would not replace requirements for compliance offsets registered with ARB. Similarly, offsets generated in California that are linked to a regional cap-and-trade program e.g., the Western Climate Initiative (WCI), would also need to meet WCI and ARB requirements.

Additionality: In order to generate reduction credits for use in a cap-and-trade program, offsets must come from an activity that will not generate a compliance obligation in that cap-and-trade program. To do so would double count the reductions and not meet the criteria for additionality. Therefore, voluntary GHG emission reductions from such activities registered by the District would be ineligible for use as offset credits. Once a cap-and-trade program is in place, reductions made by capped sources would be neither surplus nor additional, and so should not be considered voluntary reductions.

Thus far, ARB has approved three protocols for voluntary purposes in uncapped sectors only. Any use of these protocols to generate compliance offset credits would need to be adopted as part the California cap-and-trade rulemaking. It is also important to note that in addition to using approved protocols for generating compliance offsets, reductions credited under ARB's Cap-and-Trade Regulation will need to meet very rigorous requirements for verification which will also be established during the rulemaking process.

Cap-and-Trade Rulemaking: California is developing a Cap-and-Trade Regulation. Whether or not GHG credits under the District's program would be recognized in a California program for use as compliance offsets would need to be determined through the state rulemaking process. Any reductions made by sources covered by the cap-and-trade program reduce the compliance obligation for those sources in the program and should not be available for other uses. A non-permitted source in the District's jurisdiction could still be a capped source or contained within a capped sector subject to ARB's Cap-and-Trade Regulation. In this case, the non-permitted source in the District's jurisdiction would be ineligible for generating compliance offsets.

We are also in the process of defining standards, requirements, and criteria for compliance offsets within a California cap-and-trade program. Depending on ARB's definitions, District-approved credits may not be eligible for use in the California cap-and-trade program. As described on page 8 of the Staff Report under the heading Compatibility with AB 32 Requirements, "the resolution for the AB32 Scoping Plan specifically states that the implementation of future cap-and-trade regulations, including the reporting and verification of offsets, should be administered at the state level. As such, the role of local districts is limited in the state program, and district-operated GHG emission reduction credit banking programs may not be compatible with the state cap-and-trade/offset program."

At this point, there is no assurance that District-registered GHG emission reductions will be recognized under the ARB Cap-and-Trade Regulation; therefore, language in this provision should clarify that credits generated under this rule would not to be available for complying with the California Cap-and-Trade Regulation, unless otherwise provided for in the California Regulation.

David Yang

From: Stu Husband [SHusban@smud.org]
Sent: Thursday, January 07, 2010 4:08 PM
To: David Yang; KEVIN J. WILLIAMS
Subject: Draft Rule 350 Comment
Follow Up Flag: Follow up
Flag Status: Completed

David, Kevin:

I just wanted to pass along this comment on draft Rule 350 for your consideration...it is an administrative technicality.

Section 404.4 – this provision requires that 3rd party verifiers meet specific criteria, including submission of a Conflict of Interest (COI) form to AQMD.

However, I don't see an administrative step in the rule clearly stating that AQMD will review and take action on the 3rd party verifier information within a specific timeframe.

That is, is there an administrative step that AQMD will take to notify applicants and/or 3rd party verifiers of approval/denial within xx days of receiving complete information?

Thanks

Regards, Stu

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