



June 26, 2009

Via E-Mail

Chairman Mike Feuer,
The California State Assembly Committee on the Judiciary

Re: SB 722 -- Voluntary Greenhouse Gas Offsets -- Oppose if Not Amended

Dear Chairman Feuer and Members of the Assembly Committee on the Judiciary:

The Renewable Energy Marketers Association (REMA) is pleased to offer the following comments with respect to SB 722 and our concern with this pending legislation.

REMA represents the collective interests of both for-profit and non-profit organizations that sell or promote renewable energy products through voluntary markets, including renewable electricity, renewable energy certificates (RECs), and on-site solar PV to individuals, companies, and institutions throughout North America. We are taking special interest in SB 722 as many of the customers of REMA rank among the Fortune 500, including several large employers in California, the leading colleges and universities in the country (many residing in California), and finally several military installations in California and elsewhere.

REMA has great concerns about SB 722. We support the stated intent of the bill to increase transparency in the voluntary offsets market. We are concerned, however, with significant flaws in the bill as it is currently written; it actually would regulate the offsets market in a few short and overly restrictive provisions. We appreciate the recent efforts by the Assembly Natural Resources Committee to improve the bill, but the changes made are unworkable and inadequate. (See below.) Thus, we now would like to work with the Judiciary Committee to address our concerns so that the bill might achieve its purpose without doing great and needless damage to the existing offsets market, which would be bad for both economy and the environment. With this letter, we submit proposed amendments that would promote transparency without damaging this emerging market; we've also suggested changes to address aspects of the bill that simply are not workable.

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The Bill: Laudable Goals but a Failed Approach and Potentially Disastrous Results.

REMA supports what we understand to be the goals of SB 722. Purchasers of voluntary offsets, whether they are consumers or businesses, should have confidence that the GHG emission reductions they buy are indeed real, additional, verifiable, unique, and permanent. Many stakeholders in this sector, including many governmental entities and leading environmental NGOs, are making great efforts to ensure the quality of the offsets that are delivered to the market. These include the development of comprehensive standards and protocols for offsets, as well as registries. Without endorsing any particular organization or standard, we here note some of the leading examples:

- American Carbon Registry: <http://www.americancarbonregistry.org/>;
- The United Nations' Clean Development Mechanism: <http://cdm.unfccc.int/methodologies/index.html>;
- U.S. EPA's Climate Leaders Program: <http://www.epa.gov/climateleaders/>;
- The Voluntary Carbon Standard: <http://www.v-c-s.org/>;
- Gold Standard for Voluntary Offsets: <http://www.cdmgoldstandard.org/>;
- Climate, Community & Biodiversity Standards: <http://www.climate-standards.org/>;
- Chicago Climate Exchange: <http://www.chicagoclimatex.com/>; and
- Plan Vivo: <http://www.planvivo.org>

We support calls for full disclosure of the standard or protocol to which a given offset project adheres. This would enable purchasers to make informed decisions and evaluate for themselves whether a particular offset meets their own criteria.

SB 722, however, does far more than require disclosure to enable informed decision-making. It would make it unlawful to promote offsets unless they adhere to one of three sets of protocols: those adopted or approved by the California Air Resources Board ("ARB"), of which as yet there are none; those established by the California Climate Action Registry ("CCAR"), of which at present there are only four; or a third category. We support the inclusion of the first two categories; however, they are in their earliest stages and have developed few protocols. The problem is the third category, which, because there are so few approved protocols in the first two categories, is the one that most voluntary offsets today would have to meet.

This third category ignores all of the good work done around the world by organizations such as those listed above, and instead sets forth a list of criteria that is both too restrictive *and* ambiguous. For example, it requires that an offset be "verifiable" by a California agency, which effectively negates *all* out-of-state offsets. Similarly, while the bill does not require that offsets allowed under § 38702 not result in "adverse environmental or public health impacts," the bill nonetheless requires that those representing that credits result in reductions "maintain in written form and make available to any member of the public who requests it . . . [i]nformation on any adverse environmental or public health impacts associated with the creation and maintenance of the credit or emission reduction . . ." (which under the bill also includes impacts on "biodiversity" and "access to food"). It will be virtually impossible for developers of many quality offset projects to assemble enough information to be confident that they have complied with these sweeping yet vague criteria.

Such ambiguity is an invitation to litigation -- and that invitation has been embossed with the addition of citizens' suit enforcement provisions that include attorney's fees. What research and subsequent documentation would be required to satisfy the information maintenance provisions of § 38703(a)(2) on a project's impacts? One could show adherence to a respected and robust protocol, but there is little to prevent a litigant -- or one ill-informed judge -- from declaring that insufficient and imposing liability. Due to the inability to interpret and therefore adhere to the requirements of the law, many businesses that otherwise might develop offset projects will choose not to do so to avoid seemingly inevitable litigation.

Inadvertent suppression of the offset market would be bad for the economy and bad for the environment. The offsets sector is generating economic opportunities in traditionally disadvantaged areas such as rural communities. It is improving the environment by reducing or sequestering GHG emissions *today*, not in a future "post-carbon" economy. Many offset projects also deliver additional environmental co-benefits, such as natural resources restoration, improved water quality management and reduction of other air pollutants. Voluntary offsets enable those in non-regulated sectors -- including consumers -- to participate in the fight against global warming. For all these reasons, the voluntary market for quality GHG offsets should be encouraged.

The Recent Amendments are Unworkable and Inadequate.

We appreciate the effort by the Assembly Natural Resources Committee to address the shortcomings of the bill by amending Section 37802(a); however, the changes fail to fix the problem. As amended, the provision reads, "The Credit or Emission reduction meets methodologies **or standards** that have been adopted **or approved** by the State Air Resources Board pursuant to Division 25.5 (commencing with Section 38500)" (bold text indicating new language). Because the bill references (and is subordinate to) the existing provisions of AB 32, it is both unworkable and inadequate. The relevant provision of AB 32, Health and Safety Code Section 38571, provides that ARB may "adopt methodologies for the quantification of voluntary greenhouse gas emission reductions" (emphasis added). It does not make explicitly clear that ARB is authorized to approve existing independent standards. Insofar as Section 38571 may be read to allow ARB to approve independent standards, the amendment does not change the scope of 38702(a) at all and serves no clear purpose.

Even if the amended version of Section 38702(a) were interpreted to independently provide ARB the authority to approve offset standards, the approach would be inadequate as it would add significant delay. It leaves the approval of independent standards entirely to the discretion of ARB. It does not provide any timeframe within which ARB must act on to consider and approve standards, and in fact does not require ARB to do so at all. As ARB currently has a task of mammoth proportions on its hands (implementing AB 32), it may be years before it approves any independent standards, thereby continuing to ignore (and fail to take advantage of) the huge amount of good work already done within the voluntary offset sector to establish rigorous standards and protocols. Thus, it is not all clear that the amendment would work to achieve its apparent intent to enable ARB to approve existing offset standards, and even if it did, it would add so much delay that it likely would be fatal to the voluntary offsets market.

SB 722 Damages California's Regional Leadership, as it is Contrary to the Western Climate Initiative. California Co-Founded the WCI and is a Leading Member of it.

SB 722 is at odds with California's participation in the Western Climate Initiative (the "WCI"). Section 9.10 of the WCI's September 23, 2008 Design Recommendations for the WCI Regional Cap-and-Trade Program states that, "***WCI Partner jurisdictions do not intend to regulate or restrict the existing voluntary market in offsets***, to restrict the sale of offsets from projects located within a WCI Partner jurisdiction, or to place restrictions on ownership of offsets projects located within WCI Partner jurisdictions." As explained above, SB 722 definitely would regulate the existing voluntary market -- and would have the effect of severely restricting this emerging market. For California to be at odds with one of the core principles of the WCI's program -- which reportedly was the result of lengthy and intensive negotiations by the WCI Partner jurisdictions -- likely would severely damage the State's regional leadership. If California reneges on this aspect of the WCI program, the other Partners may be hesitant to continue to follow California's lead -- and worse, may similarly renege on their commitments to the regional program. That would not be good for the State and its efforts to combat global climate change, efforts that have been truly groundbreaking and made the State a global leader.

Proposed Amendments to Improve SB 722 so that its Laudable Goals of Ensuring Transparency may be Achieved without Destroying the Voluntary Offsets Market.

SB 722 goes far beyond its stated intention of ensuring transparency in the emerging carbon markets. It would seriously damage if not destroy the emerging voluntary offsets market, and as such would do harm to the environment. REMA therefore respectfully request that the Committee amend the bill to read as follows¹:

An act to add Division 25.7 (commencing with Section 38700) to the Health and Safety Code, relating to greenhouse gases.

LEGISLATIVE COUNSEL'S DIGEST

SB 722, as amended, Steinberg. Greenhouse gas credits.

Under existing law, a person or entity that represents that a consumer good that it manufactures or distributes is not harmful to, or is beneficial to, the natural environment, through the use of specified environmental terms, is required to maintain in written form in its records information and documentation supporting the validity of the representation, as specified. Existing law provides that it is unlawful for a person to make any untruthful, deceptive, or misleading environmental marketing claim, whether explicit or implied. A violation of these requirements is a misdemeanor.

This bill would make it unlawful for a person, as defined, to represent in an advertisement or in any other sales or promotional materials made available to the public for the sale of a greenhouse

¹ Language which has been added is both **bold and underlined**. Language which has been removed is ~~struck through~~. The original text is that of Senate Bill 722, as amended on June 24, 2009.

gas credit or emission reduction, that the credit or reduction reduces greenhouse gas emissions unless certain requirements are met. The bill would also require a person that represents in an advertisement or in any sales or promotional materials made available to the public for the sale of a greenhouse gas credit or emission reduction, that the credit or emission reduction results in a reduction of greenhouse gases to maintain in written form and make available to any member of the public who requests it certain information and documentation supporting the validity of that representation. A violation of these provisions would be punishable by a specified civil penalty and would create a civil cause of action. Reasonable attorney fees and costs would be available for any such action brought. These requirements would become operative on January 1, 2011, and would become inoperative if the Federal Trade Commission adopts binding and enforceable trade rules or regulations for claims or representations for greenhouse gas emission reduction credits or reductions to protect consumers.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS
FOLLOWS:

SECTION 1. Division 25.7 (commencing with Section 38700) is added to the Health and Safety Code, to read:

DIVISION 25.7. GREENHOUSE GAS REDUCTION
REPRESENTATIONS

38700. The Legislature finds and declares all of the following:

(a) Global warming poses a serious challenge to the world's environment and economy.

(b) With increasing concern regarding climate change, there has been an increase in the advertising, sale, and transfer of greenhouse gas emission reduction credits, offsets, and similar products designed to allow individuals or entities, or both, to purchase emission reduction credits to voluntarily offset greenhouse gas emissions from the activities of the purchaser.

(c) While voluntary greenhouse gas emission reductions can contribute to efforts to reduce global warming, consumers and other members of the public have few protections or standardized methods by which to ensure that they are purchasing or obtaining emission reduction credits that actually reduce greenhouse gases, reduce global warming, and improve the environment.

(d) The purposes of this division are to protect the consumer and to ensure that the benefits to the environment through the sale of legitimate greenhouse gas emission reduction credits, offsets, or similar products are realized.

38701. For the purposes of this division, the following terms have the following meanings:

(a) "Greenhouse gas credit," "emission reduction," "credit," "offset," "reduction," or any similar term, means a voluntary reduction in the emissions of, **or the avoided emission of,** greenhouse gases into the atmosphere **from projects or activities located in or outside of the state of California and** undertaken for the purposes of selling, trading, or otherwise providing the credit or emission reduction to another party. **Nothing in this division is intended to prohibit or regulate the sale of a renewable energy certificate (REC) when it is sold as a voluntary indirect emission reduction of greenhouse gasses to offset the electricity-related emissions of the purchaser.**

(b) "Person" has the same meaning as set forth in subdivision (c) of Section 17577.1 of the Business and Professions Code.

38702. It is unlawful for any person to represent in an advertisement or in any other sales or promotional materials made available to the public for the sale of a greenhouse gas credit or emission reduction, that the credit or reduction reduces greenhouse gas emissions unless it meets one or more of the following conditions:

(a) The **emission reduction project generating the** credit or emission reduction meets methodologies or standards that have been adopted or approved by the State Air Resources Board as being in compliance with Division 25.5 (commencing with Section 38500).

(b) The **person demonstrates, and discloses in any advertising or other sales or promotional materials made available to the public, that the credit or emission reduction meets all of the following conditions:**

(1) the emission reduction project generating the credit or emission reduction complies with one or more protocols for voluntary emission reductions of greenhouse gases adopted by the California Climate Action Registry consistent with the requirements in former Chapter 6 (commencing with Section 42800) of Part 4 of Division 26, as effective on December 31, 2007, **the Voluntary Carbon Standard, the Gold Standard for Voluntary Offsets, the Green-e Climate Program, the Climate, Community and Biodiversity Alliance Standard, the Chicago Climate Exchange, or Plan Vivo,** and is registered with the California Climate Action Registry.

(2) The emission reduction project generating the credit or emission reduction is in compliance with all applicable laws and regulations.

(3) The credit or emission reduction has been, or will be, registered with the California Climate Action Reserve program of the California Climate Action Registry, the American Climate Registry, the Voluntary Carbon Standard, the GHG Registry®, the GHG CleanProjects™ Registry, the Gold Standard for Voluntary Offsets, the Chicago Climate Exchange, or the Plan Vivo Registry.

(c) The person demonstrates, and discloses in any advertising or other sales or promotional material made available to the public, that the credit or emission reduction meets all of the following

conditions:

(1) The credit or emission reduction is **real, permanent, verifiable,** quantifiable and measurable in a manner that is consistent with the protocols developed pursuant to the reporting regulations adopted by the State Air Resources Board pursuant to Part 2 (commencing with Section 38530) of Division 25.5.

(2) The credit or emission reduction is ~~surplus, and is in addition to any greenhouse gas emission reduction that otherwise would occur.~~ **otherwise required by law or regulation.**

(3) ~~The credit or emission reduction is verifiable by a state, regional, or local agency within the State of California.~~ **emission reduction project generating the credit or emission reduction is in compliance with all applicable laws and regulations.**

(4) ~~The credit or emission reduction does not cause or significantly contribute to a violation of any state or federal ambient air quality standard or toxic air contaminant standard.~~

38703. (a) Any person that represents in an advertisement or in any other sales or promotional materials made available to the public for the sale of a greenhouse gas credit or emission reduction, that the credit or emission reduction results in a reduction in greenhouse gases, shall maintain in written form and make available to any member of the public who requests it all of the following information and documentation supporting the validity of the representation:

(1) The basis for the claim, including documentation that one or more of the conditions required by Section 38702 have been met.

(2) Information on any adverse environmental or public health impacts associated with the creation and maintenance of the credit or emission reduction **that are identified in the project approval documents or by the accrediting entity for the project generating the credit or emissions reduction,** including impacts on species, habitat, ecosystems, land use, biodiversity, air quality, water supply and quality, access to food, and production of food.

(b) A retailer that does not initiate a representation by advertising or through other means available to the public shall not be deemed to be in violation of this section.

38704. (a) A violation of this division is punishable by a civil penalty not to exceed two thousand five hundred dollars (\$2,500) per violation, and by the payment of the cost of the purchase of the credit, offset, or reduction as defined pursuant to subdivision (a) of Section 38701.

(b) A violation of this division creates a civil cause of action that may be brought by any person or governmental entity.

(c) Reasonable attorney fees and costs shall be available for any action brought pursuant to this section.

(d) A violation of this division is not a crime.

(e) The remedies provided in this section are in addition to any other rights or remedies under any other provision of law.

38705. This division shall become operative on January 1, 2011, and shall become inoperative if the Federal Trade Commission adopts binding and enforceable trade rules or regulations for claims or representations for greenhouse gas emission reduction credits or reductions to protect consumers.

REMA, along with many other stakeholders, has proposed specific amendments that would clarify and strengthen SB 722. These suggestions could result in meaningful changes in the language of the bill. We are ready to work with you and your colleagues on legislation that actually protects consumers. Unless SB 722 is amended, as it is currently written, we must state our opposition to this legislation.

REMA wholeheartedly believes consumer protection is a vital component of the voluntary market. Customers must have full faith that their purchases lead to incremental renewable energy production and meaningful reductions in carbon dioxide emissions from offsets. We believe it is essential to encourage individuals and organizations to make meaningful choices about their electricity supply by endorsing the sale of RECs in a voluntary market, and in doing so help support the transition to a cleaner energy future.

We look forward to continuing to work together with you and other leaders with whom we share many of the same goals on consumer and environmental protection. Thank you for listening to our concerns.

Respectfully Submitted,



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The views expressed by REMA in this regulatory filing do not necessarily represent the views of each individual member company.

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