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Via Electronic Submittal

Courtesy Copies Via E-Mail to:

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Tim Lesiuk, Chair of the Offsets Committee (Tim.Lesiuk@gov.bc.ca)

Re: Comments of the Carbon Offset Providers Coalition on the Western Climate Initiative Offset System Essential Elements Draft Recommendations Paper (April 2010)

Dear Mr. Lesiuk and Members of the Offsets Committee:

The COPC (www.carbonoffsetproviders.org) is an alliance of leading companies that provide low-carbon and clean technology investments, representing hundreds of clean infrastructure projects, millions of tons of greenhouse gases reduced, thousands of green jobs, and millions of dollars in economic benefit to local and regional communities at project locations in the U.S. and abroad. COPC members finance, produce, generate, provide, aggregate, verify, and/or market greenhouse gas emission reductions for sale as offsets in existing and emerging voluntary and compliance greenhouse gas emission trading markets. Our members include the #1 and #2 project portfolios in North America, the #1 credit aggregator, as well as the largest portfolio of international Clean Development Mechanism offsets in the world.

The COPC is pleased to have this opportunity to comment on the Offset System Essential Elements Draft Recommendations Paper (the "Draft Recommendations Paper") issued by the Offsets Committee of the Western Climate Initiative (the "WCI"). We offer the following comments based upon our members' experience operating within these markets, including the collective experience from hundreds of offset projects in nearly all 50 states here in America that have achieved millions of tons of greenhouse gas reduction.

The COPC has been engaged in the WCI's process as a stakeholder since the beginning and has submitted comments (all available on the COPC website linked above) on many of the WCI's earlier documents, including the February 2008 Summary of Major Options for a GHG Offsets System to Support the WCI Program, the June 2008 Draft Design Recommendations on Elements of the Cap-and-Trade Program, the August 2008 Draft Design of the Regional Cap-and-Trade Program, and the June 2009 Offset Limit White Paper. In these and other comments, the COPC has consistently urged the WCI to establish a robust offset program that focuses on ensuring the quality of offsets, and to avoid arbitrary limits that unnecessarily stifle the development of emissions reduction projects.

The COPC welcomes the WCI's strong commitment to including a rigorous offsets program in the Draft Recommendations Paper. In particular, the COPC affirms the WCI's



fundamental statement regarding additionality that the criteria are meant to “address the need for offsets to represent reductions or removals of GHG emissions that would not have otherwise occurred but for the incentives provided by the offset program.” (Draft Recommendations Paper at 19.) Unfortunately, two of the draft recommendations regarding additionality and eligibility run counter to this fundamental purpose of the WCI offset program.

1. Additionality Requirements Should Recognize the Diversity of WCI Partner Jurisdictions.

Section 5.1.1 of the Draft Recommendations Paper states that “performance standards used to establish a baseline will be set so as to reflect the most stringent regulatory requirements and legal requirements of any WCI Partner jurisdiction (those requirements leading to the most conservative calculation of emission reductions).” (Draft Recommendations Paper at 20-21.) This runs counter to the overall purpose of a robust offset program. While perhaps initially appealing as a simple way to ensure uniform additionality, it fails to recognize the great diversity of regulatory programs in the WCI partner jurisdictions. This failure not only impairs the cost flexibility purpose of the program, it will eliminate an important incentive to reduce GHG emissions in the near term by those not subject to the cap.

Many sources of GHG emissions that are good candidates for offset projects are in jurisdictions that do not have in place emissions control regulations necessitating the use of the most restrictive technology feasible. Market incentives can be harnessed to encourage those emitters that are not subject to compliance obligations under the cap to utilize such technology to reduce emissions. They are more likely to do so if they can follow a tried-and-true path to cost-effective emission reductions (*i.e.*, if the emission reduction technologies or practices they might adopt have been proven to be reliable and cost-effective). In other words, the entities most likely to be eligible for and to participate in the WCI offset program are sources for which proven emission reduction technologies have been developed but are not mandated by jurisdictional regulations. By requiring those entities to meet strict requirements not currently mandated in their jurisdiction *before* counting additional emissions reductions as offsets, the WCI will create a disincentive for participation in the offset program. Lack of participation in the program will create a shortage of offsets, which may slow the rate at which the WCI partner jurisdictions can transition to a low-carbon economy. Just as importantly, the fundamental purpose of the cap-and-trade program — reducing GHG emissions — will not be served, as there will be neither market incentives nor regulatory requirements to encourage the reduction GHG emissions from sources outside the cap even where proven technology is available. Relatively easily implemented emission reduction projects thus will not be undertaken; in effect, low-hanging fruit be left on the tree.

Landfills represent a good example of an industrial sector that would be discouraged from installing emission reduction technology under the proposed additionality recommendation. GHGs from landfills can be significantly reduced by installing methane capture and combustion technology. Landfills currently emit one fifth of all US methane emissions¹; of course, methane

¹ See USEPA, Sources and Emissions, Table 1 - U.S. Methane Emissions by Source, available at <http://www.epa.gov/methane/sources.html>.



is a powerful GHG with 23 times the global warming potential of CO₂. Installation of this technology is relatively low in cost and has the potential to greatly reduce anthropogenic methane emissions. Landfills that do not currently employ methane capture for economic reasons might if doing so would create the opportunity to sell offset credits in the WCI market.

While most WCI jurisdictions do not require the installation of methane capture technology at landfills, California does. Implementation of the Additionality requirement as currently drafted would require the WCI to set the baseline “performance standard” at the emission level of the “most stringent regulatory requirement” — *i.e.*, California. As a result, the baseline will be established as the emission level of a landfill that has a methane capture system installed. A baseline so far below the current emission levels of landfills in most WCI jurisdictions would prevent landfills that installed methane capture equipment from creating any offsets. As a result, landfills in those jurisdictions likely would not install methane capture equipment and easily avoided emissions would go unreduced.

According to EPA’s Landfill Methane Outreach Program (“LMOP”), there are 31 candidate landfills in Nevada, Colorado and Arizona that do not have methane capture equipment installed despite being good candidates for methane-based energy production, and only four other landfills in those three states have actually installed methane capture technology for energy production.² Indeed, only 27% of the 1,754 municipal solid waste landfills in the country had installed methane capture as of 2007.³ Clearly, there exists a great opportunity for the WCI to encourage greater proliferation of this technology in states without California’s level of regulation. For a variety of reasons other WCI partner jurisdictions do not have regulatory requirements as stringent as California, nor are they likely to anytime soon. The WCI’s additionality criteria should encourage, not suppress, proliferation of this GHG emission reduction technology in these WCI jurisdictions that differ from California.

2. The Offset Project Eligibility Start Date Should Not to Punish Early Actors.

a. Offset Eligibility Criteria Should Focus on Quality not Arbitrary Sates.

The COPC respectfully suggests that WCI will be better served by establishing a much more realistic and equitable start date that recognizes efforts of early that responded to the call to action by the WCI and others to tackle GHG emission reductions. The Draft Recommendations Paper explains that the September 23, 2008 start date identified in Section 5.2.1 was proposed because it is the “date WCI released Design Recommendations that identified the priority project types for WCI offsets.” (Draft Recommendations Paper at 23.) Offsets created before that date, as well as long-term offset projects begun before that date, apparently will be considered invalid.

² See USEPA, Landfill Methane Outreach Program, Energy Projects and Candidate Landfills, available at <http://www.epa.gov/lmop/projects-candidates/index.html#map-area>.

³ See Congressional Research Service, “Methane Capture: Options of Greenhouse Gas Emissions Reductions,” September 17, 2009, available at <http://fpc.state.gov/documents/organization/130799.pdf> (citations omitted).



The Draft Recommendations Paper explains that this date is required due to the “the need to establish a rigorous offset system to support WCI Partner Jurisdictions . . . while ensuring the quality of offsets allowed into the system.” (Draft Recommendations Paper at 23.) While the COPC applauds the WCI’s desire to see that offsets meet a high standard, an arbitrary bright-line start date before which any efforts at generating offsets — no matter how high quality — will be categorically invalidated is not the right approach. It is at odds with WCI’s “Policy Statement on Voluntary Early Actions to Reduce Greenhouse Gas Emissions,” adopted on February 28, 2008, which provides that *the WCI will “Ensure that any credits provided for voluntary early actions are based on emission reductions that are real, permanent, additional, quantifiable, verifiable, and enforceable.”* (Emphasis added.)⁴

The placement of this requirement in Section 5 (entitled “Defining the Criterion Additional”) suggests that it may be intended to ensure the additionality of offsets. However, this late date is counterproductive and unnecessary. If a pre-2008, emissions reduction project meets all the criteria of a rigorous protocol, then the emission reductions are real and additional, regardless of when created. The WCI itself builds on many years of leadership by nonprofits, academics and voluntary market investors that for over a decade have been building the market infrastructure that make the WCI offset program feasible. It is illogical and unfair to disregard all of this good work and capital investment. For example, there is no reason that a methane gas collection system that was installed at a landfill in 2007 or earlier should not be credited for methane gas it continues to collect and convert into green energy in 2010. The Draft Recommendations Paper as written would create a perverse incentive to abandon such projects, leaving greenhouse gases to be vented into the atmosphere. Exclusion of these high quality offsets also will reduce the overall volume of quality offsets available to the market, thereby hindering the cost effectiveness of the program. Rather than drawing a line at September 23, 2008, the COPC recommends that the WCI simply hold older offsets to the same standards of quality and verifiability as newer offsets.

b. Clarification Requested.

It is unclear whether the September 23, 2008 start date applies only to credits produced in the WCI system or if the start date also applies to credits approved in other voluntary or compliance offset systems prior to September 23, 2008. Section 5.2.1.3 of the Draft Recommendations Paper states that “any offsets that have previously been issued in any voluntary or compliance offset system” may be given credit by a WCI Partner Jurisdiction if the reduction is “retired or removed from the other system.” This statement appears to indicate that

⁴ Note that crediting early producers of offsets for their work will harmonize the WCI with policies supported by California, its largest partner jurisdiction. California Health and Safety Code Section 38562(b)(3), codifying AB 32, directs the board responsible for adopting implementing regulations to: “Ensure that entities that have voluntarily reduced their greenhouse gas emissions prior to the implementation of this section receive appropriate credit for early voluntary reductions.”



currently existing offsets approved by compliance systems such as the Regional Greenhouse Gas Initiative (“RGGI”) and by voluntary systems such as the Climate Action Registry (“CAR”), the Voluntary Carbon Standard (“VCS”), and the American Carbon Registry (“ACR”) can be transferred to the WCI market regardless of their start date. This statement appears to run counter to statements made by Mr. Lesiuk on the May 5, 2010 Stakeholder Call #2, which indicated that pre-2008 credits from voluntary compliance systems such as CAR would not be eligible for use in the WCI system, but those approved by compliance schemes such as RGGI would be in the event the WCI later links with RGGI. The COPC would appreciate clarification as to the meaning of the statement in Section 5.2.1.3.

Regardless of the statement’s meaning, COPC respectfully suggests that WCI should not draw artificial distinctions between offsets issued under the WCI system, those that were issued under other compliance offset systems, and those that were issued under voluntary systems that have been otherwise approved by WCI. So long as offsets were issued under systems that ensure the quality of the offsets, there is no reason to set hard eligibility dates for their use. It is logically inconsistent to apply eligibility dates to WCI offset credits when no such restrictions are applied to credits that may come from projects developed under RGGI. Acceptance of pre-2008 offsets from systems such as RGGI indicates that WCI believes that the quality of such offsets can be ensured. WCI should apply the same logic to offsets generated within the WCI jurisdictions by recognizing offsets regardless of their age so long as they are real, additional, verifiable and permanent.

c. If a Start Date Must be Selected, it Should be no Later than January 2001.

If the WCI concludes that a bright line is necessary, the COPC recommends that it be moved back at least to the year 2001 to ensure that quality offsets established pursuant to previously existing standards not be prevented from entering the WCI market. A start date of January 2001 would harmonize the Draft Recommendations Paper with Section 740 of the American Clean Energy and Security Act of 2009 (H.R. 2454) that was passed by the U.S. House of Representatives in June of 2009.

It also would be much closer in spirit to the approach taken in the American Power Act (the “APA”), introduced today by Senators Kerry and Lieberman. While the APA establishes a start date of January 1, 2009, it Section 740(b) states that any “regulatory or voluntary greenhouse gas emission offset program may apply to the Administrator and the Secretary for approval as a qualified early offset program,” and if offset projects were registered “as of the date of the enactment of this act under an [affirmatively determined] offset program,” and commenced “after January 1, 2001,” the credits will be usable in the new system. (See APA Section 735(a)(2)(A)(ii).)

While a 2001 start date requirement still will be harmful by ignoring quality offsets generated before that time, it will be much less restrictive than the Draft Recommendations Paper’s start date requirement of September 23, 2008.



We hope that the WCI and the Offsets Committee find these comments helpful. The Coalition would be happy to provide additional information to the WCI and the Committee. For more information regarding carbon offsets and the Coalition, we invite you to visit our website at www.carbonoffsetproviders.org, or contact the Coalition through our representative, Nicholas W. van Aelstyn, Beveridge & Diamond, P.C., 456 Montgomery Street, Suite 1800, San Francisco, CA 94104 (tel. (415) 262-4008; e-mail NvanAelstyn@bdlaw.com).

Sincerely,

A handwritten signature in black ink that reads "Roger Williams W". The signature is written in a cursive style with a horizontal line at the end.

Roger Williams
Chairman
Carbon Offset Providers Coalition

For inquiries, please contact COPC's counsel:

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