



November 14, 2007

The Honorable Barbara Boxer
United States Senate
Chairwoman, Committee on Environment and
Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable James Inhofe
United States Senate
Ranking Member, Committee on Environment and
Public Works
456 Dirksen Senate Office Building
Washington, D.C. 20510

Re: America's Climate Security Act of 2007 (S. 2191)

Dear Chairwoman Boxer and Senator Inhofe:

The Carbon Offset Providers Coalition appreciates this opportunity to express its support for the America's Climate Security Act of 2007 (S. 2191). The Coalition comprises companies that are leaders in the carbon offset market, including those involved in financing, producing, generating, providing, aggregating and/or marketing greenhouse gas (GHG) emission reductions for sale as offsets in existing and emerging voluntary and compliance GHG emission trading markets. 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 the U.S. and abroad that have achieved the reduction of millions of tons of greenhouse gases.

The Coalition supports the America's Climate Security Act, and in particular the bill's recognition of the vital role that offset projects will play in achieving the United States' goal of significant cuts in greenhouse gas emissions. Economic analyses by the U.S. Environmental Protection Agency (EPA) and others have shown that incentivizing a robust market in offset reductions (*i.e.*, emissions reductions from diverse sources outside a mandatory cap) can dramatically reduce the overall cost to American taxpayers and consumers of meeting the goals of global warming legislation. Indeed, without offsets, the cost of compliance could be over two and a half times more than with unrestricted use of offsets.¹

Apart from serving as a critical cost-containment mechanism, offset projects also provide jobs and opportunity for the U.S. economy, including farmers and small businesses, and often

¹ Source: U.S. EPA Analysis of The Climate Stewardship and Innovation Act of 2007, S. 280 (July 16, 2007).

include important co-benefits such as reduction of conventional air pollutants, improved water quality and renewable energy that benefit all Americans. Many offset projects also have the potential to benefit disadvantaged urban and rural communities. In addition, technology and know-how developed in offset projects can be exported, for American profit, to the rest of the world.

Finally, offsets provide critical flexibility for those industry sectors covered under an emissions cap as they transition to a new carbon-constrained economy. Many offsets projects are available to begin achieving greenhouse gas reductions immediately, giving industry time to phase-in new technology and capital investment while avoiding premature retirement of assets that could result in unnecessary economic hardship as well as avoidable environmental life-cycle costs.

In short, the potential of offset projects should be “unleashed” to help attain the goals of S. 2191 and to contribute to the global warming solution and America’s energy independence. While S. 2191 generally allows offsets to make that contribution, some provisions of S. 2191 would artificially restrict the effectiveness of the offset market or create ambiguities that may foreclose opportunities for cost-effective emissions reductions. The COPC offers the following recommendations for amendments.

1. Section 2402(a): Artificial Limits on Offsets. Section 2402(a) of the bill limits use of offsets to 15% of a regulated company’s compliance obligation. Because offsets are an essential cost-containment mechanism and also offer investment opportunity for many communities, there is no logical reason to limit the ability of offset projects to deliver cost-effective reductions of greenhouse gases. The COPC recognizes that offsets must maintain a high level of integrity, including third party verification of all emissions reductions. To this end, the bill provides for a regulatory structure that will guarantee that all eligible offset projects will deliver real, verifiable, additional, permanent, and enforceable emission reductions. Thus, there is no need – either theoretically or practically – to limit the beneficial use of offsets, and our strong preference would be to remove any quantitative limits from the statute. However, in recognition that there are some members of Congress who have concerns about offsets, the COPC accepts that it may be necessary to include some restriction on the initial percentage use of offsets. Any limit should be set sufficiently high, however, as to avoid handicapping the cap-and-trade program as a whole.

- **COPC Proposal:** Amend Section 2402(a) to read: “Beginning with calendar year 2012, the owner or operator of a covered entity may satisfy ~~45~~ 50 percent of the total allowance submission requirement of the covered entity under section 1202(a) by submitting offset allowances generated in accordance with this subtitle.”

2. Section 2402(b): Third Party Verification. Section 2402(b) requires the Environmental Protection Agency, in conjunction with the Department of Agriculture, to “promulgate regulations authorizing the issuance and certification of offset allowances.” Section 2402(b)(1) further specifies that these regulations must “ensure that those offsets represent real,

verifiable, additional, permanent, and enforceable reductions.” The COPC supports this approach. It is critical that the integrity of offsets be ensured, and the Environmental Protection Agency is the most appropriate agency to perform this work. The COPC has confidence in the EPA’s ability to establish a regulatory regime that ensures the environmental integrity of offsets as well as the practicable and economic workability of the program. The COPC and its members look forward to working with the agencies as stakeholders in the rulemaking process. In general, we believe that the guidance set forth in Section 2402(b) is sufficiently detailed; however, we do believe that it would be helpful to clarify that the “verifiable” requirement means verified by a third party. This minor change would ensure that the promulgated regulations are consistent with the best practices in use today.

- **COPC Proposal:** Amend Section 2402(b)(5) to read: “establish procedures for the third party verification, registration, and issuance of offset allowances, in accordance with section 2405;”

3. Sections 2403 and 2404: Eligible Offset Projects. Sections 2403 and 2404, which define eligible offset projects, contain repeated references to “agricultural and forestry” projects to an extent that makes it ambiguous whether non-agriculture projects would qualify, which we believe to be inadvertent and contrary to the intent of the sponsors. For example, the heading of Section 2403 reads “Eligible Agricultural and Forestry Offset Project Types,” even though the body of that section broadly qualifies “any other terrestrial offset practices identified by the Administrator.” The repeated reference to “agricultural and forestry” could be misconstrued as limiting eligibility of projects that do not relate directly to land-use, such as landfill methane capture. We believe this language may be vestigial, and can be clarified with minor changes.

- **COPC Proposal:** Amend Section 2403 heading to read: “Eligible ~~Agricultural and Forestry~~ Offset Project Types.” Amend Section 2403(b) heading to read: “Categories of Eligible ~~Agricultural, Forestry, and Other Land Use Related~~ Offset Projects.” Amend Section 2404(f) heading to read: “Development of Monitoring and Quantification Tools for ~~Agricultural and Forestry~~ Offset Projects.”

4. Section 2403(a): Exclusion of Avoided Fossil Fuels. Section 2403(a) currently provides: “Offset allowances from agricultural, forestry, and other land use-related projects shall be limited to those allowances achieving an offset of 1 or more greenhouse gases by a method *other than a reduction of combustion of greenhouse gas-emitting fuel.*” This restriction would potentially disqualify many beneficial projects from contributing to greenhouse gas reduction goals through the Subtitle D offset program. For example, the provision arguably would disqualify, or at a minimum remove a critical incentive from, renewable energy projects such as biogas combustion at landfills or wind energy that rely on the ability to market the credit from using renewable power sources in lieu of carbon-intensive (and often imported) fossil fuels. This provision also could be construed to disqualify many other beneficial projects such as urban tree canopy planting initiatives that displace cooling loads on urban buildings and thus save energy,

which are currently being developed in cooperation with environmental justice communities and urban sustainability efforts.

To the extent that there are concerns with emissions accounting or other design issues relating to avoided fuel combustion, the statute should be amended to address those concerns expressly (perhaps by providing for the adjustment of the sectoral baseline for affected covered sources to reflect renewable power capacity), rather than the blunt approach of simply excluding an entire class of beneficial projects. Although it might be possible to provide direct substitute incentives for renewable energy and other such projects (for example, through production payments or tax credits or other incentives within the revenue-recycling provisions), the bill as currently drafted does not contain such incentives to the degree or breadth that would be accomplished by an offset market-based incentive system.

In sum, because the intent of this provision is unclear, because its ramifications in terms of discouraging many projects that can mitigate global warming are counterproductive, and because the language is ambiguous as to its scope and effect, the provision should be deleted in its entirety unless and until the consequences of such a provision can be worked out in greater detail.

- **COPC Proposal:** Delete Section 2403(a).: ~~“Offset allowances from agricultural, forestry, and other land use related projects shall be limited to those allowances achieving an offset of 1 or more greenhouse gases by a method other than a reduction of combustion of greenhouse gas emitting fuel.”~~

5. **Sections 4(4) and 2403(b)(4): Terrestrial Offset Limitation.** Section 4(4) (definition of “biological sequestration”) and Section 2403(b)(4) limit offsets to “terrestrial” practices, thus effectively excluding potential greenhouse gas reduction measures from ocean fertilization, atmospheric seeding, etc. Although there are questions surrounding the viability of such approaches, there is no reason to rule out the potential global warming mitigation from such projects should they be proven scientifically. Other provisions of S. 2191 set forth rigorous standards for review and accounting of offset projects that will ensure that concerns about particular projects or technologies will be addressed. For example, under Section 2410, the USEPA Administrator may restrict projects that have adverse effects on human health or the environment.

- **COPC Proposal:** Amend Section 2403(b)(4) to read: “subject to the requirements of this subtitle, any other ~~terrestrial~~ offset practices identified by the Administrator.” Amend Section 4(4) to read “The terms “biological sequestration” and “biologically sequestered” mean – (A) the removal of greenhouse gases from the atmosphere by ~~terrestrial~~ biological means, such as by growing plants”

6. **Section 2403(c): Public Investment Disqualification.** Section 2403(c) would exclude offset projects that “participat[e] in a Federal, State, or local cost-sharing, competitive

grant, or technical assistance program.” A somewhat similar provision in former Section 2403(d) was deleted from the original draft of the bill during the subcommittee mark-up on November 1, 2007. The purpose and function of the remaining provision is unclear, but would have the ill effect of disqualifying or discouraging offset projects that partner with government or that employ technology developed under a grant. For example, in an anaerobic manure digester project, if a power take-off from a farm tractor is used to pump manure effluent from the digester, and the tractor was purchased by the farmer with some small public assistance, would that represent grounds for disqualification of a project?

Ironically, these projects are precisely the types of activities that government wants to encourage through the cost-sharing, grant or assistance programs referenced in Section 2403(c). Government incentives typically provide only a small part of the investment necessary to implement such projects, and their success depends on leveraging the public support as well as on the additional revenue from the generation of carbon offset credits. Thus, this provision would have the unintended consequence of undermining important incentive programs and missing valuable opportunities for emissions reductions.

- **COPC Proposal:** Delete Section 2403(c). ~~“A project participating in a Federal, State, or local cost-sharing, competitive grant, or technical assistance program shall not be eligible to generate offset allowances under this subtitle.”~~

7. **Section 2404(j): Exclusion of Agricultural Projects.** Section 2404(j) contains a provision reading: “Exclusion – No activity for which any emission allowances are received under subtitle G of title III [Sections 3701-3703] shall generate offset allowances under this subtitle.” The cross-referenced sections relate to a 5% allowance set-aside for domestic agriculture and forestry projects under which the Department of Agriculture may distribute allowances (which will presumably be sold back to the trading market to generate cash revenue) to “entities that carry out sequestration projects on agricultural and forest land.” Read literally, this exclusion could foreclose any agriculture or forest offset project from selling offset credits in the cap-and-trade market, regardless of whether the project itself receives free allowances, as the exclusion could be construed to apply to agriculture activities as a class. We understand that the intention of this provision is to prohibit windfall profits by barring projects that receive a subsidy in the form of free allowances from also selling offset credits for those same tons of greenhouse gas reduction. However, even construed more narrowly in that light, the provision would go beyond its apparent purpose and arguably disqualify any project that received even a few allowances regardless if the project generated carbon reductions far beyond the number of allowances provided.

Such an exclusion would undermine the intent of the revenue-recycling provisions by disqualifying projects that received even a small number of allowances as a financial incentive or grant. For example, the government may wish to incentivize methane capture at family-owned dairy farms by distributing allowances to participating farmers. However, the project may capture more methane than represented by the free allocations, but would be unable to monetize

this additional greenhouse gas mitigation under the present statutory language; thus, this provision would handicap the government's ability to leverage its own incentive programs. Accordingly, this provision should be adjusted to allow the crediting of offsets to the extent that the project generates excess reductions above and beyond the incentive provided. In addition, although Section 3701 sets aside allocations for both emission reduction and sequestration projects in the agriculture and forestry sector, Section 3703 authorizes distribution of allowances only for sequestration projects, which could be construed to exclude farm methane capture or fertilizer nitrous oxide reductions projects, and is inconsistent with the prior provision and intent of the program.

- **COPC Proposal:** Amend Section 2404(j) to read: "Exclusion – No activity project for which any emission allowances are received under subtitle G of title III shall generate offset allowances under this subtitle except to the extent such project generates greenhouse gas reductions or increases in sequestration in excess of the number of tons represented by the allowances distributed to that project under such subtitle." Amend Section 3703 to read in pertinent part: "... a program under which agricultural and forestry ~~sequestration~~ allowances may be distributed to entities that carry out ~~sequestration~~ projects on agricultural and forest land that achieve long-term greenhouse gas emission mitigation benefits."

8. Section 2408(b): Credits for Pre-Existing Projects. Section 2408(b) allows, but does not mandate, that the Environmental Protection Agency recognize offset projects begun prior to the effective date of EPA offset audit regulations where those projects are "operating under other Federal, State, or private reporting programs or registries," provided that the offsets "satisfy the applicable requirements of this subtitle," presumably including the standards eventually to be developed by EPA. There are several concerns with regard to this provision. First, in order to recognize early actors that have voluntarily invested in less carbon intensive projects and technologies and to encourage continued investment before the effective date of EPA regulations, it is critical that investors and project developers are able to rely on a clear signal that existing projects will be credited. This is especially important given the multi-year planning horizon and investment timeframe required to finance and build these projects. Accordingly, recognition of pre-existing projects should be mandatory rather than left to agency choice at some later date.

Second, it is unclear what the term "operating" means in this context. While emissions reductions from offset projects are generally registered and verified under emissions reduction programs, the projects themselves should not necessarily be thought of as operating under those programs in the same sense as "operating" under traditional environmental regulatory programs, such as the Clean Air Act or the Clean Water Act.

Third, because EPA eligibility rules have not yet been written, pre-existing projects may not precisely meet procedural or other standards that will be developed in the future even though they may be fully consistent with the statutory criteria and of comparable environmental

integrity. Accordingly, the bill should allow EPA to recognize early-implemented offset projects that are consistent with the goals of the statute, even if those projects do not exactly meet the eventual regulations.

- **COPC Proposal:** Amend Section 2408(b) to read: “The Administrator ~~may~~ shall allow for the transition into the Registry of offset projects and banked offset allowances ~~operating under~~ (a) registered under or meeting the standards of The Climate Registry, the California Climate Action Registry, the GHG Registry®, the Chicago Climate Exchange, or the GHG CleanProjects™ Registry as of the effective date of regulations promulgated under section 2407(a), and (b) offset credits registered under or meeting the standards of any other Federal, State, or private reporting programs or registries as of the effective date of regulations promulgated under section 2407(a) if the Administrator determines that ~~the~~ such other offset projects and banked offset allowances under such other programs or registries satisfy are consistent with the applicable requirements of this subtitle.”

9. **Section 2410: Federal Requirements.** In absence of an express provision to the contrary, it might be argued that approval of offsets under Section 2404 might be subject to the National Environmental Policy Act, Administrative Procedure Act, or other federal statutes which require study or review of major federal actions, which would be duplicative of the review mandated under the offsets program created by Subtitle D, and would dramatically delay and complicate approvals of individual projects. Of course, the programmatic regulations promulgated under Section 2402(b) would be subject to full public review and comment and agency consultation under relevant law.

- **COPC Proposal:** Amend Section 2410 to add a new subsection (d) as follows: “(d) Notwithstanding any other provision herein, no action of the Administrator with regard to the issuance and certification of offset allowances under this subtitle shall be subject to the National Environmental Policy Act, the Endangered Species Act, the Administrative Procedure Act, or other federal requirement; provided, however, that nothing herein shall relieve an offset project from obtaining all federal, state and local approvals otherwise required under other law.”

10. **Subtitle E of Title II: International Credits.** Subtitle E (Sections 2501-2503) allows the use of international “allowances or credits obtained on a foreign greenhouse gas emissions trading market” if USEPA certifies the market as comparable to the U.S. compliance market. However, the term “credits” is not defined, and it is unclear whether this provision encompasses Certified Emissions Reductions (CERs) generated under the Kyoto Protocol’s Clean Development Mechanism or similar international systems. Section 6006 references, but does not define, “international offset projects,” which suggests that the bill authors intended to recognize CERs, but it is not clear.

- **COPC Proposal:** Provide a definition of “international allowances or credits” or otherwise clarify the scope of this provision with regard to which international offsets, allowances, credits or instruments may be used.

11. Subtitle F of Title III: Carbon Capture and Sequestration. Subtitle F of Title III addresses Bonus Allowances for Carbon Capture and Geological Sequestration. We appreciate that S. 2191 recognizes the greenhouse gas emission reduction potential of carbon capture and sequestration (CCS). This is consistent with the international scientific consensus, as the Intergovernmental Panel on Climate Change released a special report on CCS in September 2005 that largely supported the mitigation potential of CCS. The work being done as part of the FutureGen Initiative that the federal government launched in 2003 represents the cutting edge of the potential for CCS in the electric power generation sector. The FutureGen Initiative may explain why CCS is included in Title III regarding allowances rather than in Title II regarding cost containment (where the other offsets sections are found) – and why Section 3602 of the bill limits bonus allowances for CCS projects to those in the electric power generation sector and to those that begin operation after January 1, 2008. What this language does not recognize is that CCS is a reality today. Millions of tons of industrial vent stack-sourced CO₂ are being transported and sequestered in the United States every year, and have been for several years. We would be happy to provide more information about this. Thus, while we applaud S. 2191’s recognition of the potential for CCS in the electric power generation sector, we respectfully submit that S. 2191 should be amended so that proven CCS technology in use today can be further utilized to capture and permanently sequester many more anthropogenic sources of CO₂. We have three specific proposals.

First, we recommend that CCS be addressed not in Title III but instead in Subtitle D of Title II regarding offsets. We will be happy to provide specific language regarding how best to achieve this. Short of that, we recommend that CCS be expressly recognized in Section 2403 regarding eligible offset projects.

Second, we recommend that the recognition of CCS not be limited to the electric power generation sector. Large volumes of anthropogenic CO₂ is currently being emitted from vent-stacks at industrial facilities across the country. These are sources of greenhouse gas emissions that CCS can address today, and S. 2191 should incentivize that work.

Finally, consistent with our comments with respect to Section 2408(b) regarding credit for pre-existing projects, we recommend that the recognition of CCS not be limited to those projects that begin in 2008. Those that acted early to mitigate greenhouse gas emissions with CCS should not be penalized merely because their work may not be well-known. If there is to be more investment in these successful emission reduction technologies, a clear signal should be sent that these investments will be credited. This is especially true in the area of CCS, which is more capital intensive and requires a longer investment timeframe than some other offset technologies.

- **COPC Proposal:** Move CCS from Subtitle F of Title III to Subtitle D of Title II.

Short of that, amend the latter part of Section 2403(b)(4) by inserting the following to read:

“(C) carbon capture and geological sequestration; and
“(C)-(D) other actions that result in the avoidance or reduction of
greenhouse gas emissions in accordance with section 2402; and . . .”

- **COPC Proposal:** If CCS remains in Title III rather than Title II, then amend Sections 3602(2) and (3) to read:

“(2) sequester in a geological formation permitted by the Administrator for that purpose in accordance with regulations promulgated under section 1421(d) of the Safe Drinking Water Act (42 U.S.C. 300h(d)) carbon dioxide ~~resulting from electric power generation~~; and

“(3) have begun operation during the period beginning on January 1, ~~2008~~ 2001, and ending on December 31, 2035.”

12. **Section 6006: Use of Domestic Offsets in International Reserve Program.**

Under the International Reserve Allowance Program set out in Section 6006 of the bill, importers of certain goods must submit international reserve allowances, or in lieu thereof, foreign cap-and-trade allowances or international credits under subtitle E of title II. However, the goals of the importer requirement for goods can be served equally by providing an option for importers to submit domestic offset allowances from projects approved under subtitle D of title II. Including domestic offsets as a compliance option would provide more flexibility to the importer program, would potentially lower the price of goods for consumers, and would provide additional market opportunities and important incentives for U.S.-based emission reductions that will complement the overall goal of the bill to lower global greenhouse gas concentrations.

- **COPC Proposal:** Amend Section 6006(e)(2)(A) to read: “A United States importer may submit, in lieu of an international reserve allowance issued under this section, a domestic offset allowance under subtitle D of title II or a foreign credit or a credit for an international offset project that the Administrator has authorized for use under subtitle E of title II.”

The Hon. Barbara Boxer
The Hon. James Inhofe
November 14, 2007
Page 10

Thank you again for this opportunity to express our support for S. 2191. The Carbon Offset Providers Coalition would be glad to provide further information to the Committee or staff upon request.

Sincerely,

A handwritten signature in cursive script that reads "Roger Williams" followed by a stylized flourish.

Roger Williams, Chairman
CARBON OFFSET PROVIDERS COALITION²

cc: Members of the Senate Committee on Environment and Public Works

² The members of the Coalition presently include the following entities: Blue Source, LLC; Camco International Group, Inc.; Commonwealth Resource Management Corp.; Environmental Credit Corp.; MGM International; and Sindicatum Carbon Capital.