

**Final Determination**  
**California Air Resources Board**  
**Compliance Offset Investigation**  
**Compliance Offset Protocol for Livestock Projects**

## **I. Introduction**

The California Air Resources Board (CARB) has completed its investigation into whether the Scenic View Dairy Methane Reduction Project (CARB ID CALS5040; Project) in Holland, Michigan was in compliance with the health and safety rules of the Michigan Department of Environment, Great Lakes, and Energy (MDEGLE) when the Project conducted livestock methane destruction events for which CARB subsequently issued compliance offset credits. Under section 95985(c)(2) of the [Cap-and-Trade Regulation](#) (Regulation), CARB can investigate and invalidate issued compliance offset credits if the offset project activity and implementation of the offset project was not in accordance with all local, state, or national environmental and health and safety regulations during the Reporting Period for which the compliance offset credits were issued.

Section 95985 of the Regulation establishes a process for CARB to investigate and invalidate issued compliance offset credits. Although CARB has concluded that all of the greenhouse gas (GHG) emission reductions represented by the offsets at issue here are real, quantified, and verified reductions, CARB made an [initial determination](#) that these compliance offset credits may be subject to invalidation pursuant to section 95985. In accordance with section 95985(d), on November 18, 2019, CARB blocked transfers of the potentially invalid compliance offset credits until its investigation could be completed and a final determination on whether to invalidate any of the compliance offset credits is made by CARB's Executive Officer.

In addition to blocking the transfer of compliance offset credits under investigation, CARB also notified all parties identified as holders of potentially invalid compliance offset credits, and all affected parties had 25 calendar days to provide additional information to CARB to aid in the review.

Since November 18, 2019 and pursuant to section 95985(d), CARB has conferred with MDEGLE, reviewed information submitted to it by notified stakeholders, and made staff available to stakeholders and their counsel who wished to provide information or discuss the investigation. CARB received additional information from MDEGLE on January 10, 2020. At that time, CARB determined it had sufficient information to make a final determination. The Regulation provides the Executive Officer 30 days from the date at which CARB has sufficient information to issue its final determination.

## II. General Statement of Legal Principles and Statutory Framework

### *The Regulation's Requirement for Compliance with Local, State, and National Regulatory Requirements*

The regulatory requirements that govern the eligibility, implementation, and issuance of compliance offset credits for livestock methane destruction events are contained within the Regulation and the [Compliance Offset Protocol Livestock Projects](#) (adopted November 14, 2014; Protocol).

Section 95985(c)(2) of the Regulation states that CARB may determine that a compliance offset credit may be invalidated for several different reasons, including:

The offset project activity and implementation of the offset project was not in accordance with all local, regional, state, and national environmental and health and safety regulations that apply based on the offset project location and that directly apply to the offset project, including as specified in the applicable Compliance Offset Protocol during the Reporting Period for which the ARB offset credit was issued.<sup>1</sup>

Appendix E, paragraph (b) of the Regulation specifies the project activities considered for regulatory compliance of livestock projects:

All project activities associated with the installation and operation of the biogas control system that captures and destroys the methane must comply with all requirements that have a bearing on the integrity of the generated offsets. Project activities begin at waste collection and end at onsite biogas usage and the disposal of associated digester effluents.<sup>2</sup>

Subchapter 3.7 *Regulatory Compliance* of the Protocol states:

An offset project must meet the regulatory compliance requirements set forth in section 95973(b) of the Regulation.

In turn, Section 95973(b) of the regulation states, in relevant part:

...an offset project must also fulfill all local, regional, state, and national environmental and health and safety laws and regulations that apply based on the offset project location and that directly apply to the offset project, including as specified in a Compliance Offset Protocol. The project is considered out of regulatory compliance if the project activities were subject to enforcement action by a regulatory oversight body during the Reporting Period, although whether

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<sup>1</sup> Title 17, California Code of Regulations section 95985(c)(2).

<sup>2</sup> Title 17, California Code of Regulations Appendix E, paragraph (b).

such enforcement action has occurred is not the only consideration ARB may use in determining whether a project is out of regulatory compliance.

These provisions of the Regulation and Protocol require that both the project activities associated with the livestock methane destruction events as well as implementation of the project itself must be in “accordance with all local, regional, state, and national environmental and health and safety regulations...” These provisions require that the project comply with: (1) all requirements that have a bearing on the integrity of the generated offsets and (2) environmental and health and safety requirements associated with the collection, recovery, storage, transportation, and destruction of methane, including the disposal of the associated digester effluents.

### III. Findings of Fact

#### A. *Notice of Violation Issued by the Michigan Department of Environment, Great Lakes, and Energy (MDEGLE)*

On April 23, 2019, CARB staff became aware of numerous violations that occurred at the Project site from 2013 through 2016. Specifically, MDEGLE issued a violation notice to Scenic View Dairy on October 24, 2017 in response to violations of Part 31 of the Michigan Natural Resources and Environmental Protection Act, implementing rules, and the Project’s National Pollutant Discharge Elimination System (NPDES) permit. Only one of those violations relates to the project (Item No. 5 in the violation notice; SVN-000508):

“Manure Nitrogen Rate – Based on the farm’s reports numerous fields received manure applications where the first year available Nitrogen (N) from the manure exceeded the crop recommendation. The planned crop and yield indicated an N recommendation much less than was applied through the manure application. While it can be justified to add additional N to a crop, this cannot be done prior to a shown need, which would be after a manure application. Per the permit up to one year of N can be applied for a crop as outlined in Part I, Section B, 3.c.1)c). In no case should a manure application exceed the recommendation for N as this is a violation of the farm’s permit. Future applications of manure shall not exceed the one year N need.”

This violation spans the Project’s first three reporting periods. However, CARB was not aware of the notice of violation until April 23, 2019. The first two reporting periods for the Project had shortened invalidation timeframes pursuant to section 95985 of the Regulation, which ended prior to April 23, 2019. As such, only offsets from the third reporting period, CALS5040-C (Reporting Period C), remain subject to invalidation.

Additionally, on October 25, 2019, MDEGLE notified CARB staff of an additional violation that occurred at the Project, which again involved the over-application of manure nitrogen. This event was described as having occurred from April 2, 2017 to

January 1, 2018, covering the fourth reporting period, CALS5040-D (Reporting Period D).

Table 1 shows all reporting periods for the Project, the dates upon which the reporting periods start and end, the number of ARB offset credits issued for each Reporting Period, the date ARB offset credits were issued, and the invalidation timeframe, and the start of the invalidation timeframe for each Reporting Period (which is the same date as the reporting period end date).<sup>3</sup> The two Reporting Periods which were part of this investigation (Reporting Periods C and D) are highlighted in the table below.

**Table 1. Offset Project Reporting Period Data**

Project ID # by Reporting Period	Reporting Period Start Date	Reporting Period End Date	ARB Offset Credits Issued	Invalidation Timeframe	Start of Invalidation Timeframe
CALS5040-A	2/1/2014	1/31/2015	18,359	3 years	1/31/2015
CALS5040-B	2/1/2015	1/31/2016	18,328	3 years	1/31/2016
CALS5040-C	2/1/2016	1/31/2017	20,421	3 years	1/31/2017
CALS5040-D	2/1/2017	1/31/2018	15,697	8 years	1/31/2018

Based on the information provided by MDEGLE, CARB took action to block the transfer of all compliance offset credits issued under Reporting Period D. It was not necessary to block the transfer of compliance offset credits issued under Reporting Period C because these offset credits had been previously retired.

*B. Non-Compliance Associated With Reporting Period D*

On November 25, 2019, after CARB had taken action to block all compliance offset credits determined to be subject to the investigation (initially from Reporting Periods C and D), MDEGLE clarified that the Project had actually come back into compliance in 2017, so the October 25, 2019 communication was incorrect. Based on this additional information, CARB determined that Reporting Period D was no longer subject to invalidation as part of this investigation.

*C. Response from the Authorized Project Designee, 3Degrees, and CARB responses*

On December 13, 2019, 3Degrees, the Authorized Project Designee (APD), submitted a written response to CARB. The APD contended that no invalidation with respect to

<sup>3</sup> The timeframe for invalidation refers to the time period during which CARB may invalidate an offset credit. Pursuant to Section 95985 of the Regulation, the timeframe for invalidation is eight years from the end of a reporting period unless the Project undergoes a second regulatory verification, in which case the timeframe for invalidation is shortened to three years.

Reporting Period D should occur because the non-compliance was noted in error by MDEGLE. As described in paragraph B. above, based on communication with MDEGLE, CARB has confirmed that the violation reported to CARB by MDEGLE was in error and Reporting Period D should no longer be the subject of the current investigation.

With respect to Reporting Period C, the APD stated that MDEGLE provided clarification to the APD that the project was only out of compliance with respect to nitrogen levels from the period of April 4, 2016 through September 22, 2016. The APD requested that to the extent that CARB determines that invalidation is appropriate, it be limited to the percentage of crop fields managed by the dairy that were subject to the notice of violation.

To verify the dates of non-compliance, CARB staff reached out to MDEGLE on December 20, 2019 and on January 10, 2020 to request confirmation of the dates on which the Project was out of compliance. On January 10, 2020, MDEGLE responded to CARB confirming that it considered the Project to have been in continuing non-compliance since before 2016 and to have returned to full compliance on January 1, 2017. Based on this confirmation, the dates of non-compliance for over-application of nitrogen for Reporting Period C were February 1, 2016 through January 1, 2017. This time period corresponds only to a portion of Reporting Period C.

#### **IV. Final Determination**

*A. The Project did not meet the requirements of the Regulation and the Compliance Offset Protocol.*

Under section 95985(c)(2) of the Cap-and-Trade Regulation (Regulation), CARB can investigate and invalidate issued compliance offset credits if the offset project activity and implementation of the offset project are not in accordance with all local, regional, state, and national environmental and health and safety regulations during the Reporting Period for which the compliance offset credit was issued.

The Michigan state agency with jurisdiction over the Project, MDEGLE, determined that applications of manure placed the Project out of compliance with its regulations with respect to soil nitrogen levels and the Project's NPDES permit with respect to soil nitrogen levels. As explained above, MDEGLE has confirmed for CARB that the Facility returned to compliance in 2017, prior to the start of Reporting Period D.

*B. Invalid Compliance Offset Credits*

Based on the assessment documented in this report, as well as the reviewed offset issuance documents, the Executive Officer has made the final determination that:

- CARB has determined that the violations at issue for this investigation did not cover compliance offset credits issued during Reporting Period D. As such, Reporting

Period D is no longer the subject of the current invalidation investigation and CARB has removed the CITSS transfer restrictions imposed on those compliance offset credits.

- With respect to Reporting Period C, the Project was not operating “in accordance with all local, regional, state, and national environmental and health and safety regulations” during the time of methane destruction events relevant to this investigation from February 1, 2016 through January 1, 2017. Of the 20,421 compliance offset credits for Reporting Period C that were part of this investigation, 18,867 correspond to methane destruction that occurred during the time when the Project was out of compliance (February 1, 2016 through January 1, 2017).
- CARB will identify as invalidated the number of ARB offset credits associated with the project as listed in Table 2 below on the relevant project issuance table.<sup>4</sup> CARB has notified all holders of the invalidated offsets. Per section 95985(h) of the Regulation, any entity that has retired these invalidated offset credits for compliance is required to replace the invalid compliance offset credits within 6 months of the CARB Executive Officer’s final determination to invalidate.

**Table 2. Offset Credits to be Invalidated**

<b>Project ID # by Reporting Period</b>	<b>ARB Offset Credits Issued</b>	<b>ARB Offset Credits to be Invalidated</b>
CALS5040-C	20,421	18,867

- Based on this final determination, the Executive Officer considers this investigation to be complete and final.

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<sup>4</sup> See [ARB Offset Credit Issuance Table](#).