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**SENATE COMMITTEE ON ENVIRONMENTAL QUALITY**

**Senator Allen, Chair**

**2023 - 2024 Regular**

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<b>Bill No.</b>	AB 2331	<b>Hearing Date:</b>	6/19/2024
<b>Author:</b>	Gabriel		
<b>Version:</b>	6/6/2024		
<b>Urgency:</b>	No	<b>Fiscal:</b>	Yes
<b>Consultant:</b>	Eric Walters		

**SUBJECT:** Voluntary carbon market disclosures

**DIGEST:** This bill updates a number of technical provisions created by AB 1305 (Gabriel, Chapter 365, Statutes of 2023) regarding disclosure requirements for the sellers and buyers of voluntary carbon offsets (VCOs), as defined, involving the details, accounting, and justifications of VCOs with regards to claiming carbon neutrality, among related claims.

**ANALYSIS:**

Existing law:

- 1) Under the California Climate Crisis Act (AB 1279, Muratsuchi, Chapter 337, Statutes of 2022), states that it is the policy of the state to achieve net zero greenhouse gas (GHG) emissions no later than 2045 and maintain net negative GHG emissions thereafter, and to ensure that by 2045 statewide anthropogenic GHG emissions are reduced to at least 85% below the 1990 level.
- 2) Defines terms related to the cap-and-trade program, including the California Air Resources Board (CARB's) Compliance Offsets Program. (Title 17 CCR, Section 95802)
- 3) Creates specified disclosure requirements for the sellers and buyers of voluntary carbon offsets (VCOs), as defined, involving the details, accounting, and justifications of VCOs with regards to claiming carbon neutrality, among related claims. (AB 1305, Gabriel, Chapter 365, Statutes of 2023)

This bill makes changes to the requirements created by AB 1305 (Gabriel, 2023), including:

- 1) Specifying a January 1, 2025 start date for the reporting requirements, and the date after which offset projects must quantify the removal and avoided emission components of a project.

- 2) Stating that a renewable energy credit (REC), as defined, is not a VCO.
- 3) Making minor and technical changes to the disclosures required of business entities marketing or selling VCOs and of entities purchasing VCOs to make certain claims.

## Background

- 1) *What is a carbon offset?* In its simplest terms, a carbon offset is when one entity who is attempting to reduce its emissions instead pays another entity to then reduce or remove an equivalent amount of emissions, rather than actually reduce their emissions themselves.

The devil, of course, is in the details. Who is reducing their emissions instead? What emissions are they reducing, avoiding, or removing? Would they have reduced those emissions if they had not been paid through the offset arrangement? Are the offset emissions directly equivalent to the original emissions, or is their equivalence depending on subjective accounting assumptions? These questions and more have swirled around offsets for as long as they have been in use.

Despite these concerns, carbon offsets are widely used by individuals, corporations, and governments to mitigate their GHG emissions on the assumption that offsets reflect equivalent climate benefits achieved elsewhere.

- 2) *Voluntary offsets versus compliance offsets.* In California, many of the state's largest polluters are subject to the state's cap-and-trade program. Under the cap-and-trade program, they are required by law to either reduce their emissions by specified amounts over time or otherwise surrender compliance instruments to cover those emissions. The two available compliance instruments are allowances (which originate from the state providing a set amount each year) and offsets (which originate from entities outside of cap-and-trade offering to reduce or avoid equivalent volumes of emissions). Offsets purchased to comply with cap-and-trade are "compliance offsets"; their use is to comply with mandatory legal obligations.

In contrast, voluntary carbon markets are not established by governments and participation is voluntary. These markets allow companies, governments, and other organizations to offset their carbon emissions on a voluntary basis, either to meet their own sustainability goals or to demonstrate their commitment to reducing their carbon footprint. The voluntary carbon market is currently

smaller than the compliance market, but it is expected to grow as more entities seek to increase their climate ambitions while minimizing associated costs.

AB 1305 exclusively pertains to voluntary carbon markets. It makes no changes to the ability of cap-and-trade covered entities to use compliance offsets to comply with their cap-and-trade compliance obligations.

- 3) *When offsets don't offset.* The central idea behind a carbon offset is that it can substitute for GHG emission reductions that an organization would have made on its own. When offsets are truly like-for-like (e.g. a ton of emitted CO<sub>2</sub> is compensated by a ton of CO<sub>2</sub> removed from the atmosphere and stored permanently), they can indeed be used to achieve carbon neutrality and reduce the total tonnage of GHG emissions to the atmosphere. This accounting quickly becomes wickedly complicated when vastly different pollutants, activities, and carbon stores are used to compensate for each other, however.

The issue is perhaps at its most inscrutable when it comes to so-called “avoided emissions.” To qualify as a genuine carbon offset, the reductions achieved by a project need to be “additional” to what would have happened if the project had not been carried out (e.g. continued as business-as-usual). In the case of avoided emissions, the business-as-usual scenario is often, at its core, an educated guess made by financially vested parties.

If you own and protect a forest for generations, it does not inherently create avoided emissions offsets. On the other hand, if you own and protect a forest, tell an offset registry you were planning to cut it down, and then continue protecting it for generations, you can potentially create a number of valuable avoided emissions offsets. While simplistic, this example illustrates the vital importance of transparency, safeguards, and other best practices.

Moreover, continuing the example of the protected forest, no one can predict the future. Even with the best of intentions for responsible stewardship, the conditions for extreme wildfires arise more often as climate change worsens. What happens when your forest burns down? If the offset was already generated, and the (nearly permanent) CO<sub>2</sub> emission was already justified, what recourse remains? Different protocols take different approaches to deal with these so-called “reversals”, but it is crucial that plans are in place and able to assure that carbon removals do not simply go up in smoke without further compensatory actions.

- 4) *Junk offsets.* Not all offsets are created equal. The lack of regulation and oversight of VCO markets in particular results in offsets being issued and sold

that are highly unlikely to generate the carbon benefits that they claim to represent, which can be referred to as “junk offsets.” Junk offsets inflict harm in two primary ways. First, buyers of offsets who sincerely believe that purchasing an offset will finance projects that generate carbon benefits are defrauded when they are sold a junk offset that fails to deliver such benefits. Second, corporate buyers of junk offsets may greenwash their activities (intentionally or unintentionally) if they use the offsets in their accounting of the corporation’s carbon footprint, which may result in claims to customers, employees, and investors that are inaccurate.

- 5) *The Federal Trade Commission’s (FTC’s) Green Guides*. The Green Guides are designed to help marketers avoid making environmental claims that mislead consumers. The FTC’s most recent update of the Guides includes, among other things, guidance on marketers’ claims about carbon offsets.

On carbon offsets, the FTC’s Green Guides read:

“Given the complexities of carbon offsets, sellers should employ competent and reliable scientific and accounting methods to properly quantify claimed emission reductions and to ensure that they do not sell the same reduction more than one time.

“It is deceptive to misrepresent, directly or by implication, that a carbon offset represents emission reductions that have already occurred or will occur in the immediate future. To avoid deception, marketers should clearly and prominently disclose if the carbon offset represents emission reductions that will not occur for two years or longer.

“It is deceptive to claim, directly or by implication, that a carbon offset represents an emission reduction if the reduction, or the activity that caused the reduction, was required by law.”

## Comments

- 1) *Purpose of Bill*. According to the author, “AB 2331 will improve California's ability to crack down on corporate greenwashing and junk voluntary carbon offset credits by providing clarity around implementation and enforcement of existing law. These changes will help further ensure that voluntary offset projects are not over-credited and that consumers know exactly what they are purchasing.”
- 2) *Clean up legislation*. Last year’s AB 1305, by the same author, created disclosure requirements for VCOs, both for business entities marketing or

selling VCOs within the state and for entities that purchase or use VCOs to make claims about carbon neutrality. Since the passage of that bill, several issues have been raised by affected entities, which are addressed by this bill:

- a) *Implementation date.* The original legislation lacked an effective date, though a letter to the Assembly Chief Clerk stated the author intended a January 1, 2025, start date. AB 2331 codifies that start date throughout the bill.
- b) *Affected products & entities.* The original legislation defined VCOs as “Any product sold or marketed in the state that claims to be a ‘greenhouse gas emissions offset,’ a ‘voluntary emissions reduction,’ a ‘retail offset,’ or any like term, that connotes that the product represents or corresponds to a reduction in the amount of greenhouse gases present in the atmosphere or that prevents the emission of greenhouse gases into the atmosphere that would have otherwise been emitted,” and excluded offsets used to comply with legal or regulatory mandates. AB 2331 maintains that definition, and further explicitly states that renewably energy credits (RECs) are not included.

To facilitate compliance, AB 2331 currently allows, “a business entity that markets *or* resells a VCO...” which it itself has not generated to direct a buyer to the disclosure made by the entity that generated the offset. ***To ensure this compliance option is only used as intended, the committee may wish to amend this to apply to a business entity that markets and resells a VCO.***

- 3) *Which instruments, exactly?* A main goal of AB 1305 was to increase transparency in the VCO market. By adding a specific exclusion for RECs, AB 2331 could now raise a question of if other, non-VCO products might be implicated unless explicitly excluded. However, the provisions of AB 1305/AB 2331 notably only apply in two instances: “A business entity that is marketing or selling voluntary carbon offsets within the state,” or “An entity that purchases or uses voluntary carbon offsets that makes claims regarding the achievement of net zero emissions, claims that the entity, related entity, or a product is ‘carbon neutral,’ (or similar claims).” While there are a number of other instances where a registry exists or VCOs may be used as a temporary step towards other instruments, those seem to neither be “being marketed or sold by a business entity,” nor “used by an entity to make claims about carbon neutrality.” As such, this seems like a commonsense cleanup measure that does not substantially expand what is already required under AB 1305.

- 4) *Committee amendments. Staff recommends the committee adopt the bolded amendments in comment 2 above.*

**DOUBLE REFERRAL:**

If this measure is approved by the Senate Environmental Quality Committee, the do pass motion must include the action to re-refer the bill to the Senate Judiciary Committee.

**Related/Prior Legislation**

SB 1036 (Limon, 2024) adds certain claims about VCOs to the False Advertising Law, related to VCOs that are known or should be known to not be quantifiable, real, and additional, as defined. SB 1036 is currently in the Assembly Natural Resources Committee.

SB 390 (Limon, 2023) was identical to SB 1036 as introduced, and was vetoed by the Governor.

SB 27 (Skinner, Chapter 237, Statutes of 2021) established, among other things, a registry for the purposes of identifying and listing projects in the state that drive climate action on the state's natural and working lands and are seeking funding from state agencies or private entities.

**SOURCE:** Author

**SUPPORT:**

Anew Climate LLC  
California Environmental Voters (formerly CLCV)  
Environmental Defense Fund  
IETA

**OPPOSITION:**

None received

**Positions reflect letters received by noon one week prior to the hearing.**

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