

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 2331 (Gabriel)
Version: June 20, 2024
Hearing Date: July 2, 2024
Fiscal: Yes
Urgency: No
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SUBJECT

Voluntary carbon market disclosures

DIGEST

This bill clarifies and modifies the law governing voluntary carbon offsets (VCOs).

EXECUTIVE SUMMARY

Carbon offsetting is an activity that compensates for, or balances out, greenhouse gas emissions generated by an organization through its activities and operations. Essentially, an entity that wants to mitigate its greenhouse gas emissions can pay another entity or person to eliminate, reduce, or refrain from greenhouse gas emissions, *offsetting* the first party's emissions. Verifying that these emissions are actually being offset is core to voluntary carbon offsets. Unlike the state's cap and trade program, the voluntary carbon offset market is largely unregulated. This has driven concerns that there is rampant fraud in the industry and that many of these offsets are essentially worthless.

Last year, AB 1305 (Gabriel, Ch. 365, Stats. 2023) sought to require more transparency by requiring a business entity that is selling VCOs to disclose specified information about the applicable carbon offset project, including details regarding accountability if a project is not completed or does not meet the projected emission reductions or removal benefits.

This bill is a cleanup of those provisions to provide more clarity around implementation, scope, and reporting.

This bill is author-sponsored. The bill is supported by various organizations and industry groups, including the International Emissions Trading Association. No timely opposition was received by the Committee. The bill passed out of the Senate Environmental Quality Committee on a 7 to 0 vote.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Imposes disclosure requirements on those who would sell or market VCOs in California, including:
 - a) Details regarding the project generating the offset including the location, timeline, dates, quantities of offset GHG emissions (as defined), total project emissions, type of project, durability of the project, compliance with voluntary standards, and whether there is independent validation or verification of the project.
 - b) Accountability measures if a project is not completed or does not meet the projected emissions reductions or removal benefits.
 - c) Pertinent data and calculation methods needed to independently reproduce and verify the number of offsets issued using the protocol.
 - d) Definitions for pertinent terms, including “durability”, “protocol”, and “voluntary carbon offset.” (Health & Saf. Code § 44475.)
- 2) Imposes disclosure requirements on in-state buyers (or users) of VCOs who claim “carbon neutrality” or similar claims, including the name of the entity selling the offset, names and identification numbers if applicable, the type and location of the project generating the offset, the protocol used to estimate emission reductions or removal benefits, and whether there was independent third-party verification of the data and claims. (Health & Saf. Code § 44475.1.)
- 3) Requires an entity that claims “carbon neutrality” or a similar claim for themselves, their product, or an affiliated entity to disclose on their website information justifying that claim, including:
 - a) How the claim was determined to be accurate.
 - b) How interim progress to that goal is being measured.
 - c) Whether there is independent third-party verification of the company data and claims listed. (Health & Saf. Code § 44475.2.)
- 4) Declares that a violation of this act is subject to a civil penalty of not more than \$2,500 per day, for each day that information is not available or is inaccurate, for each violation, not to exceed a total amount of \$500,000, which is to be recovered in a civil action by the Attorney General, a district attorney, county counsel, or city attorney. (Health & Saf. Code § 44475.3.)

This bill:

- 1) Clarifies that it applies to marketing and sales on or after January 1, 2025 and that initial disclosures are due by that date and updated annually thereafter.

- 2) Modifies and clarifies the details of the project that are required to be disclosed on the business' website.
- 3) Excludes from the definition of "voluntary carbon offset" a renewable energy certificate (REC), issued through an accounting system of a governmental regulatory body or virtual power purchase agreement, of which the REC corresponds to one unit of electricity that was generated and delivered by an eligible renewable energy resource, or a low-carbon fuel standard credit.
- 4) Provides that verification by third parties required by a registry shall constitute independent third-party verification of company data and claims.

COMMENTS

1. Cleaning up the voluntary carbon offset market

Carbon offsets operate where a certain entity absolutely must emit carbon dioxide and so provides for the same amount of the greenhouse gas to be removed from the atmosphere by other means to compensate. Offsets were historically centered on the planting or protection of trees, which absorb carbon dioxide, however, the term has since been applied to a variety of environmental efforts globally:

The vast majority of offsets available fall into a category called "avoided emissions." These are projects that either protect forests, provide people with alternatives to using fossil fuels, or avert emissions from waste. If done right, such projects can reduce the volume of greenhouse gases being added to the atmosphere while providing other benefits to local communities and promoting biodiversity. Beyond planting or protecting trees, offsets can also be generated by preventing the release of greenhouse gases other than CO₂, like methane or nitrous oxide. Typically, more expensive offsets involve removing carbon dioxide that's already in the atmosphere and storing it away. That may involve projects like growing a forest or installing machines that vacuum carbon dioxide out of the air. Just 4% of off sets actually remove CO₂ from the atmosphere. . . .¹

The voluntary carbon offsets targeted by this bill are distinct from carbon offsets involved in the state's cap-and-trade program. Under the cap-and-trade program, industry polluters are legally required to either reduce their emissions by specified amounts over time, or otherwise surrender compliance instruments to cover those

¹ Ashkat Rathi & Ben Elgin, *What Are Carbon Offsets and How Many Really Work?* (June 14, 2022) Bloomberg, <https://www.bloomberg.com/news/articles/2022-06-14/what-are-carbon-offsets-and-how-many-really-work-quicktake?leadSource=uverify%20wall>. All internet citations are current as of June 17, 2024.

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.

Voluntary carbon offsets are just that, voluntary. Voluntary carbon offsets 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 Federal Trade Commission has issued guidance on appropriate marketing of these products:

- 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.²

Despite this guidance, this market is largely unregulated and there are concerns about the legitimacy of these offsets.

2. Addressing these concerns with transparency measures

Last year, AB 1305 was introduced and signed into law in response to the largely unregulated VCO market and reports demonstrating consistent over-crediting and a lack of legitimate additionality in VCO projects. The concerns are well-documented and widespread:

The brisk sales of meaningless offsets is leading to widespread claims of climate progress that isn’t actually happening. As Bloomberg Green previously reported, environmental groups such as the Nature Conservancy and the National Audubon Society have sold credits for

² *Green Guides*, FTC, <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguides.pdf>.

protecting trees that weren't in danger of being harvested, leading to misleading claims of emissions reductions by Walt Disney Co., JPMorgan Chase & Co., and other companies. Meanwhile, North America's largest carbon reforestation project, Green Trees, has sold credits for trees that were already planted through government programs, sometimes more than a decade earlier, resulting in inflated carbon reduction claims by Bank of America Corp. and many others. (The Nature Conservancy, Audubon, and Green Trees all said their projects followed the market's rules, while Disney, JPMorgan, and Bank of America each declined to comment.) "There's a distinct possibility that a great deal of existing carbon offsets are effectively fake," says Robert Mendelsohn, professor of forest policy and economics at Yale.³

These "junk offsets" inflict two major harms. 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 and can constitute a form of unfair competition.

AB 1305 required a series of disclosures to be placed on the websites of business entities that sell VCOs. It requires them to disclose certain details regarding the applicable carbon offset projects. This includes basic information regarding the type, location, and relevant timing of the project. They must also disclose the specific protocol used to estimate emissions reductions or removal benefits. It also requires information regarding certain metrics and validation, including whether the project meets established legal or industry standards and whether there is third-party validation or verification.

These entities selling offsets must also post details regarding accountability measures if a project is not completed or does not meet the projected emissions reductions or removal benefits. This includes details about what the entity plans to do if the carbon storage projects are reversed or if the future emissions reductions do not materialize. These entities must post all data and calculation methods needed to independently reproduce and verify the number of emissions reduction or removal credits issued using the protocol.

The law also requires each entity that purchases or uses voluntary carbon offsets that makes claims regarding the achievement of net zero emissions, claims that the entity,

³ Ben Elgin, *This Timber Company Sold Millions of Dollars of Useless Carbon Offsets* (Mar. 17, 2022) Bloomberg, <https://www.bloomberg.com/news/articles/2022-03-17/timber-ceo-wants-to-reform-flawed-carbon-offset-market>.

related entity, or a product is “carbon neutral,” or makes other claims implying they do not add net carbon dioxide or greenhouse gases to the climate or has made significant reductions to its carbon dioxide or greenhouse gas emissions to disclose specified information on their website. This includes basic information about the entity that sold the offset and identifying information about the project. In addition, and similar to above, the purchasing entity must detail the specific protocol used to estimate emissions reductions or removal benefits and whether there is independent third-party verification of company data and claims listed.

AB 1305 also requires similar postings be made by each entity that makes claims regarding the achievement of net zero emissions, claims that the entity, a related or affiliated entity, or a product is “carbon neutral,” or makes other claims implying they do not add net carbon dioxide or greenhouse gases to the climate or has made significant reductions to its carbon dioxide or greenhouse gas emissions. These entities must post all information documenting how, if at all, a “carbon neutral,” “net zero emission,” or other similar claim was determined to be accurate or actually accomplished, and how interim progress toward that goal is being measured, for all greenhouse gas emissions associated with its claims.

Again, the entity must document whether there is independent third-party verification of the company data and claims listed.

Enforcement is tasked to public prosecutors, namely the Attorney General, district attorneys, county counsel, or city attorneys. They may seek civil penalties of not more than \$2,500 per day, for each day that information is not available or is inaccurate on the relevant website, for each violation, not to exceed a total amount of \$500,000.

3. Clean up and clarification

This bill is a clean up of AB 1305 in response to confusion around implementation, scope, and timelines. The bill provides that it applies to marketing and sales on or after January 1, 2025 and that initial disclosures are due by that date and updated annually thereafter.

The bill also modifies and clarifies the details of the project that are required to be disclosed on the business’ website. For instance, it provides that a business entity that markets or resells a VCO within the state that it has not generated may satisfy the requirements of the statute by publishing on the business entity’s website sufficient information to direct the buyer to the disclosure made by the business entity who generated the VCO.

The bill also excludes from the definition of “voluntary carbon offset” a renewable energy certificate (REC), issued through an accounting system of a governmental regulatory body or virtual power purchase agreement, of which the REC corresponds to

one unit of electricity that was generated and delivered by an eligible renewable energy resource, or a low-carbon fuel standard credit.

As to verification obligations, it provides that verification by third parties required by a registry shall constitute independent third-party verification of company data and claims.

According to the author:

Assembly Bill 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.

California Environmental Voters states in support:

Last year, the legislature passed AB 1305 (Gabriel), which established first in the nation disclosure requirements for entities buying and selling voluntary carbon offsets or making specified emission reduction-related claims. As entities began efforts to comply with the bill's disclosure requirements, provisions were identified that could benefit from increased clarity and technical changes. . . .

AB 2331 makes technical and clarifying changes to the provisions of AB 1305, providing increased clarity for entities seeking to engage with the voluntary carbon offset market or make claims regarding significant reductions in carbon emissions. These changes include specifying the date entities must publish their first disclosure to be January 1, 2025, and ensuring unintended energy and climate products are not within scope.

SUPPORT

Anew Climate, LLC
California Environmental Voters
Environmental Defense Fund
International Emissions Trading Association

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: SB 1036 (Limón, 2024) makes it unlawful, pursuant to the False Advertising Law, to engage in specified unfair, deceptive, or fraudulent practices in the market related to VCOs, including verifying an offset project for the purposes of issuing a voluntary carbon offset if the person knows or should know that the GHG reductions or GHG removal enhancements of the offset project are unlikely to be quantifiable, real, and additional. SB 1036 is currently in the Assembly Committee on Natural Resources.

Prior Legislation:

SB 390 (Limón, 2023) was nearly identical to SB 1036. SB 390 was vetoed by Governor Newsom, who stated in his veto message:

I support the author’s intent to bring greater transparency to the verification, issuance, and sale of voluntary carbon offsets, and to address the problem of so-called “junk offsets.” However, by imposing civil liability for even unintentional mistakes about offset quality, this bill could inadvertently capture well-intentioned sellers and verifiers of voluntary offsets, and risks creating significant turmoil in the market for carbon offsets, potentially even beyond California. I encourage the author to consider an alternative approach to ensuring voluntary carbon offset quality that avoids these unintended consequences.

AB 1305 (Gabriel, Ch. 365, Stats. 2023) *See* Executive Summary and Comment 2.

SB 343 (Allen, Ch. 507, Stats. 2022) tightened the requirements around the permissible use of the “chasing arrows” recycling symbol to avoid deceptive uses in marketing and otherwise.

PRIOR VOTES:

Senate Environmental Quality Committee (Ayes 7, Noes 0)

Assembly Floor (Ayes 67, Noes 1)

Assembly Appropriations Committee (Ayes 14, Noes 0)

Assembly Natural Resources Committee (Ayes 10, Noes 0)
