



**Via email**

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Dear Ms. Hyatt,

November 17, 2017

**Re: Ontario Offset Credits regulation under the Climate Change Mitigation and Low-carbon Economy Act, 2016, EBR 013-1460**

Please accept the following submission of the Canadian Environmental Law Association (“CELA”) regarding the quoted regulation proposal notice.

**1. Offset initiatives registered in other jurisdictions will not contribute to meeting Ontario’s emissions target.**

Since the passing of the *Climate Change Mitigation and Low-carbon Economy Act (CCMLEA)*, Ontario has legislated greenhouse gas reduction targets. The cap and trade program is expected to be the main regulatory tool relied on to achieve the target reductions. Section 5 (1) of the Ontario Offset Credits regulation allows the offset initiative to be located in Canada, other than Quebec. Allowing reductions from offsets to be located outside the province jeopardizes Ontario’s meeting of its emission targets. Instead of offset protocols driving investment in alternative practices of Ontario’s uncapped sectors, the resources will flow to other parts of Canada without reducing Ontario’s emissions. California recently passed AB 398 which requires that half of an entity’s offset credits be required to provide direct environmental benefits to the state.<sup>1</sup>

Ontario’s capped emitters should not be able to meet their carbon allowance obligations through reductions outside the province. Ontario must follow California and require that at least half of the offset initiatives registered in Ontario be required to be undertaken within the province. CELA also requests that there be an analysis of whether allowing offsets to be fungible between jurisdictions will help reduce Ontario’s emissions, and that this analysis be done with every offset protocol that is developed.

**Recommendation**

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<sup>1</sup> AB-398 California Global Warming Solutions Act of 2006: market-based compliance mechanisms, fire prevention fees, sales and use tax manufacturing exemption (2017), at s 4(38562)(c)(2)(E)(i)(I), online: California Legislative Information <[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB398](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB398)> .

**Recommendation 1: Ontario should require that offset initiatives registered in Ontario be undertaken within the province.**

**2. Low-income and vulnerable communities**

The offset protocols approval process must include consideration of other environmental impacts the protocols may create, as well as where the offset initiatives are to be located. In addition to reducing greenhouse gas emissions, the Ministry of Environment and Climate Change must ensure that offset initiatives prioritize the prevention of toxic chemicals from entering the environment, protecting species at risk habitats and other ecologically significant ecosystems, as well as protecting human health. The activities encouraged under offset protocols must be evaluated in accordance with these principles.

Ontario should ensure, at the very least, that offset initiatives do not further burden low-income and vulnerable communities. Low-income and vulnerable communities already disproportionately suffer from high levels of air pollution. In California, facilities subject to cap-and-trade were located in neighbourhoods with higher proportions of residents of colour and residents living in poverty, and facilities that emit the highest levels of greenhouse gases were also more likely to be located in those communities.<sup>2</sup> In Ontario, the Aamjiwnaang First Nations in Sarnia is one of the most polluted places in Ontario, and houses 40% of Canada's chemical industry.<sup>3</sup> Offsets allow big emitters, such as those around Aamjiwnaang First Nations, to continue to emit by purchasing cheap offsets and maintaining their greenhouse gas emissions at the same level, or even higher. If offset initiatives are to be placed in communities such as Aamjiwnaang First Nations, there need to be assurances that there will be no adverse environmental and health impacts from the offset initiative. These communities also need to be made aware that offsets will not provide a direct reduction from localized sources, and in some cases, could increase emissions at some facilities.

Allowing offsets exacerbates pollution problems in low-income and vulnerable communities. Offsets offer a cheap alternative to changing behaviour and reducing greenhouse gas emissions. One of the purposes of the *CCMLEA* is to “assist Ontarians to transition to a low-carbon economy.”<sup>4</sup> This will never happen so long as big emitters can absorb the costs of offsets and continue to emit greenhouse gases in predominantly low-income and vulnerable communities. Ontario needs to provide incentives to change behaviour, not only for the purpose of the *CCMLEA* to be realized, but also to achieve environmental equity.

**Recommendation**

**Recommendation 2: Offset protocols must include consideration of other environmental and health impacts.**

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<sup>2</sup> Lara J. Cushing et al, « A Preliminary Environmental Equity Assessment of California's Cap-and-Trade Program» (Los Angeles: University of Southern California, 2016) at p 2, online: <[https://dornsife.usc.edu/assets/sites/242/docs/Climate\\_Equity\\_Brief\\_CA\\_Cap\\_and\\_Trade\\_Sept2016\\_FINAL2.pdf](https://dornsife.usc.edu/assets/sites/242/docs/Climate_Equity_Brief_CA_Cap_and_Trade_Sept2016_FINAL2.pdf)>.

<sup>3</sup> Environmental Commissioner of Ontario, *Good Choices, Bad Choices: Environmental Rights and Environmental Protection in Ontario* (Toronto: Office of the Environmental Commissioner of Ontario, 2017) at 121.

<sup>4</sup> *Climate Change Mitigation and Low-carbon Economy Act*, SO 2016, c 7, s 2(1)(a).

**Recommendation 3: Ontario should ensure that offset initiatives do not further burden low-income and vulnerable communities.**

### **3. Pollution Reduction**

Offsets need to be separate from other pollution reduction initiatives in order to ensure that greenhouse gas emissions continue to decrease and are not just being sold as offset credits. If a facility was already planning to take specific actions on pollution reduction, it should not be able to then register it as an offset initiative and sell it. Thus, facilities should not be able to register offset initiatives as far back as January 1, 2007 and instead should only be allowed to register offset initiatives from the start of the cap-and-trade program. The emissions from these initiatives were already counted in Ontario's emission target and facilities should not retroactively benefit from these initiatives if it will not help Ontario reach its targets. Early reduction credits are already available to facilities and achieve the purpose of rewarding facilities who took early action to reduce emissions. This double counting defeats the purpose of Ontario's cap-and-trade program and amounts to a giveaway to industry. Ontario needs to develop separate incentives for offsets, as well as develop an enforcement scheme to ensure that not every pollution reduction initiative is being registered as an offset.

### **Recommendation**

**Recommendation 4: Facilities should not be able to register offset initiatives from as far back as January 1, 2007.**

### **4. Buffer Account**

There should be specific language in the Offsets Credits regulation or subsequent regulations that addresses offsets that have been invalidated. Ontario has proposed to use a Buffer Account, similar to Quebec's Environmental Integrity Account, although no language surrounding this account appears in the regulations before us. Ontario should follow California and instead use a "buyer liability" rule. This rule requires that entities purchasing offset credits are responsible if the offsets were later invalidated. Since it is the buyer's compliance obligation and the buyer has chosen to use offsets to help with that obligation, it is the buyer's responsibility to determine what to do if that offset is later invalidated. Adopting a "buyer's liability" rule ensures that entities bear responsibility for choosing to use offsets instead of choosing to reduce their greenhouse gas emissions.

If Ontario chooses to use only a Buffer Account, the process for establishing the risk factor of reversal for offset initiatives must be transparent and subject to public scrutiny. The amount of offset credits held in the Buffer Account must also be publicly available. Any offset regulation should include provisions that address the possibility of the Buffer Account becoming depleted.

**Recommendation 5: Ontario should introduce a "buyer's liability" rule, requiring that entities purchasing offset credits are responsible if the offsets are later invalidated.**

### **5. Transparency**

Information about offset initiatives should be readily available to the public. For example, in California, information about offsets is not readily accessible by the public. Although the number of credits approved and specific protocols are accessible, information about the location of offset initiatives is not readily available.<sup>5</sup> A public registry needs to be created in Ontario that lists the location of the offset initiative, environmental benefits and adverse impacts, how much greenhouse gas emissions are being reduced, and regular reporting on the effectiveness of the initiative. Having this information will allow the public to determine whether offsets are located in low-income and vulnerable communities, whether the offset initiatives are located in areas with other environmental problems, such as poor air quality, whether there are any co-benefits to the offset initiative, and whether the offsets will be counted toward Ontario's emissions target. Transparency will increase public trust that the offset is additional, real, verifiable and permanent. It will also increase public trust in the cap-and-trade program generally, and ease doubts that offset initiatives may not have other adverse environmental and health impacts, or not deliver benefits beyond reducing greenhouse gas emissions.

## **Recommendation**

**Recommendation 6: Ontario should ensure that the Offsets Credits regulation has clear requirements for transparency of offset initiatives to help ensure public trust in the program.**

### **6. Other jurisdictions**

Ontario should make a commitment in its Offset Credit regulation and any subsequent regulations to meet the most stringent offset requirement offered from either California or Quebec. California recently amended their offset credit limit by allowing only a total of 4 percent of a covered entity's compliance obligation to be met by offset credits, down from 8 percent. Ontario should follow suit and only allow 4 percent to be met by offset credits. This will better ensure that facilities will directly lower their greenhouse gas emissions instead of investing in offset initiatives that may or may not lower greenhouse gas emissions.

## **Recommendation**

**Recommendation 7: Ontario should only allow 4 percent of compliance obligations to be met by offset credits**

### **7. Meaningful consultation with the public**

Ontario needs to continue its public consultation on offsets, including with Indigenous communities. Offset protocols should be translated from technical language into plain language documents to allow for meaningful public consultation. This principle should be included in the proposed offset regulation. Public consultations should also be conducted regarding each protocol,

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<sup>5</sup> Shannon Dulaney et al., "Carbon Offsets and Health Co-Benefits: Assessing the Capacity of the Offset Program to Provide Health Co-benefits to California's Disadvantaged Communities", prepared for California Air Resources Board Member, Dean Florez (New Haven: Yale School of Forestry and Environmental Studies, 2017) at p 16, online: <[http://environment.yale.edu/docs/carb\\_policy\\_memo.pdf](http://environment.yale.edu/docs/carb_policy_memo.pdf)>.

including the timely publication of any assumptions made with regards to risk factors and unintended environmental impacts.

## **Recommendation**

**Recommendation 8: Offset regulations should include a positive obligation for meaningful public consultation.**

### **8. Summary of Recommendations**

CELA recommends that the current Offset Credits regulation and any subsequent regulation should ensure the following:

**Recommendation 1: Ontario should require that offset initiatives registered in Ontario be undertaken within the province.**

**Recommendation 2: Offset protocols must include consideration of other environmental and health impacts.**

**Recommendation 3: Ontario should ensure that offset initiatives do not further burden low-income and vulnerable communities.**

**Recommendation 4: Facilities should not be able to register offset initiatives from as far back as January 1, 2007.**

**Recommendation 5: Ontario should introduce a “buyer’s liability” rule, requiring that entities purchasing offset credits are responsible if the offsets are later invalidated.**

**Recommendation 6: Ontario should ensure that the Offsets Credits regulation has clear requirements for transparency of offset initiatives to help ensure public trust in the program.**

**Recommendation 7: Ontario should only allow 4 percent of compliance obligations to be met by offset credits**

**Recommendation 8: Offset regulations should include a positive obligation for meaningful public consultation.**

Thank you for the opportunity to comment on the proposed regulations.

Yours Truly,



Monica Poremba  
Counsel