



To: Climate Action Reserve

From: Green Holdings Corporation

Date: March 30, 2012

Re: Comments on the Climate Action Reserve's Coal Mine Methane Protocol, Version 2.0

We appreciate the opportunity to provide comments on Version 2.0 of the Climate Action Reserve's ("Reserve") Coal Mine Methane Protocol ("V 2.0"). We commend the Reserve on its continued facilitation in connection with this protocol development and we are pleased to continue taking an active role in this process.

We believe that the Reserve has developed a rigorous and fair CMM Protocol and, with a few exceptions, the clarifications set forth in V 2.0 further ensure the integrity of the Climate Reserve Tons ("CRT") to be generated pursuant thereto.

As a developer of market-based solutions that reduce greenhouse gas ("GHG") emissions, we are very concerned about the proposed modifications set forth in Section 3.5 which significantly changes the requirements for regulatory compliance. Our concerns are shared by other key stakeholders, as reflected in the comments made during the Reserve's Public Comment Webinar on March 13, 2012, the majority of which focused on the proposed changes to Section 3.5.

While we understand that the proposed changes under consideration by the Reserve are a continuation of its ongoing efforts to remain the premier carbon offset registry in North America and to ensure environmental benefit, integrity and transparency in market-based solutions that reduce GHG emissions, we believe that, if left in its current form, Section 3.5 will serve as a deterrent to the development of potential coal mine methane ("CMM") abatement projects and significantly reduce the availability of mechanisms to decrease CMM emissions.

The Reserve's credibility as a pioneer of market-based solutions is crucial to all GHG emission abatement project developers, but more especially to those which, like Green Holdings Corporation, depend solely on the sale of CRTs generated by our projects to justify the substantial investment of time and funds required to achieve GHG emission reductions.

**Proposed changes to Section 3.5 include:**

- a. Expanded regulatory compliance to the mine where the project is located
- b. All instances of non-compliance at the mine must be disclosed to verifier
- c. Recurrent, negligent or intentional non-compliance will result in no CRTs issued for GHG reductions during the period of non-compliance
- d. Non-compliance due to acts of nature, administrative or reporting issues will not affect CRT crediting
- e. Attestation of Regulatory Compliance would be changed accordingly

**Our comments:**

- In most cases, the project developer will be a third party and will not be the coal mine owner or operator. The project developer will, in turn, contract with the verifier. Therefore, compliance or non-compliance with all applicable laws, rules and regulations by the mine owner or operator will not be within a project developer's control. Accordingly, in our opinion, penalizing the project developer for a non-compliance occurrence by the mine where project is located is unfair and will be counterproductive to the development of CMM abatement projects.
- Regulatory compliance by the mine operator is determined by existing mine safety, environmental and other local and state regulations. The coal sector is highly regulated by federal, state and local agencies. The following non-exhaustive list is provided as a guide to some of the federal laws which coal mine operators must comply with:
  - Migratory Bird Act (1914)
  - Fish and Wildlife Coordination Act (1934)
  - Multiple Use - Sustained Use Act (1960)
  - Endangered Species Act (1963)
  - Wilderness Act (1964)
  - National Historic Preservation Act (1966)
  - National Environmental Policy Act (1969)
  - Bald Eagle Protection Act (1969)
  - Mining and Minerals Policy Act (1970)
  - Endangered Species Act (1973)
  - Forest and Rangeland Resource Planning Act (1974)
  - Safe Drinking Water Act (1974)
  - Archeological and Historical Preservation Act (1974)
  - Noise Control Act (1976)
  - National Forests Management Act (1976)
  - Resource Conservation and Recovery Act (1976)

- Surface Mining Control and Reclamation Act (1977)
- Clean Water Act (1977)
- Soil and Water Resources Conservation Act (1977)
- American Indian Religious Freedom Act of (1978)
- Clean Air Act (1990)
- Mine Safety and Health Act of 1977 (as amended in 2006)

In its current form, Section 3.5 will require a project developer to be ultimately responsible for the coal mine operators' adherence to each and every regulation that affects the mining industry to protect its investment in the CMM abatement project. In our opinion, Section 3.5 will result in an unwarranted and excessive financial burden on the project developer

- Based on our consultation with mine owners and operators, the Reserve's proposed expansion of regulatory compliance will have no impact on the extent of occurrences of non-compliance by the mine operator of rules and regulations governing its industry.
- We are not aware of any repository maintained with updated records of "all instances of non-compliance" necessary for project developers to provide an Attestation of Regulatory Compliance that would be required under Section 3.5. Accordingly, compliance with 3.5 would not be practicable.
- Mine operators have no obligation, legal or otherwise, to provide the requisite records to verifiers (which are contracted by project developers) to determine whether the occurrences of non-compliance are "recurrent, negligent or intentional" and may withdraw access to such records without notice at any time. Thus compliance with Section 3.5 would not always be verifiable.

#### **Our conclusions:**

##### **Increased risks to project developers**

As written, Section 3.5 requires the project developer to assume the risk of non-compliance by the mine operator each time it provides the Reserve with an Attestation of Regulatory Compliance.

The uncertainties surrounding which laws and regulations are covered by the Attestation of Regulatory Compliance and what, if any, information concerning non-compliance occurrences is disclosed by the mine operator to the project developer or the verifier for evaluation, or whether any particular non-compliance occurrence is judged to be recurrent, negligent or intentional, makes the risk of non-issuance of CRTs unreasonably high.

### **Lower GHG emission reductions**

Such a high level of risk, which the project developer is neither adequately able to evaluate nor control, will, in our opinion, lead to the withdrawal of a significant amount of the current funding from pending and future CMM emission abatement projects. This result would be in direct conflict with one of Reserve's core principles, namely the promotion of GHG emission reduction activities.

### **Increased risks to CRT integrity**

In the event the scope is expanded to include the mine as set forth in Section 3.5, the Reserve would no longer benefit from the current firewall in place between it and the projects and which protects the Reserve's reputation from all occurrences of non-compliance by the mine where the project is located. Accordingly, the Reserve would be at risk of criticism for any and all environmental, safety or other incidents which may occur at the mine where the project is located.

### **Our recommendations:**

For all of the reasons set forth above, Green Holdings Corporation recommends that all language referring to the proposed scope expansion of regulatory compliance to include the mine where the project is located be removed from V 2.0.

### **Good policy is based on good data**

In the event that the Reserve elects to pursue scope expansion beyond the project, we suggest that Reserve constitute a workgroup made up of key stakeholders, including project developers, coal mine operators and industry experts to investigate and consider the following key points:

1. Recommend a list of all federal, state and local laws and regulations affecting all coal mining operations which significantly impact the integrity of CRTs and which should be considered for inclusion in a proposed expanded scope.
2. Recommend thresholds (severity of violation, recurrence, negligence and intent) for selected laws or regulations which would constitute a non-compliance occurrence by the mine where the project is located.
3. Recommend clear methodologies to direct verifiers in assessing occurrences of non-compliance by the mine where the project is located (severity of violation, recurrence, negligence and intent) taking into account corrective actions taken by the mine.

If invited, Green Holdings Corporation would gladly participate in such a workgroup.

We understand that the Reserve is considering expanding the scope of regulatory compliance to all of the Reserve's protocols. We recommend that the Reserve carry out an in-depth assessment of the impact of such an expansion to the Reserve's remaining protocols so as not to potentially unfairly single out CMM activities for such a potentially burdensome requirement.

We commend the Reserve for its diligent effort to structure a CMM Protocol that will facilitate its effective and widespread adaptation by the mining industry and one which encourages the participation in GHG abatement by independent project developers.

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*For further information about our comments, please contact:*

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### **About Green Holdings Corporation**

Green Holdings Corporation ("GHC") is a developer of market-based GHG abatement projects with considerable experience in the area of CMM emission abatement, and was a member of the Reserve's workgroup that assisted in the drafting of Version 1 of its CMM Protocol.

GHC has developed a pipeline of CMM emission abatement projects in the U.S., the first of which will be hosted by CONSOL Energy, Inc. at its Enlow Fork mine in southwestern Pennsylvania. The Enlow Fork CMM project is registered with Reserve (Project No. CAR 583) pursuant to the Reserve's CMM Protocol Version 1.0.

Prior to preparing the comments contained herein, GHC considered advice we received from a wide range of stakeholders including other project developers, coal mine operators, academics and verifiers.