

Comments to the Climate Action Reserve on Coal Mine Methane Project Protocol Proposed Version 2.0  
Comments provided by Steven Winberg and Richard Winschel of CONSOL Energy Inc.  
March 30, 2012

Our comments are provided in response to the revisions proposed for Section 3.5 Regulatory Compliance.

**Comment No. 1.** We strongly recommend against the proposed expansion of regulatory compliance requirements in Section 3.5 in which not only the methane abatement project, but also the coal mine itself, must be in material compliance with all applicable laws. Our recommendation against these changes is based on the following two observations: 1) Experience to date shows that most or many of potential coal mine methane abatement projects will be undertaken by project developers who are not coal mining entities. These project developers will have the financial and operational responsibilities for the project equipment, but they will have no control whatsoever over the operation of the associated coal mine. It is inherently unfair to penalize these project developers, who may be operating in full compliance with all laws and who may be successfully abating great quantities of methane emissions, for shortcomings in the operation of the associated coal mine over which they have no control. 2) With respect to occupational safety and health, underground coal mining may well be the single most regulated business activity in the U.S. Some large underground coal mines average almost 3 inspector shifts per day for Federal MSHA inspectors, plus additional inspector hours for State inspectors (from agencies such as the West Virginia Office of Miners Health, Safety and Training, or the Pennsylvania Bureau of Mine Safety). These inspectors' jobs are to seek out any and all violations, whether major or minor. In addition, mines have to comply with numerous regulations of the Clean Water Act, the Clean Air Act, the Surface Mining Control and Reclamation Act, the Resource Conservation and Recovery Act, and others. The result is that there are few, if any, active underground coal mines that are violation-free.

*“Project developers are required to disclose in writing to the verifier any and all instances of non-compliance of the project or the mine with any law. If a verifier finds that a project or a project mine is in a state of recurrent non-compliance or non-compliance that is a result of negligence or intent, then CRTs will not be issued...”*

Thus, depending on how the above proposed requirement is interpreted, it may be that it is not possible for real-world active U.S. underground coal mines to meet these requirements, and we will be left with a protocol so onerous that it becomes worthless because it is impossible to be met by the associated mine of any methane abatement project. To illustrate this: even though CONSOL Energy's safety performance is much better than the underground coal mining industry average (for example, it was 2.5 times better in 2011), our mines receive numerous MSHA citations each year.

**Comment No. 2.** In the event that Recommendation No. 1 above is not accepted by CAR, we then make the following recommendation. The Project Developer's Attestation of Regulatory Compliance form (revised 6/9/11) includes the following passage

*“For the period... the Project was in material compliance with all Laws.”*

We presume that this form will be revised so that the developer must attest that **both** the Project **and the mine** are in material compliance with all Laws. In this event, we recommend that CAR specifically define “material compliance with all Laws” as follows:

*“For United States coal mines, a mine is in material compliance with environmental, health and safety laws if the operator timely abates notices of violation and orders of regulatory authorities and the operator maintains all permits and approvals necessary for operation of the mine.”*