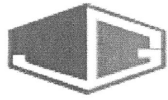


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December 11, 2014

Chair Mary Nichols  
California Air Resources Board  
1001 I Street

Sacramento, CA 95812

Re: Definition of regulatory compliance under the ARB Mine Methane Capture Protocol

Dear Chair Nichols,

Thank you for your continued leadership and commitment to develop a cap-and-trade program in California. As this program is a central element of California's Global Warming Solutions Act (AB 32) and covers major sources of GHG emissions in the State, such as refineries, power plants, industrial facilities, and transportation fuels. We think this program is the most progressive in USA. One unique characteristic of this program is that it provides focus and financial resources to directly reducing greenhouse gas emissions. Our interest is in the ARB Mine Methane Capture (MMC) protocol. We currently capture Mine Methane in 3 states and the protocol can enable us to obtain financial resources to capture mine methane at a rate in excess of what we could do otherwise.

Unfortunately, a lack of clarity in whether carbon offset projects meet the regulatory compliance requirements of the regulation is impacting the supply of offsets to the cap and trade system. The recent final decision of the Clean Harbors investigation has introduced a great deal of uncertainty to the market as to how regulatory compliance will be applied to all project types, especially those that are required to have subsequent 12-month reporting periods. There have been multiple articles written to date citing the particular risks associated with mine projects given their proclivity for citations and violations (i.e. over 200,000 from MSHA in 2012).

We signed a group letter and provide this additional letter with anecdotal information to provide some real life example of citations that we believe should not be considered as causes for invalidation.

All US mining operators and project developers are challenged to comply with hundreds of regulatory standards

each year. "Authority to issue citations for violations of their regulations" is just about every Federal, State and County agency in each location we operate. It would be a long list! Typically the major players are:

State level:

reclamation, mining, safety

water quality control

air pollution control

hazardous materials and waste management

Oil and Gas Commissions

Federal level:

EPA has oversight authority of respective State programs

Office of Surface Mining, Reclamation and Enforcement has oversight authority over the respective State programs

The United States Forest Service and Bureau of Land Management could also issue citations for activities on lands under their management.

Local:

Counties

Townships

Water Sheds

A practical reality is that MMC is so new that permits from the above listed agencies are delayed as their regulations were not written with MMC in mind. For example we have facilities that have dual permits required from oil and gas regulations (for the methane gas) and Mine Safety and Reclamation agency (for the methane gas from a mine).

States are different in their perspective on permits. Some states encourage greenhouse gas reduction projects and will expedite permits or correct inappropriate classifications for some. Other states give no preferential consideration to a greenhouse gas reduction project.

Under these conditions, even the most dedicated and responsible project developers as well as mine operators will frequently be cited for violations of one standard or another. As such, the MMC protocol will be unworkable unless specific guidance is presented to inform developers, investors, verifiers, and the broader market as to what standard or criteria will be used to determine regulatory compliance. Citations from any of these agencies are a violation of some rule, some may be trivial, but they are still regulations.

We should really stress that a violation that has nothing to do with the destruction of the methane and carbon offset should not trigger an invalidation. Only a violation that is knowingly committed in an attempt to deceive or manipulate the carbon offsets should be considered. Many of the violations received are very similar to getting a traffic ticket for having a taillight out on your car. You may have been completely unaware of the condition. In fact, the car may have passed a safety inspection the day before the ticket!! A sample of citations that are not relevant in our view to MMC invalidation would be:

- Cleanliness of facilities
- Periodic certification of fire extinguishers
- Wearing of eye, ear, foot protection
- Chocks behind the wheels of parked vehicles
- Nitrous Oxide Permissions
- Decibels of sound

Etc.

Violations are enforced by the relevant agencies and we recommend ARB not be involved in those agencies actions. Most violations are issued and are not final. The burden of proof is often on the Agency. The operator has the right to contest any violation written. The mere issuance of a citation is not the admission or the settlement of such. Often citations are simply orders to fix a condition within a certain time.

The operator has the right to take any and all citations to court. Many violations are settled before going to court, because of the cost. There are established venues for these citations to be handled.

We are frequently asked to describe the risks associated with our projects, especially the regulatory risks. Many financial investors do not want to assume any liability.

**The uncertainty associated with these perceived risks are preventing project development, discouraging capital investment, and negatively impacting the price of MMC offsets. We recommend that ARB include specific clarifications in the MMC protocol that would be helpful to address these issues. Our recommended clarifications are the following:**

- Direct Applicability: If ARB could clarify that the regulatory compliance requirement applies specifically to an offset project and what activities constitute “the project,” the universe of possible compliance issues is greatly diminished. This could be accomplished by using an “entity approach” in combination with an “activity approach.”
  - Many projects will operate under separate legal status from the mine and will need to obtain permits independent of mine operations. The “entity approach” would be to state that a violation would only trigger an invalidation proceeding as a result of a violation issued under a permit that applies to the project, not the mine.
  - Because there are cases where the project does not operate under separate legal status from the mine, the “activity approach” could also be used by explicitly including or excluding certain activities within the definitions of offset project activity or violation. A line could be drawn as to what violations would or would not be grounds for invalidation. As a starting place, pages 23-32 of the protocol already show what activities directly impact the offsets themselves. While the

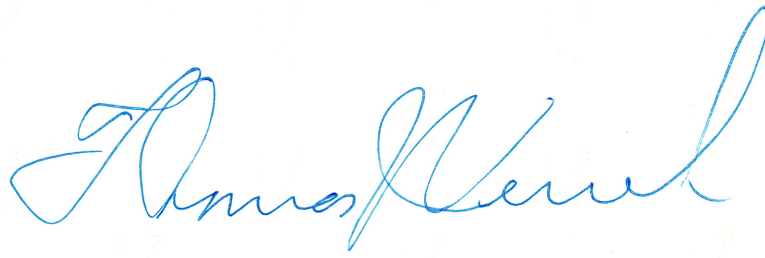
activities on pages 23-32 are not a perfect corollary, they could provide grounds to delineate more robust “activity approach” boundaries for direct applicability.

- Timing of a Violation: A one-day violation that is immediately cured, for example, should not result in loss of all credits from an entire 12-month reporting period. While there is some logic to the notion that an ODS violation would apply to the entire reporting period, which are typically much shorter, it is not a rational approach for all project types. Only the portion of credits generated during the violation period should be subject to invalidation for project types which are required to have subsequent 12-month reporting periods. This will likely require a small regulatory amendment to Section 95973(b) during a 15-day change package.
- Defining a Violation: Any violation should be substantive and associated with the project (i.e. restroom cleanliness should not trigger an invalidation investigation). ARB could acknowledge this by stating that prior to an invalidation investigation, ARB will conduct an evaluation of the severity of a violation and the subsequent enforcement action that was issued. Here again, a presentation of items that would not trigger invalidation proceedings, based on violations commonly received by mines, would be very helpful for project participants. Defining a Violation: Any violation that would trigger an invalidation proceeding should be substantive and associated with the project (i.e. restroom cleanliness should not trigger an invalidation investigation). ARB could acknowledge this by stating that prior to an invalidation investigation, ARB will conduct an evaluation of the severity of a violation and the subsequent enforcement action that was issued. Before a citation would trigger an invalidation proceeding, it should be a violation that is in its final settlement is written as “reckless disregard” and is a violation that was knowingly and willful as a result of the operator of the project that directly affects the carbon offsets. Here again, a presentation of items that would not trigger invalidation proceedings, based on violations commonly received by mines, would be very helpful for project participants.
- Paper Violations: Certain citations or violations can be issued for an operator’s plan failing to conform to applicable laws, even when no action that would break a law has occurred. This “paper violation” only involves paperwork, plans, and anticipated actions as opposed to actions that have already occurred. Such violations should not be grounds for invalidation since no violating action has in fact occurred. This could be addressed in a number of ways, but a simple way could be to specify that citations or violations that are not the result of actual operation or physical activity may not be grounds for invalidation.

We believe these clarifications will provide more certainty for carbon offset suppliers and buyers to invest in environmentally worthwhile projects and provide more certainty on regulatory compliance. Conversely, without ARB providing more guidance on regulatory compliance, we fear less financing will be invested in good projects, which could increase the overall costs of the cap-and-trade program. With more certainty, more projects can provide more local and regional air pollution benefits in the sectors of most interest to ARB.

Again, thank you again for the opportunity to provide you with our recommendations on this vitally important issue. We will follow-up with your office this week in order to set up a meeting to further discuss this with you in more detail.

Sincerely,



Thomas Vessels

Chief Executive Officer

Vessels Coal Gas, Inc.

cc:

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