

**2014 U.S. COAL MINE METHANE
CONFERENCE**

**LEGAL AND REGULATORY DEVELOPMENTS IMPACTING
MINE METHANE EMISSIONS AND PROJECTS IN THE U.S.**

COLLON KENNEDY, ESQ.

FOR

USEPA COALBED METHANE OUTREACH PROGRAM

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Legal & Regulatory Update (2012 - 2014)

TODAY'S CONVERSATION

ARB CAP AND TRADE PROGRAM

- Compliance Offset Protocol MMC Projects (Eff. 7/14)

PRESIDENT'S CLIMATE ACTION PLAN

- Strategy to Reduce Methane Emissions (6/13)

BLM'S WASTE MINE METHANE RULEMAKING (4/14)

GHG REPORTING RULE AMENDMENTS (9/13)

- Released 2013 GHG data (9/14)

FEDERAL LITIGATION AND STATE LAWS

Discussion

ADDITIONAL FACTORS IMPACTING MINE METHANE (“MM”) PROJECT DEVELOPMENT

- **Federal Litigation**
 - Clean Air Act (“CAA”):
 - Applying EPA’s “Tailoring Rule” to MM Emissions
 - Petition to Develop New Source Performance Standards (“NSPS”) for Coal Mining Industry
 - National Environmental Policy Act (“NEPA”): Analyzing Coal’s GHG Emissions Social and Environmental Costs
- **State Laws: Renewable & Alternative Energy**
 - Colorado: S.B. 13-252 Amends Renewable Energy Standards (“RES”) to Include Coal Mine Methane (“CMM”)
 - Ohio: S.B. 310 Amends Alternative Energy Portfolio Standards (“AEPS”)

Historic U.S. MM Project Development Challenges

**NO NATIONAL
ENERGY POLICY**

**MAZE OF MM
POLICIES &
MARKETS**

CHALLENGES

**BUSINESS &
RESOURCE RISKS**

**COMPLEX
ENVIRONMENTAL
LITIGATION**

MM Project Development Outlook

RECENT FEDERAL CASES & CHANGES TO STATE LAWS

2013

- **CO – 13-252 Amends RES to include CMM (July)**

2014

- **“Tailoring Rule” Limitations - *UARG v. EPA* (June)***
- **NSPS for Coal Mining - *WildEarth Guardians v. EPA* (May)**
- **NEPA Analysis of GHG Emissions - *HCCA v. USFS* (Sept.)****
- **OH – SB 310 Amends AEPS – Delays 12.5% RES Goal (July)**

Federal Cases

- United Air Regulatory Group (“UARG”) v. EPA, et al.

** High Country Conservation Advocates, et al. (“HCCA”) v. USFS et al.

State RES and AEPS

TAILORING RULE HISTORY

MASSACHUSETTS v. EPA (2007): GHGs ARE SUBJECT TO CAA

- 2011: EPA “tailors” PSD & Title V program emission thresholds for stationary sources with potential to emit large GHG volumes
- 2012: U.S. Court of Appeals D.C. Circuit in *Coalition for Responsible Regulation, Inc. v. EPA* sustains EPA’s “Tailoring Rule”
- 2013: U.S. Supreme Court grants and consolidates 6 petitions for certiorari into *UARG v. EPA*
- 2014: Justice Scalia for Supreme Court affirms in part and reverses in part and remands case to lower court for further judicial action to effectuate the final decision

CAA PSD & TITLE V PRIMER

- CAA regulates motor-vehicle and stationary source emissions
- CAA's Prevent Significant Deterioration ("PSD") program regulates "major emitting facilities" with potential to emit 250/100+ tons/yr. depending on "the regulated air pollutant"
- Title V permits are required for "major sources" emitting 100+ tons per year of "any regulated air pollutant"
- PSD permits require Best Available Control Technology ("BACT") for "any air pollutant" including GHGs
- 2011: EPA's "Tailoring Rule" modifies PSD and Title V statutory emission thresholds to apply to GHGs

TAILORING RULE

GHG EMISSION THRESHOLDS

Tailoring Rule Phased-In PSD & Title V Permitting Programs:

- **Step 1:** Jan. 2 - June 30, 2011: Stationary sources with PSD & Title V permits for conventional or regulated pollutants (“anyway sources”) that also emit 75,000+ tons/yr. of GHGs CO₂e
- **Step 2:** July 1, 2011 - June 30, 2012: Applies to:
 - New “non-anyway sources” with potential to emit 100,000+ tons/yr. of GHGs CO₂e
 - Major modifications at “non-anyway sources” that increase emissions by 75,000+ tons/yr. of GHGs CO₂e
- **Step 3:** July 1, 2013: Might further reduce GHG thresholds

UARG v. EPA

KEY FACTS AND FINDINGS

- The Solicitor General said ““anyway sources” account for roughly 83% of American stationary-source GHG emissions, compared to just 3% for the additional “non-anyway sources” EPA is seeking to regulate in Steps 2 and 3 of the Tailoring Rule.” - pg. 10
- Most coal mines are not “anyway sources;” they were to be regulated in Steps 2 and 3 of the Tailoring Rule
- Including GHGs at PSD’s unambiguous *statutory threshold levels* (250/100 + tons/yr.) would alter the CAA’s structure and design and be “incompatible” with the substance of Congress’s regulatory scheme – pg. 18

UARG v. EPA

DECISION HIGHLIGHTS

Affirms EPA's Authority to Regulate GHG Emissions

- Facilities with PSD Permits for other pollutants (“anyway sources”) may limit GHG emissions – pg. 27
- For “anyway sources” a BACT requirement may be imposed if GHG emissions exceed a *de minimus* amount, which could be less than the Tailoring Rule’s Step 1 75,000+ tons/yr. of GHGs CO₂e – pg. 28

Limited EPA’s “Tailoring Rule”

- GHGs alone are not “regulated air pollutants” that trigger 250/100 ton/yr. PSD and Title V permit requirements - pgs. 11-13
- EPA cannot revise or “tailor” clear statutory PSD and Title V emission thresholds – pg. 21
- Pending further legal action, EPA will not require PSD or Title V permits for Step 2 “non-anyway sources” - EPA Memo 7/24/14

MM PROJECT DEVELOPMENT IMPACT?

DECISION ENABLES MOST MM PROJECTS TO MEET “LEGAL ADDITIONALITY” REQUIREMENTS

- MM ER Project Offset Protocols typically include an “additionality” requirement, i.e. “GHG reductions” claimed would not otherwise occur due to:
 - Federal, state, or local law, regulation, or other legal mandates, or
 - A conservative business-as-usual scenario
- Examples
 - California Air Resources Board (“ARB”) Compliance Offset MMC Protocol
 - Climate Action Reserve (“CAR”) CMM Project Protocol Version 1.1 (10/12)
 - Verified Carbon Standard (“VCS”)/U.N.’s Clean Development Mechanism (“CDM”) ACM0008 (08)

WILDEARTH GUARDIANS V. EPA

HISTORY

- 2010: WildEarth Guardians and others (“Guardians”) petitioned EPA for a rulemaking to add coals mines to stationary sources regulated under CAA
- 2013: EPA denied petition explaining it needed to prioritize its actions, in light of limited resources and ongoing budget uncertainties, and could not proceed with the requested action
- 2014: U.S. Court of Appeals D.C. Circuit upheld EPA’s decision to deny the CAA rulemaking petition

GUARDIANS V. EPA

KEY FACTS



(Source: Greenoptimistic.com)

- Electricity generating sectors account for 60% of GHG emissions
- Coal mines account for 1% of GHG emissions

GUARDIANS V. EPA

HOLDING

- Budgetary constraints and diverting staff resources to less-significant sources of emissions could result in an overall increase in GHG emissions - pg. 11
- Court agreed “that, in light of the circumstances, the best course of action [for the agency] was to prioritize sectors that emit more pollutants” - pg. 12 - ultimately deferring consideration of the rulemaking to a more appropriate time

NEPA ANALYSIS GHG EMISSIONS

COLORADO ROADLESS RULE

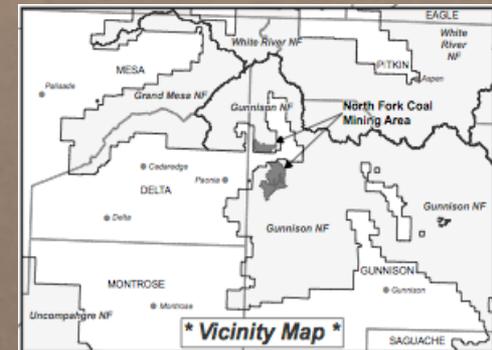
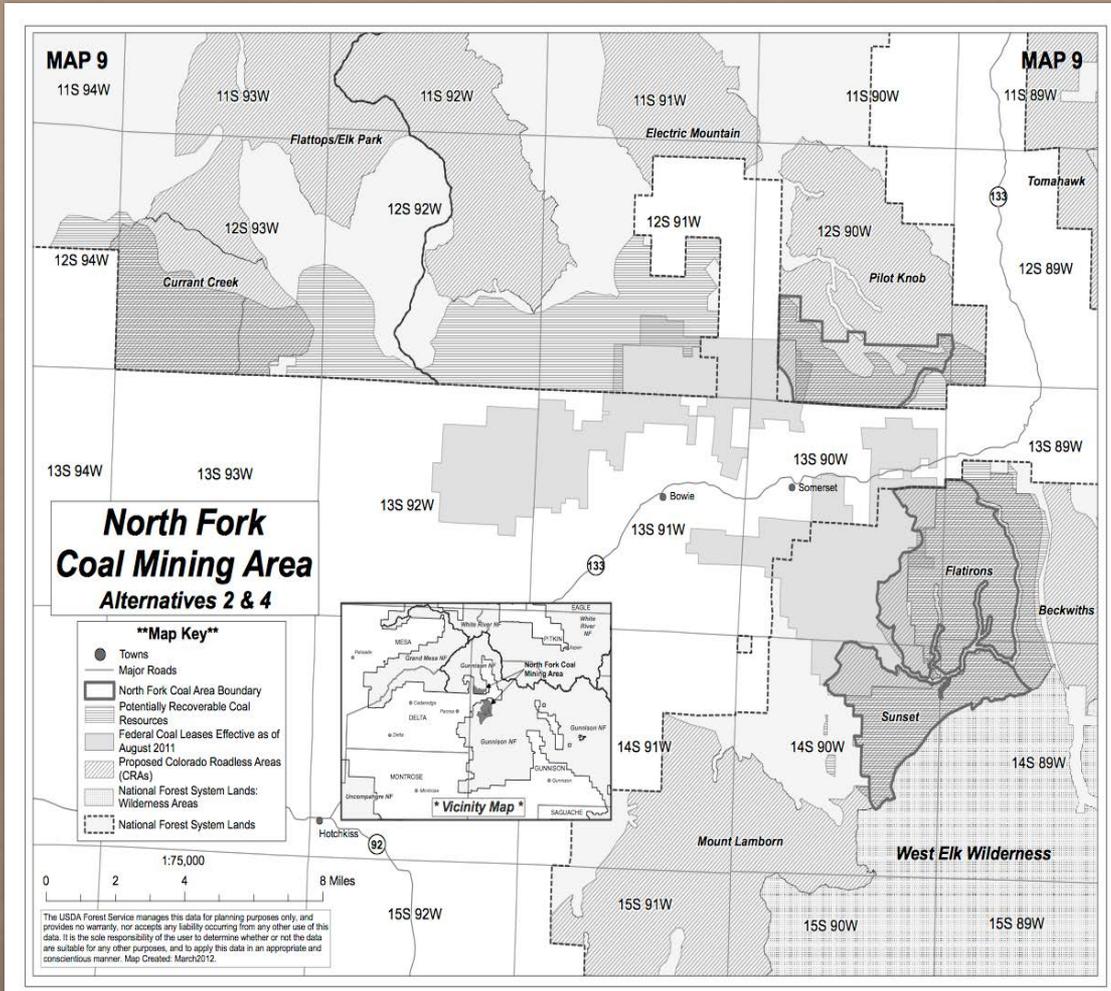
- 2011: USFS issued CRR FEIS covering 4.43 million acres of inventoried roadless areas
- 2012: USFS issued CRR - designating 4.2 million acres of National Forest roadless areas
- CRR provides new coal leases/proposed federal actions will require site-specific environmental analysis, public input, and decision making

SUNSET ROADLESS AREA

- 5,800 acres - Bordered by Mount Gunnison and West Elk Wilderness Areas
- Next door to Arch Coal's existing West Elk Mine*
- North Fork Valley Mining Area (19,000 acres) allows temporary road construction in Sunset Roadless Area for coal mining activity

* Operated by Mountain Coal Company

CRR: Coal Mining on Federal lands



HCCA v. USFS

History

2011: Arch Coal obtains BLM Coal Lease Modifications covering 1,701 acres in Sunset Roadless Area (5,800 acres)



2012: CRR adopted includes North Fork Valley Coal Mining Area covering about 19,000 acres



2013: Arch Coal submits Coal Exploration Drilling Plan in Sunset Roadless Area



2013: HCCA, et al. v. USFS, et al. filed in Colorado U.S. District Court – Appeals NEPA GHG Emissions Analysis on Three (3) Federal Actions Described Above

HCCA v. USFS

Key Holdings

Federal agencies' NEPA documents for North Fork Valley Exception, Coal Lease Modifications, and Exploration Plan were legally deficient because there was insufficient analysis of:

- Social, economic, and environmental impacts or ...“costs” of GHG emissions from *expanded mining operations*
- Expert's report on forecasting GHG emissions from *combustion of coal produced from North Fork Valley*
- Lease Modifications' and Exploration Plans' effects on *recreational interests* in Sunset Roadless Area

Court vacated all federal actions and permanently enjoined activity pending further NEPA review

Colorado

2013 RES Amendment

RES AMENDED TO PROMOTE USE OF CMM TECHNOLOGY

- **S.B. 13-252** AMENDS CRS 40-2-124 BY INCLUDING “CMM” AS AN “ELIGIBLE ENERGY RESOURCE” IF CMM GENERATED ELECTRICITY IS “GREENHOUSE GAS NEUTRAL” – AS DETERMINED BY PUC
 - “CMM” means methane captured from active and inactive coal mines naturally escaping to the atmosphere. For active mines only methane being vented is eligible
 - “Greenhouse Gas Neutral” means the volume of GHGs emitted into atmosphere over next 5 years is no greater than the volume that would have been emitted if CMM had not been converted to electricity

OHIO

2014 AEPS AMENDMENT

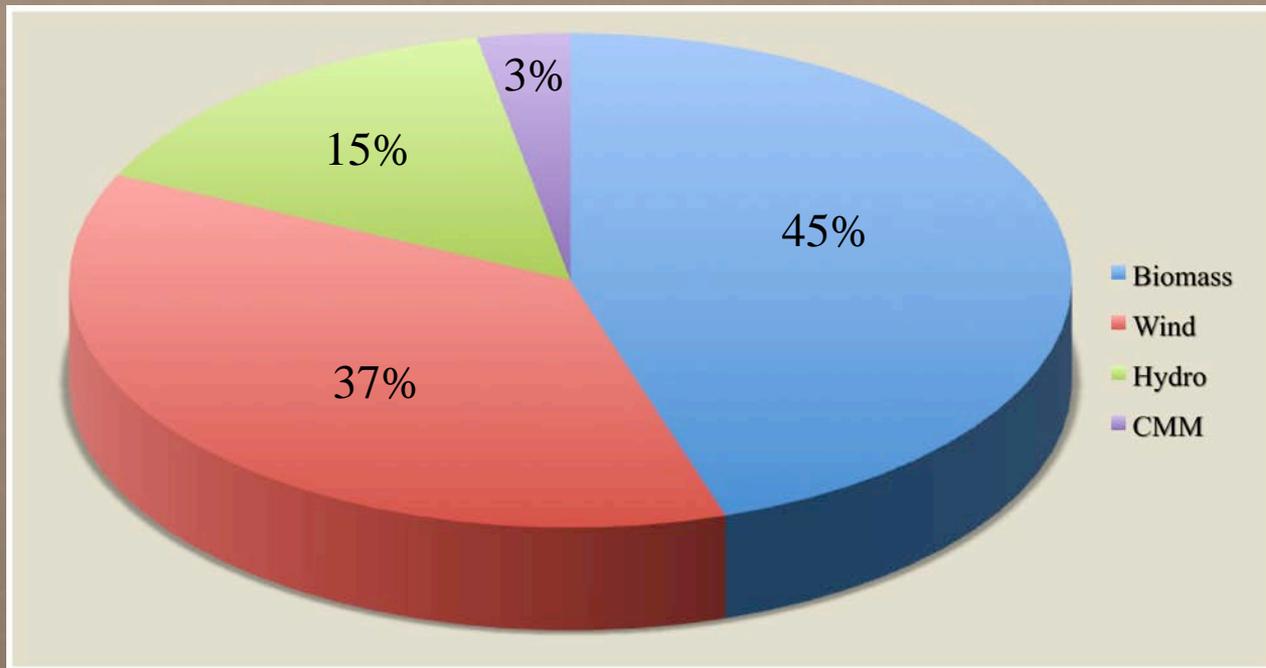
S.B. 310 made numerous changes to RES (but still includes CMM from abandoned mines as a “renewable energy resource”):

- Replace term “alternative energy resources” with qualifying “renewable energy resources”
- Amended definition of advance energy projects
- Eliminated requirement for electric distribution utilities (“EDUs”) and competitive electric service providers (“CRES”) to purchase one-half of renewable energy from in-state facilities
- Changed goal of 12.5% of renewable energy from 2025 to end of 2026

OHIO PUCO

2014 AEPS REPORT (Draft)

2012 EDU & CRES COMPLIANCE: NON-SOLAR RENEWABLE RESOURCE (IN-STATE)



- 2009 Amendment to AEPS included CMM emitted from abandoned mines as “renewable energy resource”
- 2012 draft report indicates CMM is 3% of state’s non-solar renewable energy
- Report identifies 1 CMM certified renewable energy facility in-state

MM Project Development Takeaways

FEDERAL LITIGATION

- Recent court decisions reduce near-term permitting obstacles to “additionality” for many MM projects
- MM Project NEPA Analysis of MM GHG Emissions: “A Plan is Better than No Plan”
 - Some impact analysis of social and environmental costs will likely be required for future project entitlements

STATE LAW RES AMENDMENTS

- Colorado: CMM now an RES “eligible energy resource”
- Ohio: Delays 2025 renewable energy goal of 12.5% until end of 2026; CMM project contributes to meeting RES in 2012

QUESTIONS?

Collon Kennedy III, Esq.
743 Horizon Court, Suite 385
Grand Junction, CO 81506
Ph: 303-808-6905
E-mail: nolloc08@aol.com

Coalbed Methane Outreach Program
Jayne Somers, Ph.D., P.E.
Climate Change Division
United States Environmental Protection Agency
Washington, DC
Ph: 202-343-9896
www.epa.gov/coalbed