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February 21, 2003

Mr. Lowell P. Braxton, Director
Division of Oil, Gas and Mining
1594 West North Temple, Suite 1210
P.O. Box 145801
Salt Lake City, Utah 84114-5801

Dear Mr. Braxton:

We completed our review of your October 22, 2002, formal amendment (State Amendment Tracking System (SATS) number UT-042-FOR). The amendment proposes several changes to section 40-10-10 of the Utah Code Annotated. Some of the proposed changes are editorial; others change Utah's statutory provisions for small operator assistance in response to the June 19, 1997, letter we sent to you under 30 CFR Part 732. The public comment period for this amendment closed on February 5, 2003. The Office of the Solicitor chose not to review and comment on our concerns.

As a result of our review, we have concerns about two changes proposed in this amendment. One of the proposed changes would make Utah's statutory provision less stringent than the Surface Mining Control and Reclamation Act. In the second case, we request your explanation of Utah's reasons for making the proposed change. Both topics are described in our enclosure to this letter.

We would be happy to meet with you to discuss our review findings or any matters of concern regarding this formal amendment at your convenience. Please call Ron Sassaman at (303) 844-1400, extension 1521, if you have any questions.

Sincerely,

James F. Fulton, Chief
Denver Field Division

Enclosure

cc: Regional Solicitor - Rocky Mountain Region

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FEB 25 2003

DIV. OF OIL, GAS & MINING

UTAH'S PROPOSED FORMAL AMENDMENT DATED OCTOBER 22, 2002
(SATS NUMBER UT-042-FOR)

We completed our review of your October 22, 2002, formal amendment that proposed several changes to section 40-10-10 of the Utah Code Annotated (UCA). Some of the proposed changes are editorial; others change Utah's statutory provisions for small operator assistance in response to the June 19, 1997, letter we sent to you under 30 CFR Part 732.

We have concerns about the following provisions of the proposed formal amendment:

CONCERNS

1. Proposed UCA 40-10-10(2)(d)(ii), waiver of certain information in permit applications

Utah proposes to make a number of editorial changes at UCA 40-10-10(2)(d). Existing UCA 40-10-10(2)(d) describes information required in permit applications that includes results of test borings, core samplings, and physical and chemical characteristics of the coal seam, overburden, and of the stratum under the coal. It also authorizes the Division of Oil, Gas and Mining (DOG M) to waive the requirement for this information if a written finding concludes it is unnecessary. Utah proposes to codify these provisions as new subsections (2)(d)(i) and (2)(d)(i)(A) through (F) and to codify the waiver provision as new subsection (2)(d)(ii). Most of the editorial changes are minor. However, a proposed change to the State's waiver provision would make it less stringent than the Surface Mining Control and Reclamation Act (SMCRA).

Existing (2)(d) allows DOGM to waive the requirements " * * * of this Subsection * * *" if it finds, in writing, that they are unnecessary. We interpret the existing waiver's reference to "this Subsection" to mean subsection (d), which is limited to the information described above. As such, the existing waiver is consistent with the scope of the waiver in the counterpart Federal provision at section 507(b)(15) of SMCRA.

 As proposed at UCA 40-10-10(2)(d)(ii) in amendment UT-042-FOR, however, Utah would revise its provision by allowing DOGM to waive the application requirements of "this Subsection (2)" upon finding, in writing, that they are unnecessary. By specifically referring to "Subsection (2)" of UCA 40-10-10, the Division could waive much more information than is described under existing subsection (2)(d) or proposed subsections (2)(d)(i) and (2)(d)(i)(A) through (F). Entire subsection (2) describes required application information about ownership, maps and plans, hydrology and probable hydrologic consequences, as well as test borings, core samplings, and the physical and chemical characteristics of the coal, the overburden, and the stratum underlying the coal. That includes considerably more information than may be waived under section 507(b)(15) of SMCRA, which says the provisions of " * * * this paragraph (15) may be waived * * *" if the regulatory authority determines, in writing, that they are unnecessary. Referenced "paragraph (15)" of section 507(b) of SMCRA is limited to descriptions of

test borings and core samplings and the physical and chemical characteristics of the coal, the overburden, and the stratum underlying the coal.

For these reasons, we find proposed subsection 40-10-10(2)(d)(ii) is less stringent than the counterpart provision at section 507(b)(15) of SMCRA. Because Utah enacted these statutory changes effective May 5, 2002, the State must amend its Code to make it no less stringent than SMCRA. One suggested approach to doing so would revise proposed UCA 40-10-10(2)(d)(ii) to refer to waiving the application requirements of "Subsection (2)(d)(i)."

2. Proposed change to UCA 40-10-10(5), filing requirement for permit applications

Existing UCA 40-10-10(5) requires mine permit applications to be filed with the county clerk for public inspection, or at some other public office approved by DOGM, in the county where mining is to occur. The requirement excludes information about the coal seam. Utah proposes to change this section to make minor editorial changes in wording and punctuation. It also proposes to remove the phrase "for public inspection" from the filing requirement.

Removing the phrase "for public inspection" appears to remove the provision's purpose. Absent the requirement to make an application available for public inspection, there is no other reason stated in this provision for requiring an application to be filed with the county clerk or in another public office. The existing approved provision directs the applicant to file a copy of the application specifically so the public can inspect it at a public office in the county where mining is to occur.

Our review will consider Utah's program, as a whole, to determine whether or not the proposed change makes this Code provision less stringent than the counterpart Federal provision at section 507(e) of SMCRA. To help us do that, we ask that you please explain Utah's reason(s) for removing the phrase "for public inspection" from UCA 40-10-10(5).