



JON M. HUNTSMAN, JR.  
Governor

GARY R. HERBERT  
Lieutenant Governor

# State of Utah

## DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER  
Executive Director

### Division of Oil, Gas and Mining

JOHN R. BAZA  
Division Director

General  
Outgoing  
a

November 17, 2008

John Schaff, Legislative Auditor General  
Office of the Legislative Auditor General  
315 House Building  
Utah State Capitol Complex  
Salt Lake City, Utah 84114-5315

Subject: December 2007 Legislative Audit of the Division's Coal Regulatory Program

Dear Mr. Schaff:

As requested by your letter to me dated November 3, 2008, I am enclosing several documents describing the activities of the Division of Oil, Gas and Mining relative to the December 2007 legislative audit of the Division's Coal Regulatory Program. I believe that as a division, we have made excellent progress in addressing the various recommendations provided in the audit report, and I welcome the opportunity to follow up with you or any of the legislative audit staff to explain our current situation in greater detail.

Included with this letter is the completed table as requested in your November 3<sup>rd</sup> letter. Other accompanying documents include:

- Tabular chronology of events describing the Division's response to the audit
- Copy of presentation at May 29, 2008 public meeting in Castledale
- Copy of presentation at October 16, 2008 BLM Coal Symposium in Helper
- Copy of DOGM letter dated October 29, 2008 sent to the Utah Mining Association
- Side-by-side comparison of coal fees proposals
- Revised DOGM internal Technical Directive 005

In addition to the numerous meetings and actions taken specific to the recommendations of the audit, some of the changes within DOGM since the audit include personnel changes within the mining group of DOGM and the Coal Regulatory Program, summarized as follows:

- Dana Dean, P.E. as the Associate Director for Mining in April 2008
- Daron Haddock as the Coal Program Permit Supervisor in February 2008
- Jim Smith as a Lead Staff Member in the Coal Program in February 2008 - sharing certain management duties with Mr. Haddock
- Staffing of the Coal Regulatory Program reduced to 18 FTEs as of July 2008

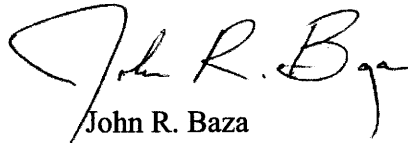


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John Schaff  
November 17, 2008

Because of these actions taken and several other philosophical adjustments made in DOGM since the legislative audit, I feel that the Division's Coal Regulatory Program has made great progress in becoming more efficient and more effective in achieving the intents of legislature for this state government program. I believe that if your staff were to review our efforts at this time, they would find a very much improved and very different organization than they observed during calendar year 2007.

Thank you for your professionalism and courtesy in helping us to improve our operations. Please contact me for any additional information that you may require.

Sincerely,



John R. Baza  
Director

an  
Enclosure  
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**Audit Follow-up:  
A Performance Audit of Coal & Mining Regulatory Program  
(Number 2007-15)**

**Recommendations**

**Reported Actions**

Chapter II:

Status: Implemented

1. We recommend that division management follow *Utah Administrative Rule R645-303-221*, and complete a 15-day initial completeness review on all relevant permit changes. Management should track and monitor the 15-day review (ICR) to ensure that it is consistently completed.

- Assigned staff lead workers for specific mines, who are responsible for all ICRs for their mines
- Implemented required ICR procedures beginning in Dec. 2007
- 83% of ICRs completed on time since then (72 out of 87)

2. We recommend that division management adhere to required mandated deadlines and deny permit amendments that are incomplete.

Status: Implemented

- If a mine permit application is deficient, the entire document is returned to the applicant with a detailed deficiency list – eliminating confusion and saving time when reviews are iterative
- Timeliness has improved (with small delays in certain cases due to personnel changes)
- Staff have been instructed to accomplish tasks well in advance of statutory due dates in order to avoid deadline crunches
- Moving toward a more project management based approach

## Recommendations

3. We recommend that division management create a complete policy with water monitoring. This policy should contain procedures that will help ensure water-monitoring reports are timely reviewed. The division also needs to communicate with the coal operators on any deficiencies that are generated from the water reports within a specific time frame.
4. We recommend that division management create a policy and procedures for emergency permit approvals. The policy should specify a sufficient documentation level that can demonstrate the division's decision as not being arbitrary and capricious.
5. We recommend that division management create a policy and develop procedures to ensure annual reports are completed in a timely manner.

## Reported Actions

Status: Partially implemented

- We have revised internal Technical Directive 005 to state that the division has 90 days to review data
- We need a small amount of further clarification to Tech 005 to ensure consistency in reviews

Status: Implemented

- The following concepts have been discussed with staff:
- "Emergency" – threat to human health and safety – we have stepped back in such cases (e.g. Crandall Canyon) until the threat is over
- "Expedited" – obviously, everyone wants their permit now – new method of assigning due dates should help to achieve timeliness without sacrificing conscientious analysis

Status: Implemented

- Completeness of Annual Reports now checked by inspectors during complete inspections in 3<sup>rd</sup> quarter (all required actions have been completed for the current year)
- Any reports that need further review are assigned as a separate task due by the end of the 4<sup>th</sup> quarter

## Recommendations

6. We recommend that division management utilize the CTS program or develop a similar management information system. Division management should carefully evaluate options that ensure technical IT staff make the necessary changes to the coal tracking system (or a similar system) to ensure that management has the capability to track the status of required tasks and functions. Other items that should be included into the system are:

- Reports detailing workload analysis
- Priority rankings of projects
- Automated calculation of due dates and a function that automatically monitors deadlines

7. We recommend that division management include in the Governor=s Balanced Scorecard all key performance indicators that can be measured to help the division better evaluate their overall performance.

## Reported Actions

Status: Implemented

- There is now automatic calculation of IR and statutory due dates
- Coal managers are using the CTS to prioritize tasks
- There is now consistent input to the CTS that has improved the quality of the database

Status: Implemented

- Have started to include all midterm reviews, water monitoring reports, permit renewals, etc. in timeliness numbers
- Programming CTS to automatically calculate report numbers

## Recommendations

## Reported Actions

### Chapter III:

1. We recommend that DOGM conform its interpretation of the permit area to the definition adopted by the federal Office of Surface Mining and clarified by the Board of Oil, Gas and Mining. If the division believes that the current interpretation of the rules does not adequately protect environmental resources then it should seek clarification from the Legislature and/or the Board of Oil, Gas and Mining.

### Status: Implemented

- Permittee may change permit area to include only the disturbed area
- Division will retain only those regulatory requirements related to subsidence or baseline data required in the “adjacent” areas
- No one has made the change so far

### Chapter IV:

1. We recommend that division management ensure the *Utah Administrative Rules* are being consistently enforced as clarified by the Board of Oil, Gas and Mining and adopted by the federal Office of Surface Mining. If division management believe the rules need to be revised to better ensure the protection of environmental resources or public safety, then they should seek the appropriate approval from the Legislature and/or the Board of Oil, Gas and Mining.

### Status: Implemented

- Coal managers are ensuring that the rules are being applied correctly, fairly and consistently – there have been no further incidences such as those cited in the audit
- Invite permittees to call division management if they feel they not being treated fairly
- Informal conference requests or appeals to the Board are also options to address grievances – two such informal conference were conducted in the past two months
- No rule revisions by the Board are currently contemplated, but ongoing rulemaking analysis by staff will identify any areas that may need such action

## Recommendations

## Reported Actions

### Chapter V:

1. We recommend that DOGM utilize the following two approaches when requesting federal funding in the future.

- § Request the Office of Surface Mining (OSM) change the area-weighted average formula to include disturbed and adjacent areas.
- § Request federal funding based on the workload option.

2. We recommend that DOGM devise a fee structure and present it to the Legislature for their consideration.

Status: Not yet implemented

- Because no operator has applied for a change to their permit area, the 2009 Grant Application was submitted based on the current formula
- We have changed our timesheet tracking to include mine codes in preparation for a future workload option application
- We would be the first state to use the workload option, thus there is no existing model to follow and we must carefully analyze the best way to implement
- If it appears that future federal grants may be affected by the current area-weighted formula, then DOGM will pursue modification during an upcoming grant application cycle

Status: Not yet implemented

- Division analysis indicates that a more reasonable fee structure than that suggested in the audit is appropriate:
- \$6000 for new permits, \$8000 per year for active operations, and \$4000 per year for inactive operations
- On August 14, 2008, we informed the Natural Resources Appropriations Committee of our intent to request an approved fee structure
- We will formally present our proposal during the 2009 Legislative General Session

## Utah Division of Oil, Gas and Mining

Public meeting regarding legislative audit  
of DOGM's Coal Regulatory Program  
May 29, 2008

## Introductions

John Baza, Director  
Paula Dupin Zahn, Financial Manager  
Steve Schneider, Admin. Services/Policy  
Coordinator  
Dana Dean, Associate Director of Mining  
Daron Haddock, Coal Program Manager  
Jim Smith, Coal Program Manager  
Steve Alder, Assistant AG

## Legislative Audit History

- June 1, 2007 – Audit letter to DOGM
- July – October, 2007 – Audit meetings w/ DOGM
- Dec. 18, 2007 – Audit report to legislature
- Dec. 19, 2007 – Initial DOGM management/staff discussion of audit report
- January 8, 2008 – Initial DOGM/coal operator discussion of audit report

## History

- January – April, 2008 – Multiple coal operator joint meetings and internal DOGM meetings discussing audit response
- May 29, 2008 – Public meeting to discuss audit response

## Audit recommendation #1

We recommend that division management follow Utah Administrative Rule R645-303-221, and complete a 15-day initial completeness review on all relevant permit changes. Management should track and monitor the 15-day review (ICR) to ensure that it is consistently completed.

## Audit recommendation #2

We recommend that division management adhere to required mandated deadlines and deny permit amendments that are not complete.



### Audit recommendation #3

We recommend that division management create a complete policy with water monitoring. This policy should contain procedures that will help ensure water monitoring reports are timely reviewed. The division also needs to communicate with the coal operators on any deficiencies that are generated from the water reports within a specific time frame.

### Audit recommendation #4

We recommend that division management create a policy and procedures for emergency permit approvals. The policy should specify a sufficient documentation level that can demonstrate the division's decision as not being arbitrary and capricious.

### Audit recommendation #5

We recommend that division management create a policy and develop procedures to ensure annual reports are completed in a timely manner.

### Audit recommendation #6

We recommend that division management utilize the CTS program or develop a similar management information system. Division management should carefully evaluate options that ensure technical IT staff make the necessary changes to the CTS (or a similar system) to ensure that management has the capability to track the status of required tasks and functions.

### Audit recommendation #7

We recommend that division management include in the Governor's Balanced Scorecard all key performance indicators that can be measured to help the division better evaluate their overall performance.

### Audit recommendation #8

We recommend that DOGM conform its interpretation of the permit area to the definition adopted by the federal Office of Surface Mining and clarified by the Board of Oil, Gas and Mining. If the division believes that the current interpretation of the rules does not adequately protect environmental resources then it should seek clarification from the Legislature and/or the Board of Oil, Gas and Mining.

### Audit recommendation #9

We recommend that division management ensure the Utah Administrative Rules are being consistently enforced as clarified by the Board of Oil, Gas and Mining and adopted by the federal Office of Surface Mining. If division management believes the rules need to be revised to better ensure the protection of environmental resources or public safety, then they should seek the appropriate approval from the Legislature and/or the Board of Oil, Gas and Mining.

### Audit recommendation #10

We recommend that DOGM utilize the following two approaches when requesting federal funding in the future:

- Request the Office of Surface Mining change the area-weighted average formula to include disturbed and adjacent areas.
- Request federal funding based on the workload option.

### Audit recommendation #11

We recommend that DOGM devise a fee structure and present it to the Legislature for their consideration.

### Audit report website

[http://www.le.state.ut.us/audit/ad\\_2007dl.htm](http://www.le.state.ut.us/audit/ad_2007dl.htm)



## Utah Division of Oil, Gas and Mining Coal Regulatory Program Status

Presented by **John R. Baza, Director**  
at the  
Utah Coal Symposium

October 16, 2008



## Mission of the Coal Regulatory Program

- ✓ Support the existence of a viable coal mining industry to meet the nation's energy needs
- ✓ Implement standards that safeguard the environment and protect the public health and safety
- ✓ Achieve the successful reclamation of land affected by coal mining activities

(see SMCR A and UCA 40-10)



## Personnel/Staffing Changes

- ✓ Coal staff down from 23 FTE's to 18
- ✓ Lost: 2 Hydrologists, 1 Engineer, 1 Permit Supervisor, 1 Biologist
- ✓ Contracted:
  - April Abate (Hydrologist)
  - Ingrid Wieser (Biologist - Nov. 17)
  - Suzanne Steab (Office Specialist)



## 2007 Legislative Audit

- ✓ Auditor's report to the Legislature December 18, 2007
- ✓ Eleven recommendations
- ✓ Response immediate and effective in many cases, some changes will take time to fully implement and see benefits



## Audit Recommendation 1

We recommend that division management follow *Utah Administrative Rule R645-303-221*, and complete a 15-day initial completeness review on all relevant permit changes. Management should track and monitor the 15-day review (ICR) to ensure that it is consistently completed

- ✓ Assigned mine leads, who are responsible for all ICRs for their mines.
- ✓ Implemented ICR in Dec. 2007
- ✓ 83% of ICRs completed on time since then (72/87)



## Audit Recommendation 2

We recommend that division management adhere to required mandated deadlines and deny permit amendments that are incomplete.

- ✓ If a permit is deficient, the whole thing is returned with a deficiency list
  - Eliminates confusion and saves time when reviews are iterative
- ✓ Timeliness has improved (some bumps in the road with personnel changes)
  - No longer just assigning due dates based on statutory limits
  - Moving toward a more project management based approach
  - If a project will take 1-2 hours to complete, why make it due 60 days out?