Utah Mining Association

August 14, 2017

Dana Dean, P.E.
Associate Director
Utah Division of Oil, Gas and Mining
1594 West North Temple, Suite 1210
PO Box 145801
Salt Lake City, UT 84114

Re: Utah Division of Oil, Gas, and Mining Directive for Coal Mining Bond Calculations

Dear Associate Director Dean:

On behalf of the Utah Mining Association, we appreciated the opportunity to meet with you, Director Baza and Daron Haddock, regarding the July 18, 2017, revisions to Technical Directive 007, "Calculation Guidelines for Determining Coal Mining Reclamation Bond Amounts" ("Tech Directive" or "Tech Directive 007"). We appreciated the Division's explanation of the discussions with the federal Office of Surface Mining Reclamation and Enforcement ("OSM") which lead to revision of the Tech Directive and implementation pursuant to the May 3, 2017, Action Plan #UT-2017-001. The coal industry is significantly impacted by Tech Directive 007, which ultimately determines the cost of reclamation bonding. For this reason, the industry requests the Division delay implementation of the revised Tech Directive for a 30-day comment period. As set forth below, the coal industry has both procedural and substantive concerns with the revisions to Tech Directive 007 which need to be addressed before they become effective.

1. The Division should remove reference to "worst case scenario" from its assumptions and include procedures for determining the point of maximum reclamation cost liability. Tech Directive 3(B).

a. The Tech Directive should delete the reference "worst-case scenario" which is not a defined term under the Utah Coal Program. OSM and Division Rules require the amount of the bond be based on the MRP, probable difficulty of completing reclamation and the applicant's estimate of the cost of completing the reclamation plan. *See* 30 C.F.R. 800.14(a); R645-301-830.130 (referencing the probable difficulty of reclamation).

b. Per OSM Directive 882, State and Federal Rules, the Tech Directive should be clarified to confirm that bond cost estimations should be based on "the point of maximum reclamation cost liability" within the permit term (i.e. the point in time where the reasonable maximum disturbed area, backfill void, refuse piles, revegetation, etc., are expected) not a hypothetical "worst case scenario." *Id*.; *See* OSM Directive 882, Chapter 2, Step 1: on page 9 (procedures for determination of the point of maximum reclamation cost liability as identified in the 6 bulleted items).

2. The Division inappropriately limits the use of local and regional cost indices, Tech Directive 007, Section 4(I).

Utah's coal industry operates in a very competitive market. To allow Utah coal operators to remain competitive the Division needs to consider how its bonding costs compare with other coal mining states. Use of the nation-wide R.S. Means' as a source of costs data does not prevent the State from using regional and local costs to further refine costs to more representative rates. Typically, contractors' costs for equipment, labor and materials are determined at a local level. For example, the central Utah coal mining region is located near Price, Utah. Contractors in the Price area are located in the same region as the mines they service and are able to offer more competitive rates than those reflected in R.S. Means. These local rates are documented in the Price Utah City Cost Index, attached. Other coal producing States, currently take advantage of similar adjustments in their comparative costs, resulting in reduced rates reflecting local and regional actual costs. For example, the State of Ohio uses the R.S. Means' average rates and then further adjusts those rates per local and regional costs from their AML or landfill construction programs. Following this example, the Utah Coal Program should also consider regional or local cost indexes in their bond calculations. Therefore, we suggest the following:

a. The Division's reliance on national indices, especially with respect to demolition costs, labor rates and equipment rental, is not a true reflection of reclamation costs for projects in Utah. *See* OSM Directive 882, Chapter 2 at page 22. In the new Tech Directive 007, Section 4(I), References, the Division states:

> *"the only regional factor that applies to reclamation work is site construction. Historically, the site construction regional factor for Utah cities is within 2% of the national average. Since the adjustment is not significant and varies from year to year, the Division does not use regional factors."*

This is not the case. R.S. Means does not provide a regional cost index directly relating to "site construction." DOGM formerly allowed the use of City Cost Indexes to account for cost variations from the national averages included in R.S. Means. For the coal industry, the Price, Utah City Cost Index is typically used. *See attached*, City Cost Indexes for Price, Utah for the years 2013-2017, excluding 2015. The "Site & Infrastructure, Demolition" and the "Weighted Average" City Cost Indexes for Price for these years are:

Year	Demolition Index	Weighted Average Index
2013	93.0	84.7
2014	93.5	84.9
2016	94.1	85.8
2017	94.3	85.0
Average	93.7	85.1

The City Cost Indexes do not provide factors related to earthwork and revegetation (the other primary reclamation activities). However, the factors in the Installation (i.e. labor) column for Price average about 65% of the national average. Given the relatively low labor rates for the region, the "Weighted Average" City Cost Index for Price would appropriately account for cost differences between the coal producing areas of Utah and the national average.

3. **Overhead and Profit (O&P) should not be considered part of direct costs, Tech Directive 7(B)(12).**

   a. Tech Directive Section 7(B)(12) incorrectly categorizes O&P as a direct cost. Per OSM Directive 882, O&P is an indirect cost (unless local bids are used and included with direct costs or R.S. Means' "total" index costs are used). *See* OSM Directive 882, Chapter 2 at page 22.

   b. The Tech Directive should be clarified. Where local bids or direct cost estimates include Overhead and Profit ("O&P) (in the event R.S. Means' total costs are used to calculate direct costs) O&P should be broken out and allocated to indirect costs. Direct costs should be reduced for purposes of escalation.

4. **The Division's Indirect Cost Calculation Results in "Double Dipping", Tech Directive 7(C).**

   a. The Division fails to provide a reference for the indirect cost factors listed in the directive.

   b. Under Tech Directive Section 7(C)(1), there is no basis to assume that mobilization and demobilization costs are the maximum allowed by OSM Directive 882, or 10%.

   In the experience of the industry, mobilization and demobilization costs should be closer to 2.5% or 4% in Utah. Materials and equipment are readily available in the coal-producing areas of the State. Therefore the distance to travel to the work site is significantly reduced and will not result in any abnormal mob costs due to long-distance travel. Labor costs will also be reduced due the shorter distance traveled, and likely will eliminate costs for per diem since personnel are from the area that will not be utilizing the hotels for their housing needs. The 10% startup cost factor is high. The industry standard is 5% for site construction projects throughout

Utah.

c. Under Tech Directive Section 7(C)(4), the Division is without the authority to assess an indirect cost for "Main Office Expenses" and this calculation results in "double dipping."

The term "main office expenses" is not a defined category of expenses and should be removed from the indirect cost estimate. R.S. Means indicates that this expense is the average national cost typically charged by a General Contractor whose annual project volume ranges between $2.5 and $4.0 million. In Utah, only a small percentage of the reclamation work is performed by subcontractors and there are no "main office expenses."

d. O&P (as a separate line item) should be included in indirect costs per OSM Directive 882. To the extent that profit and overhead are estimated as part of a Direct Cost estimate, they should be broken out before escalation. Since these cost factors did not change with the requirement that overhead and profit is included in the unit costs, a real possibility exists that overhead and profit would be counted twice under the new directive.

5. Inflation Adjustments, Tech Directive 7(D).

a. In practice, the Division is improperly escalating Indirect Costs. This practice is inconsistent with OSM Directive 882, which requires escalation of Direct Costs only. *See* OSM Directive 882. Chapter 2 at page 21. Please clarify the Division's Tech Directive 7(D) to be consistent with OSM's guidelines.

Once again, we appreciate your consideration and look forward to providing additional input prior to the Division's implementation of the revised Tech Directive 007.

Sincerely,

Mark D. Compton
President