

From: Daron Haddock
To: Denning, William G - MSHA
Date: 10/10/03 4:00PM
Subject: Re: Whiskey Creek Mine

Bill, I promised to let you know when things started to happen at the the White Oak Whisky Creek Mine. Reclamation is now starting. We have reached an agreement with Frontier Insurance Company to complete the reclamation work at the site. I have attached a copy of the notification letter that we have sent out for your information. Although funds for reclamation are limited, we intend to have someone from our office overseeing the work and on site just about all of the time so that we can ensure that things get done correctly. Thanks for your interest.

>>> "Denning, William G - MSHA" <Denning.William@DOL.GOV> 08/28/03 12:48PM >>>
Daron, Thanks for calling and providing a briefing on DOGM's activities regarding reclamation at the Whiskey Creek Mine.

LEGAL CONSIDERATIONS: The District has relied for legal guidance in this area on a letter issued in 1983 by Cynthia L. Atwood, Associate Solicitor for Mine Safety and Health, to a State of New Mexico official regarding the State's "Abandoned Mine Reclamation Program." Attwood stated that MSHA has exercised authority over "certain reclamation activities, such as surface work performed by the mine operator immediately following mining to restore mined land to its original contour and replace topsoil." Regarding previously mined land, Atwood stated, "However, we have also taken the position that other activities occurring on previously mined land would not be subject to the Mine Act. The factors considered in determining MSHA's authority in such cases include (1) the nature of the activities, particularly in relation to activities normally associated with mining; (2) the relationship in time and the geographic proximity of the activities in question to active mining operations; (3) the nature of the land at the time of the activities; and (4) the operational relationship of the activities to active mining operations, including the control and direction of the workforce and the degree to which equipment or facilities are shared with active mining operations." Regarding the New Mexico program, Atwood concluded that MSHA would not exercise jurisdiction due to the nature of the activities and the amount of time elapsed since mining took place on the land. She also stated, "An additional basis of our determination is the fact that the work will be carried out by contractors of the State retained for the specific purpose of reclamation, rather than by mine operators as an activity incidental to mining."

Our position has been that if the State takes over and contracts the reclamation work, then we do not exercise authority but defer to the State. If Frontier would hire a contractor, then that might be different and we might assert jurisdiction over that contractor. I think it's a State's rights sort of thing. When do you think that you or Frontier will start work at the site? Do you anticipate completing it before winter? If you have any legal documents, such as you citations and cessation orders, agreements with Frontier, etc., which could help us make our jurisdictional determination, I'd appreciate if you could fax them to me at 303-231-5553. Thanks.

Bill

Staff Assistant to the District Manager

303-231-5560

CC: Cornett, Bob E - MSHA; Davis, Allyn C - MSHA; Geldmeyer, Diane F - MSHA; Knepp, William P - MSHA



State of Utah

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October 9, 2003

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Re: White Oak Reclamation

Dear Surface Landowner:

This letter is to inform you that the Division of Oil, Gas and Mining (OGM) has signed an agreement with the reclamation bonding company for the White Oak Mine and Loadout, which is Frontier Insurance Company in Rehabilitation. As you may know, Lodestar discontinued mining earlier this year at the White Oak surface mine. The bankruptcy court, under Chapter 11, sold certain assets, which included some exposed coal. That coal was mined and shipped this spring by Blue Ridge Services. The bond, which was posted by Blue Ridge Mining Services mining activities, was subsequently utilized, in June 2003, to reclaim approximately half of the White Oak loadout area. The goal was to reclaim areas closest to the summer camps in Scofield.

Since April, OGM, as the regulatory authority (RA) over coal mining and reclamation in Utah, has been negotiating for reclamation of the pit and loadout area. The negotiation phase followed a formal notice to Lodestar in bankruptcy (in Chapter 7 since July 15, 2003), and Frontier in Rehabilitation, of OGM's "Intent to Forfeit" the reclamation bond. On October 3, 2003, OGM, the federal Office of Surface Mining (OSM) and Frontier signed agreements providing for the reclamation of the sites.

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Surface Landowners
October 9, 2003

Beginning Monday October 6, Whiskey Creek Mining Services began actively removing structures from the Loadout, and beginning on Thursday, October 9, 2003 Leducor of Reno, NV began mobilizing reclamation equipment to the Mine.

OGM intends to provide for inspection at the sites and is involved in signoff of payments to the contractor to ensure the work is being completed to the satisfaction of the RA. Since only one quarter of the roughly \$4M reclamation bond estimate is available, OGM has negotiated to prioritize 1) elimination of underground mine openings, 2) removal of dangerous equipment and structures, 3) elimination of dangerous highwalls, 4) restoration of major drainage ways, and 5) ecological stabilization of the site. We hope you agree with these priorities. We plan that the site will be left in a stable and usable condition. We believe that you will be pleased to have these mining hazards and features removed from your property, and to have the surface use of the site again.

So that you are aware, OGM is also planning to pursue other potential sources of funding and is involved actively with OSM in capturing any further available dollars. If you have any questions, please contact me at 801-538-5306.

Sincerely,

Mary Ann Wright,
Associate Director, Mining

vs

cc: Steve Alder, AAG
Dan Meadors, Skyline
William T. Gorton, III, Esq
Mark Wayment, Whiskey Creek Mining Services
Alice Carlton, Manti - La Sal N.F.
Fred O Ferrall, BLM, Price
Jim Kohler, BLM, Salt Lake Office
Lawrence Buhler, Attorney for Marakis
Jerry Helms, Leducor
Scott Kiscaden, Blue Ridge Services, LLC
Boyd McAfee, Clear Creek Camp

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