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AMAX COAL WEST, INC.

A Subsidiary of AMAX Coal Industries, Inc.

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November 16, 1993

DIVISION OF
OIL, GAS & MINING

Mr. James Carter, Director
State of Utah
Division of Oil, Gas and Mining
3 Triad Center, Suite 350
Salt Lake City, UT 84180-1203

RE: Castle Gate Coal Company (AMAX); Closure of 12/18/90
Division Order; Requirements for Public Notice and Hearing.

Dear Mr. Carter:

For future reference, I have taken the time to summarize my understanding of the agreements which were reached between the Division of Oil, Gas and Mining and AMAX (Castle Gate Coal Mine) during the meeting held at the Division Office on September 27, 1993.

The agreements can be summarized as follows. First, it was agreed that the Division would close out the 12/18/90 Division Order. Second, it was agreed that a new Order would be issued covering Crandall Canyon and a few other specific areas. Third, it was agreed that the reclamation bond would be recalculated. Fourth, it was agreed that NOV 91-28-2-1 would be terminated. And, fifth, no agreement was reached on whether or not the 12/18/90 Division Order permit changes were subject to public notice requirements. These agreements are further explored in the paragraphs below.

Briefly, a review of the history of this matter shows that the Division of Oil, Gas & Mining issued a Division Order to Castle Gate Coal Company on 12/18/90. The Division Order made twenty-six separate findings of permit deficiency in the Castle Gate permit. And, it required Castle Gate to make permit changes for the Sowbelley Canyon, Hardscrabble Canyon, and the Preparation Plant areas of the Castle Gate Mine in order to bring the permit into compliance with Utah's State Coal Program. The Crandall Canyon area was not included in the Division Order.

After numerous submissions to effectuate the ordered permit changes, AMAX and DOGM both agree that, with a few exceptions, the

Division Order has been satisfied. To bring the process to an end, then, AMAX requested the September 27th meeting with UDOGM to discuss closure of the Order. The following five points summarize my understanding of the agreements reached during this meeting.

First, it was agreed by the parties that DOGM would prepare a Closure Order with findings which documents that the 12/18/90 Division Order findings have been satisfactorily addressed and that the Castle Gate Permit is now in compliance with the State Program. At the same time, however, the Closure Order would contain provisions that excepted Crandall Canyon and several other specific areas of concern from its terms.

The Division proposed that this Closure Order be completed sometime in the "late fall" of this year. As you know, based on the authority of interim Division approvals, AMAX has, in good faith, expended a good deal of time, effort and money to pursue reclamation work required by the Division Order. While they acknowledge the Division's authority to allow the work to proceed under interim approval, AMAX is eager to have final Division approval through the Closure Order as soon as possible so that the work done can be considered complete.

Second, after the Closure Order is completed, the Division would issue a new Order covering the exceptions reserved in the Closure Order. These exceptions include requirements for permit amendments related to Crandall Canyon as well as several minor items related to other permitted areas. The new Division Order would set out a reasonable schedule for completing the requirements contained therein. The procedure for scheduling would follow the submission/comment procedure set out in the regulations.

Third, it was agreed that the Castle Gate Bond would be recalculated to reflect the work completed under the 12/18/90 Division Order. The bond calculation will be performed after the Closure Order has been written.

Fourth, it was agreed that as part of the closure process, the Division would issue documentation showing that NOV 91-28-2-1, issued July 5, 1991, for failure to comply with the terms of the 12/18/90 Division Order, has been abated and will be terminated.

Fifth, left unsettled was the issue of whether or not AMAX would be required to adhere to the notice and public participation requirements of R645-302-100 due to the permit changes precipitated by the 12/18/90 Division Order. After a review of UDOGM regulations, it is AMAX's position that all of the changes submitted as a result of the Division Order findings are classified as "Permit Amendments". Permit Amendments do not require public notice, public participation, or notice of decision.

AMAX reached the above conclusion by following the logical progression of the regulations. Briefly, the Division Order was issued under Utah regulation R645-303-212. This regulation provides for reasonable permit changes to be processed according to Utah regulations R645-303-220 through 228.

A review of sections 220 through 228 reveals that section 222 is the regulation most applicable to this matter. Section 222 provides that permit changes are necessary under three enumerated conditions: 1) when there is a change in the method of conducting mining, or 2) when there is a change in reclamation operations or 3) when there are changes in the conditions authorized or required under the approved permit. AMAX agrees that Castle Gate Mine meets one or more of the conditions set out in section 222; thus, we fall under the permit change section of the regulations.

On the other hand, the latter part of section 222 provides that extensions to the proposed permit area (except for incidental boundary areas) must be processed and approved as new permits, not as Permit Changes. As AMAX is not extending the proposed permit area, they believe that the latter part of section 222 is inapplicable; therefore, it is dismissed from further discussion.

Tracking further into the regulations reveals that R645-303-223 expressly provides for two distinct types of permit changes. They are "Significant Permit Revisions" and "Permit Amendments". It appears that these two types of permit changes are mutually exclusive. A permit change must be one or the other. For reference purposes, Section 223, in pertinent part, is set out below:

223. " . . . The application for a Permit Change will be categorized as a Significant Permit Revision if it involves any of the changes or circumstances set forth in R645-303-224. All other Applications for a Permit Change, including Incidental Boundary Changes, will be categorized as Permit Amendments."

For a permit change to be a "Significant Permit Revision", it must meet certain criteria. Those criteria are clearly and exclusively stated in Section 224 as follows:

"224. An Application for a Permit Change must be categorized and processed as a Significant Permit Revision for any of the following changes or circumstances:

224.100. An increase in the size of the surface or subsurface disturbed area in an amount of 15 percent, or greater, than the disturbed area under the permit;

224.200. Engaging in operations outside of the cumulative impact area as defined in the Cumulative Hydrologic Impact Assessment (CHIA);

224.300. Engaging in operations in hydrologic basins other than those authorized in the approved permit;

224.400. When required by an Order issued under R645-303-212 and R645-303-213;

224.500. In order to continue operation after the cancellation or material reduction of the liability insurance policy, capability of self-insurance, performance bond, or other equivalent guarantee upon which the original permit was issued; or

224.600. As otherwise required under applicable law or regulation."

Because of the language found in Section R645-303-223, if a Permit Change does not meet the criteria for being a "Significant Permit Revision", then it is, by default, a Permit Amendment. A review of the submissions made as a result of the 12/18/90 Division Order shows that AMAX has not proposed an increase in the size of the surface (224.100), has not engaged in operations outside the CHIA (224.200), has not engaged in operations in non-permitted hydrologic basins (224.300), and does not have insurance or bonding problems (224.500). Therefore, I would suggest that these regulatory provisions are not sources for causing the permit changes resulting from the Division Order to be classified as "Significant Permit Revisions". Consequently, they are eliminated from further discussion.

This leaves consideration of R645-303-224.400 and 600 as the only regulatory provisions by which the Division Order permit changes might be considered Significant Revisions. Considering Section 224.600, first, it provides that a permit change should be considered a "Significant Revision" when required under applicable law or regulation. A brief review of Utah's R645 regulations, the Utah Code and SMCRA regulations revealed no regulation or law which expressly requires the types of submissions made in response to the Division Order to be classified as a "Significant Revision". Thus, this provision is eliminated from further discussion or, at least, until an applicable law or regulation can be cited.

This brings the analysis to the last provision to be considered - Section 224.400. This section provides that a permit change is a "Significant Revision" when required by Order. Assuming that the "Order" referred to in this section is the 12/18/90 Division Order, a review of that Division Order reveals the following language.

"The application for permit change shall specify for each Finding, whether or not the change constitutes a significant permit revision or a permit amendment when submitted."

It is clear from this language that the Division Order does not "order" the permit changes required thereunder to be "Significant Revisions". Rather, this language seems to imply that AMAX must review each submission made in response to each Division Order finding in light of the conditions set forth in R645-303-224. If the submission meets the conditions found in the subsections of R645-303-224, then it must be classified as a "Significant Revision". If it does not, then, the submission is a "Permit Amendment". As stated above, the facts show that none of the submissions fall within the categories enumerated. Therefore, the logical conclusion is that all submissions are classified as Permit Amendments.

The Division has suggested that the cumulative impact of all the Division Ordered changes might act to make the permit changes a "Significant Revision". AMAX does not believe there is any regulatory authority for such an assertion. The Division Order makes it clear that each permit change made in response to each finding is considered for inclusion in the "Significant Revision" category on an individual basis. It is a generally well settled legal principle that if a statute enumerates conditions which must be met in order for a thing to become subject to that statute, then that list is exclusive. No other conditions can be added. As none of the conditions enumerated in Section 224 cause the Division Order submissions to be classified as "Significant Revisions", then, by generally applicable law they must fall outside of the "Significant Revision" category. And, in view of the above analysis, there is no legal basis for re-including them in that class.

If one follows the logical progression of the regulations, then, it is clear that all of the permit changes required by the December 18th Division Order fall into the classification of Permit Amendments. On the issue of public participation, then, the regulations provide that:

227. Permit Amendments will be processed in accordance with the requirements of R645-300-100 and R645-300-200, and the information requirements of R645-301 and R645-302, except that permit amendments will not be subject to the requirements for notice, public participation, or notice of decision of R645-300-100 (emphasis supplied).

In conclusion, an objective consideration of the regulations and the facts leads to the conclusion that the Division Order responses should be classified as Permit Amendments and not Significant Revisions. Permit Amendments are not subject to the notice requirements of R645-300-100. Thus, AMAX should not be required to adhere to regulations requiring public notice for the permit changes made as a result of its responses to the Division Order requirements.

AMAX asks that you consider the above regulatory analysis prior to making a definitive decision requiring public notice of the permit changes made. If you should have any questions or comments about this letter or my understanding of the agreements reached during our September 27th meeting, please don't hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Steven R. Laird".

Steven R. Laird
Senior Attorney

SRL/mg