

May 21, 1981

Ronald W. Daniels
Acting Assessment Officer
Division of Oil, Gas and Mining
State of Utah
1588 West North Temple
Salt Lake City, Utah 84116

Re: DOGM NOV No. N81-1-1-2, Violation No. 1 -
Plateau Legal Position

Dear Ron:

The following is an outline of our legal position regarding the above referenced violation for your consideration at the May 22, 1981 assessment conference. As you recall, Violation No. 1 cited the Plateau Mining Company for operating without a permit in violation of Utah Code Annotated 40-10-9(1), in the construction and operation of a conveyor system at the mine. In the letter which accompanied the violation, dated April 6, 1981, Joe Helfrich stated that the conveyor system "is referred in these two plans as an existing structure, approximate construction date of overland belt system and new road - October 1977." In the assessment worksheet which accompanied Ron Daniels' May 7, 1981 letter, DOGM stated that the violation was an obstruction to enforcement in that it "prevented the inspector from determining if the conveyor was constructed in accordance with an approved plan."

UCA 40-10-9(1) provides that "no person shall engage in or carry out surface coal mining operations within the State unless that person has first obtained a permit issued by the Division pursuant to an approved mining and reclamation program." Turning to the definitions under the State regulations, UMC 700.5 defines "permit" as a permit to conduct underground coal mining activities "issued by the Division pursuant to a State program." A "State program" is defined by the same section to mean a program established by a State and approved by the Secretary pursuant to Section 503 of the Federal Act to regulate surface coal mining and

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reclamation activities and surface effects of underground mining activities on non-Indian and non-federal lands within the State. "Section 503 of the Federal Act" refers to 30 USC 1253 of the Surface Mining Control and Reclamation Act of 1977. This section provides the authority for each state to enact their own surface coal mining regulatory program with approval of the Secretary of Interior. Utah received approval of its regulatory program in January, 1981.

As previously noted, the letter which accompanied the violation issued by DOGM pointed out that the conveyor system was an existing structure. UMC Part 784 sets forth the requirements that must be met by an operator who submits an application for an underground coal mining permit. UMC 784.1 states "this part provides the requirements for the mining operations and reclamation plans portions of applications for permits for underground coal mining activities . . ." UMC 784.12 provides that each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the underground coal mining activities. "Existing structure" is defined in UMC 700.5 as "a structure or facility used in connection with or to facilitate underground coal mining activities for which construction begins prior to the approval of a State program." (emphasis added).

The State of Utah is aware that Plateau Mining Company submitted a reclamation permit application on February 20, 1981, to DOGM. The conveyor system was addressed in this application and was identified as an existing structure. Clearly, Plateau Mining Company has met all of the requirements of the Utah law and regulations. DOGM has cited Plateau for operating without a permit in violation of the Utah law. However, Utah law states that a permit is issued pursuant to an approved State mining and reclamation program. The Utah regulations also define a permit to be one which is issued by the Division pursuant to a State program, and a State program is defined as one that is established by a State and approved by the Secretary of Interior pursuant to the Federal Act. The Utah regulations direct that an operator must address all existing structures in his reclamation permit application, and existing structures are defined as those structures for which construction began prior to the approval of a State program. Not only was construction on Plateau Mining Company's conveyor system initiated prior to the approval of the State program, but it was also completed prior to the State program. Therefore, it is our position that Plateau Mining Company has met the requirements of the law in all respects and invite the DOGM to point out where the violation exists. The conveyor system was addressed in our

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reclamation permit application and any challenge to the inadequacy of our submittal regarding the conveyor system should be directed to Plateau Mining Company as part of the technical review and assessment which the DOGM and the OSM is currently completing. We think it is improper to cite Plateau Mining Company for a violation at this time.

Thank you for your consideration. If you have any questions, please call me at (213) 739-2290.

Very truly yours,



Joseph E. Ronan, Jr.

JERjr:dp

cc: Mr. J. D. Spaulding
Mr. A. C. Pierce
Mr. F. Tucker
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