

RECEIVED
MAY 17 1990File # 1007/006 #
2 : # 4Cyprus Plateau Mining Corporation
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Price, Utah 84501
(801) 637-2875

May 15, 1990

Ms. Pamela Grubaugh Littig
Department of Natural Resources
Division of Oil, Gas and Mining
355 West North Temple, Suite 350
Salt Lake City, UT 84180-1203

Dear Ms. Littig:

Re: Reclamation Agreement

We have forwarded the Reclamation Agreement and our revised bond estimate to our Corporate legal and bond departments. The following concerns and comments need to be addressed before action on the Agreement can continue.

1. The third recital paragraph reads as follows: "Whereas, the Operator is ready and willing to file the bond in the amount and in a form acceptable to the Division and to perform all obligations imposed by the Division relating to the reclamation of the property." This language appears to grant the Division authority beyond the scope of applicable laws and regulations and to provide the Operator's consent to that additional authority. The paragraph should be clarified by inserting after "obligations imposed by the Division" the language "pursuant to applicable laws and regulations."
2. Paragraph 5 seems to require that the original public liability insurance policy submitted with the permit application would remain in force. This is not true as Cyprus' insurance carriers vary over time. Paragraph 10 seems to acknowledge that a change in the amount of coverage and/or the liability insurance company may occur. Upon such changes a Stipulation To Revise Reclamation Agreement attached as Exhibit D to the reclamation agreement will be filed. We simply need to confirm that the proper procedure is to file a new Stipulation To Revise Reclamation Agreement with each applicable change.
3. Paragraph 7 starts by stating "the Operator does hereby jointly and severally agree" The reference to "jointly and severally" is generally intended to be applicable to two or more parties. Here, only the Operator is granting the indemnity. The

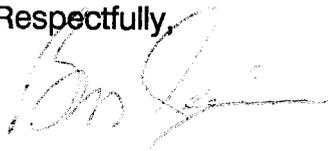
reference to "jointly and severally" needs to be clarified or deleted. Is the reference to the surety or the bond, as the surety is not a party to the Agreement?

4. Two comments regarding paragraph 11. First, the last sentence of paragraph 11 reads "the Operator shall be liable for all costs incurred by the Division to enforce this Agreement, including any attorneys fees." The word "reasonable" needs to be inserted prior to the word "costs". Second, paragraph 11 needs to be clarified so the Operator is not responsible for costs and attorneys fees if it challenges an action of the Division and prevails in that challenge. In short, if there is a dispute regarding the enforcement of the PAP, the Act, the rules, or this Agreement, the Division must prevail in that dispute prior to receiving any reimbursement of costs under paragraph 11.
5. The proposed form includes a bond for non-federal coal, and a separate bond for federal coal. Both bonds are for the benefit of DOGM. Is one bond still going to be sufficient for operations mining both federal and non-federal coal? If not, why not?
6. The third paragraph in the form of bond reads "the surety will not cancel this bond at any time for any reason, including nonpayment of premium or bankruptcy of the principal during the period of liability." As a practical matter, bonds are purchased just like insurance with an annual premium being paid to the surety. Does DOGM intend this language to cause the surety to continue coverage under a bond if premiums are no longer paid? Of course, if a bond lapses, the Division could shut down an operation.
7. The fourth paragraph in the form of bond reads "the surety and their successors and assigns, agree to guarantee the obligation and to indemnify, defend, and hold harmless the Division from any and all expenses which the Division may sustain as a result of the Operator's failure to comply with the conditions of the obligation." Presumably, the referenced "obligation" is the reclamation obligation covered by the bond. This language requires the surety to indemnify the Division in an undetermined amount, which amount may exceed the face amount of the bond. It is hard to believe a surety will accept this language. A premium is charged based upon the face amount of the bond, which face amount defines the risk of the surety. This open-ended language eliminates the ability of the surety to determine its maximum exposure, and thereby establish a premium to be paid for the bond.

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After Division review, we can get together to discuss the concerns, or possibly a conference call could be arranged with our legal council.

Respectfully,

A handwritten signature in black ink, appearing to read "Ben Grimes", written over a faint horizontal line.

Ben Grimes
Sr. Environmental Engineer

/sd

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