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State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Norman H. Bangertter
Governor

Dee C. Hansen
Executive Director

Dianne R. Nielson, Ph.D.
Division Director

355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340

November 24, 1992

Mr. Keith Sieber
Cyprus Plateau Mining Corporation
P. O. Drawer PMC
Price, Utah 84501

Dear Mr. Sieber:

Re: Inspection Problems, Cyprus Plateau Mining Corporation, Star Point Mine, ACT/007/006, Folder #2, Carbon County, Utah

I am writing you about an inspection problem that has been encountered at the Star Point Mine which concerns mine records, and more particularly, the lack of availability of mine records in conjunction with DOGM inspections. This situation has occurred when Mr. Grimes, Sr. Environmental Engineer, is gone and/or if he has other commitments that takes him away during the inspection. Record availability and review is a mandatory part of an inspection under the Utah Coal Regulatory Program. (Please refer to Utah Code Annotated, Title 40, Chapter 10, and paragraph 19-2-b which is highlighted and is enclosed hereto as well as UAC R645-400-221.)

In Utah, various systems have been employed to be certain that at the time of an inspection records are readily available and things are not "hanging on one nail". For example, at one mine, the secretaries are knowledgeable about the official records and pull records on demand. They, too, are responsible for filing and controlling all records in central files. Some environmental personnel keep working files at their desk when necessary, but the official records are in central files. Others utilize records in central files through a charge out system, while some mines have a central records system, but maintain an inspection record loose-leaf where a copy of records pertinent to DOGM inspections are readily available.

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Mr. Keith Sieber
ACT/007/006
November 24, 1992

My interest is that the records for the Star Point Mine are available at the time of an inspection without undue delay. Thank you for considering and correcting this matter.

Sincerely,



Lowell P. Braxton
Associate Director, Mining

jbe
Enclosure
cc/enc: Ben Grimes
Pamela Grubaugh-Littig
Bill Malencik
007006.IP

Utah Code Annotated (U.C.A.) Title 40 - Chapter 10 - Coal Mining and Reclamation

(f) Avoiding acid or other toxic mine drainage by such measures as, but not limited to:

'p4(A) Preventing or removing water from contact with toxic-producing deposits;

'p4(B) Treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses;

'p4(C) Casing, sealing, or otherwise managing boreholes, shafts, and wells to keep acid or other toxic drainage from entering ground and surface waters.

(ii) Conducting surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area (but in no event shall these contributions be in excess of requirements set by applicable state or federal law), and avoiding channel deepening or enlargement in operations requiring the discharge of water from mines.

(j) With respect to other surface impacts not specified in this subsection (2), including the construction of new roads or the improvement or use of existing roads to gain access to the site of these activities and for haulage, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structure, facilities, or other property or materials on the surface, resulting from or incident to such activities, operate in accordance with the standards established under section 40-10-17 for such effects which result from surface coal mining operations; but the division shall make the modification in the requirements imposed by this subsection (2)(j) as are necessary to accommodate the distinct difference between surface and underground coal mining methods.

(k) To the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of these resources where practicable.

(l) Locate openings for all new drift mines working acid producing or iron producing coal seams in a manner as to prevent a gravity discharge of water from the mine.

(3) In order to protect the stability of the land, the board shall suspend underground coal mining under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if, after proper notice and hearing there is a finding of imminent danger to inhabitants of the urbanized areas, cities, towns, and communities.

(4) The provisions of this chapter relating to permits, sureties, bonds, inspections, and enforcement, public review, and administrative and judicial review shall be applicable to surface operations and surface impacts incident to an underground coal mine with those modifications to the permit application requirements, permit approval or denial procedures, and bond requirements as are necessary to accommodate the distinct difference between surface and underground coal mining methods.

1981

~~40-10-19. Information provided by permittees to division - Inspections by division - Signs required at operations entrances - Violations reported by reclamation officers - Copies of records and reports available to public~~

(1) For the purpose of developing, administering, and enforcing any permit under this chapter, or of determining whether any person is in violation of any requirement of this chapter, the division shall require any permittee to provide information relative to surface coal mining and

reclamation operations as the division deems reasonable and necessary in the division's implementing rules and regulations.

~~20. The authorized representatives of the division, without advance notice and upon presentation of appropriate credentials:~~

(a) Shall have the right of entry into, upon, or through any surface coal mining and reclamation operations or any premises in which any records required to be maintained under this subsection (2) are located.

~~(b) May at reasonable times, and without delay, have access to and copy any records, inspect any monitoring equipment or method of operation required under this chapter. As required by subsection 40-8-17(2), this entry and access are conditions to obtaining an approved state permit to conduct surface mining operations.~~

(3) The inspections by the division shall:

(a) Occur on an irregular basis averaging not less than one partial inspection per month and one complete inspection per calendar quarter for the surface coal mining and reclamation operation covered by each permit;

(b) Occur without prior notice to the permittee or his agents or employees except for necessary onsite meetings with the permittee; and

(c) Include the filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of this chapter.

(4) Each permittee shall conspicuously maintain at the entrances to the surface coal mining and reclamation operations a clearly visible sign which sets forth the names, business address, and phone number of the permittee and the permit number of the surface coal mining and reclamation operations.

(5) Each reclamation officer, upon detection of each violation of any requirement of this chapter, shall forthwith inform the operator in writing and shall report in writing the violation to the division.

(6) Copies of any records, reports, inspection materials, or information obtained under this chapter by the division shall be made immediately available to the public.

1979

~~40-10-20. Civil penalty for violation of chapter - Public hearing - Contest of violation or amount of penalty - Collection - Criminal penalties - Civil penalty for failure to correct violation.~~

(1) Any permittee who violates any permit condition or who violates any other provision of this chapter may be assessed a civil penalty by the board, except that if the violation leads to the issuance of a cessation order under Section 40-10-22, the civil penalty shall be assessed. This penalty shall not exceed \$5,000 for each violation. Each day of continuing violation may be deemed a separate violation for purposes of the penalty assessments. In determining the amount of penalty, consideration shall be given to the permittee's history of previous violations at the particular surface coal mining operation; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether the permittee was negligent; and the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation.

(2) A civil penalty shall be assessed by the board only after the person charged with a violation described under Subsection (1) has been given an opportunity for a public hearing. Where the public hearing has been held, the board shall make findings of fact, and shall issue a written decision as to the occurrence of the violation and the amount of the penalty which is

- bond so that they are conveniently available to residents of that area, except:
- 142.100. As otherwise provided by federal law; and
- 142.200. For information not required to be made available under R645-203, R645-300-124 or R645-400-144.
143. The Division will ensure compliance with R645-400-142 by either:
- 143.100. Making copies of all records, reports, inspection materials, and other subject information available for public inspection at a federal, Utah or local government office in the county where the mining is occurring or proposed to occur; or
- 143.200. At the Division's option and expense, providing copies of subject information promptly by mail at the request of any resident of the area where the mining is occurring or is proposed to occur. Provided, that the Division will maintain for public inspection, at a federal, Utah or local government office in the county where the mining is occurring or proposed to occur, a description of the information available for mailing and the procedure for obtaining such information.
144. In order to protect preparation for hearings and enforcement proceedings, the Director of the Office and the Division may enter into agreements regarding procedures for the special handling of investigative and enforcement reports and other such materials.
150. Public Participation. The State Program provides for public participation in the enforcement of the State Program in R645-400-200, R645-400-300, R645-401, and the Board's Procedural Rules.
160. Compliance Conference.
161. Compliance conferences between a permittee and an authorized representative of the Division are provided for and described in R645-400-162 through R645-400-165.
162. A permittee may request an onsite compliance conference with an authorized representative of the Division to review the compliance status of any condition or practice proposed at any coal exploration or coal mining and reclamation operation. Any such conference will not constitute an inspection within the meaning of UCA 40-10-22 and R645-400-130, or any applicable permit or exploration approval.
163. The Division may accept or refuse any request to conduct a compliance conference under R645-400-162.
164. The authorized representative at any compliance conference will review such proposed conditions and practices in order to advise whether any such condition or practice may become a violation of any requirement of the Act, the approved State Program or any applicable permit or exploration approval.
165. Neither the holding of a compliance conference under this section nor any opinion given by the authorized representative at such a conference will affect:
- 165.100. Any rights or obligations of the Division or of the permittee with respect to any inspection, notice of violation or cessation order, whether prior or subsequent to such compliance conference; or
- 165.200. The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.
- R645-400-200. Information Related to Inspections.
210. Requests for Inspections.
211. A citizen may request a Division inspection under UCA 40-10-22 by furnishing to the Division a signed, written statement (or an oral report followed by a signed, written statement) giving the Division reason to believe that a violation of the State Program or any applicable permit or exploration approval has occurred, and including a phone number and address where the citizen can be contacted.
212. The identity of any person supplying information to the Division relating to a possible violation or imminent danger or harm will remain confidential with the Division if requested by that person, unless that person elects to accompany the inspector on the inspection, or unless disclosure is required under Utah or federal law.
213. If a Division inspection is conducted as a result of information provided to the Division by a citizen as described in R645-400-211, the citizen will be notified as far in advance as practicable when the inspection is to occur and will be allowed to accompany the authorized representative of the Division during the inspection. Such person has a right of entry to, upon, and through the coal exploration or coal mining and reclamation operation about which he or she provided information, but only if he or she is in the presence of and is under control, direction and supervision of the authorized representative while on the mine property. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant. All citizens so visiting mine sites are required to comply with applicable MSHA safety standards.
214. Within 10 days of the Division inspection or, if there is no inspection within 15 days of receipt of the citizen's written statement, the Division will send the citizen the following:
- 214.100. If an inspection was made, a description of the enforcement action taken, which may consist of copies of the Division inspection report and all notices of violation and cessation orders issued as a result of the inspection or an explanation of why no enforcement action was taken;
- 214.200. If no Division inspection was conducted, an explanation of the reason why; and
- 214.300. An explanation of the citizen's right, if any, to informal review of the action or inaction of the Division under R645-400-240.
215. The Division will give copies of all materials in R645-400-214 within the time limits specified in that Rule to the person alleged to be in violation, except that the name of the citizen will be removed unless disclosure of the citizen's identity is permitted under R645-400-212.
220. Right of Entry.
- ~~221. Each authorized representative of the Division conducting an inspection under R645-400 through R645-401~~
- ~~221.100. Will have a right of entry to, upon, and through any coal exploration or coal mining and reclamation operation~~

~~without advance notice, or a search warrant, upon presentation of appropriate credentials;~~

~~221.00. May, at reasonable times and without delay, have access to and copy any records, and inspect any monitoring equipment or method of operation required under the State Program or any condition of an exploration approval or permit imposed under the State Program; and~~

~~221.300. Will have a right to gather physical and photographic evidence to document conditions, practices or violations at the site.~~

222. No search warrant will be required with respect to any activity under R645-400-221 except that a search warrant may be required for entry into a building.
230. Review of Adequacy and Completeness of Inspection. Any person who is or may be adversely affected by coal mining and reclamation operations or coal exploration operations may notify the Director in writing of any alleged failure on the part of the Division to make adequate and complete or periodic inspections as provided in R645-400-130 or R645-400-210. The notification will contain information to demonstrate the belief that the person is or may be adversely affected including the basis for his or her belief that the Division has failed to conduct the required inspections. The Director will within 15 days of receipt of the notification, determine whether there is sufficient information to create a reasonable belief that R645-400-130 or R645-400-210 are not being complied with, and if not, will immediately order an inspection to remedy the noncompliance. The Director will, also furnish the complainant with a written statement of the reasons for such determination and the actions, if any, taken to remedy the noncompliance.
240. Review of Decision Not to Inspect or Enforce.
241. Any person who is or may be adversely affected by coal exploration or coal mining and reclamation operations may ask the Director to review informally an authorized representative's decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in a request for State inspection under R645-400-210. The request for review will be in writing and include a statement of how the person is or may be adversely affected and why the decision merits review.
242. The Director will conduct the review and inform the person, in writing, of the results of the review within 30 days of his or her receipt of the request. The person alleged to be in violation will also be given a copy of the results of the review, except that the name of the citizen will not be disclosed unless confidentiality has been waived or disclosure is required under Utah or federal law.
243. Informal review under this section will not affect any right to formal review or to a citizen's suit under the State Program.

R645-400-300. Provisions of State Enforcement.

310. Cessation Orders.

311. The Division will immediately order a cessation of coal mining and reclamation operations or of the relevant portion thereof, if it finds, on the basis of any Division inspection, any violation of the State Program, or any condition of a permit or an exploration approval under the State Program, which:

- 311.100. Creates an imminent danger to the health or safety of the public; or
- 311.200. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.
312. Coal mining and reclamation operations conducted by any person without a valid coal mining permit constitute a condition or practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, unless such operations are an integral, uninterrupted extension of previously permitted operations, and the person conducting such operations has filed a timely and complete application for a permit to conduct such operations.
313. If the cessation ordered under R645-400-311 will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the Division will impose affirmative obligations on the person to whom it is issued to abate the violation. The order will specify the time by which abatement will be accomplished.
314. When a notice of violation has been issued under R645-400-320 and the permittee fails to abate the violation within the abatement period fixed or subsequently extended by the Division then the Division will immediately order a cessation of coal exploration or coal mining and reclamation operations or of the portion relevant to the violation. A cessation order issued under R645-400-314 will require the permittee to take all steps the Division deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.
315. A cessation order issued under R645-400-311 or R645-400-314 will be in writing, signed by the authorized representative of the Division who issued it, and will set forth with reasonable specificity:
- 315.100. The nature of the violation;
- 315.200. The remedial action or affirmative obligation required, if any, including interim steps, if appropriate;
- 315.300. The time established for abatement, if appropriate, including the time for meeting any interim steps;
- 315.400. A reasonable description of the portion of the coal exploration or coal mining and reclamation operations to which it applies; and
- 315.500. The order will remain in effect until the violation has been abated or until vacated, modified or terminated in writing by the Division.
316. Reclamation operations and other activities intended to protect public health and safety and the environment will continue during the period of any order unless otherwise provided in the order.
317. The Division may modify, terminate or vacate a cessation order for good cause, and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the permittee.
318. The Division will terminate a cessation order by written notice to the permittee, when it is determined that all conditions, practices or violations listed in the order have been abated. Termination will not affect the right of the Board to assess civil penalties for those violations under R645-401.