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United States Department of the Interior

OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
SUITE 310
625 SILVER AVENUE, S.W.
ALBUQUERQUE, NEW MEXICO 87102

TAKE PRIDE IN AMERICA

L Braxton

In Reply Refer To:

May 8, 1990

Act/007/007
#2

Dr. Dianne R. Nielson, Director
Division of Oil, Gas and Mining
Department of Natural Resources
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, UT 84180-1203

RECEIVED
MAY 14 1990
DIVISION OF
OIL, GAS & MINING

Re: 1990 Oversight Findings - Permitting

Dear Dr. Nielson

Each year the Albuquerque Field Office (AFO) reviews portions of the Division's permitting activities as part of a multiyear cycle of review. This was accomplished by an on-going review in AFO's office and by a site review at the Division of Oil, Gas and Mining's (DOGM) office, which occurred January 29 through February 1, 1990. We would like to open a discussion on the elements reviewed in order to finalize this review by June 30, 1990. Following is our preliminary findings for the 1990 evaluation period:

PERMITTING

Processing of new mining permits. No new applications were received during the evaluation period. However, an application which proposes significant alteration to the original permit, such as adding new leases, must be processed as a new permit. One such application was reviewed. DOGM took all appropriate actions.

Solicitation/consideration of comments from Governmental agencies and SHPO. OSM has had prior indications of a lack of coordination by DOGM with Federal Land Management Agencies (FLMA). This coordination is a responsibility DOGM has accepted through the cooperative agreement. Coordination and consideration of comments from Governmental agencies and SHPO were reviewed in DOGM's office. The determination of this review is that DOGM, for the most part, is coordinating well with the appropriate Governmental agencies and SHPO.

Processing of applications for permit revisions, transfers, sales, and assignments. AFO's in-house review of DOGM activities indicated a number of problems associated with the transfer of the Sunnyside Mine permit. These were enumerated in several reports previously sent to DOGM. Two other permit transfers, Wellington Prep Plant and the Crandall Canyon Mine, occurred in 1989. During the site visit to DOGM's office, the review of the Sunnyside transfer was completed. Review of the Wellington and Crandall Canyon transfers have also been completed.

Continued problems were found with the Sunnyside transfer. AFO personnel reviewed the application for transfer which lists the Acquisition Agreement between the two companies as right-of-entry. The documents entailed in this agreement did not include an assignment of lease or any indication that Bureau of Land Management (BLM) concurrence of the Federal leases occurred, though the application lists BLM's coal ownership. To finalize our records on this issue, please notify us of the status of the lease. OSM needs documentation if this lease has been assigned to SRS.

DOGM's file on the Sunnyside Mine contained a Kaiser bankruptcy document which stated that a Pennsylvania mining company was owned and controlled by David Corman of Colorado Coal and Coke who purchased the Sunnyside Mine. The company, International Anthracite Coal, has two active permits. The OSM Wilkes-Barre Office supplied the enclosed corporate structure for Corman, which also indicates a connection to an inactive mine in New Mexico. This information was not in the transfer application. In fact, the application specifically states that company officials did not have current or previous mine permits.

Because the corporate connection was found in DOGM files in a document written by a DOGM attorney, OSM believes that DOGM was remiss in not requiring that the application package be revised to contain this information and in not checking with the State of Pennsylvania regarding the other operations. OSM requests that DOGM contact the company and resolve this issue. AFO anticipates a revision to the permit. It would be advantageous if this could be accomplished by the close of the evaluation period.

Crandall Canyon, including the parent company, Genwall Coal, was sold to Nevada Electric Investment Company in January 1989. DOGM regulations in effect at the time state at UMC 788.5 that the "* * * transfer, assignment or sale of rights means a change in ownership or other effective control over the right to conduct underground coal mining activities under a permit issued by the Division."

Section 788.18 - Transfer, Assignment, or Sale of Permit Rights: Obtaining Approval - outlines the process that the operator and DOGM must follow so the right to mine under that permit can be transferred to the new owners, the successors in interest. This process was not followed. This resulted in a permit being transferred to new ownership

and control without compliance information being supplied, public notice given, concurrence of involved Governmental agencies, or verification that the bond was valid. DOGM did an Applicant Violator System check on the new officers but opted to stipulate the permit to gather other vital information 6 months after the company changed ownership. OSM's main concern at this time is the validity of the bond. Please verify that DOGM now has a bond signed by a new and valid official of Genwall Mining.

The transfer of the Wellington Prep Plant was reviewed. This site is not on Federal land and, because coal is not being mined, surface ownership is right-of-entry. OSM's review indicated that the Wellington transfer was executed properly. Thus, of the three transfers done during 1989, two were handled inappropriately.

The processing of the permit revisions resulting from Ten-Day Notices (TDN) was found to be untimely during the 1989 evaluation period; this has continued. OSM wrote a TDN on the Bear Canyon mine on November 24, 1989, for failure to pass; on March 29, 1990, OSM re-inspected the site and found a silt fence in place that DOGM indicated was approved. AFO records show that the revision was approved on April 4, 1990, 4 months after the permit defect was identified. Price River Complex was inspected on November 28, 1989, and DOGM has indicated that the three permit defects identified will be repaired during permit renewal in May 1991, 18 months after the determination that defects exist. Skyline Mine was inspected on March 16, 1990, and the operator committed to submit revisions to abate violations written in the TDN. OSM has no record of these revisions.

During the site visit, the overall processing of revisions was reviewed. Generally, DOGM processes revisions appropriately.

Conduct of midterm and other reviews required by 30 CFR 774.11. AFO reviewed the processing of the five midterm reviews due during the first three quarters of the 1990 evaluation period. DOGM's performance in this area has improved. The 1989 Evaluation Report indicated that midterm reviews were untimely. Several were done 1 year after they were due. The 1990 midterm reviews ranged from being on time to being 4 months late.

AFO also was concerned about the completeness of midterm review after DOGM granted operators up to 2 years to re-organize their permit application package as part of the midterm review process. DOGM interprets its regulations to allow only reasonable revision at midterm review that will produce an accurate permit, regardless of the form the permit takes after numerous revisions. OSM found that DOGM's staff did thorough midterm reviews.

One problem, transmittal of information to AFO's office resulting from midterm review, surfaced. This will be resolved when DOGM transmits the necessary information which has been requested under a separate letter.

PERFORMANCE BONDS

Evaluation of bonding scheduled for review in the 1990 report was done by WFO personnel during the site visit on January 29 through February 1, 1990. Parameters of bonding that were reviewed were:

Tracking and security systems and verification of bond validity/ value/lack of restrictions - reviewed and reported on by Ms. Vicki Bryan;

computation and adequacy - reviewed and reported on by Robert Inman and Karen Jass.

These reports are enclosed for your review. Ms. Bryan found DOGM's tracking of bonds to be professional and well maintained. Security also was done well. Minor problems surfaced on the execution of some bonds and in regard to bond forms. DOGM responded to some of Ms. Bryan's concerns by making changes to its bond forms for which Ms. Bryan commends DOGM's responsiveness. Ms. Bryan's report contains further suggestions for strengthening Utah bonds.

AFO is particularly concerned about two situations brought to light by the on-site review: The self-bond at Hiawatha and the certificate of deposit on the Sunnyside Mine. DOGM should strive for resolution of these issues prior to the end of the evaluation period.

No program deficiencies were found in the on-site review of bond calculations and amounts for the five mines selected. Some minor problems surfaced, as detailed in the enclosed report. Overall, OSM and DOGM figures fell within an acceptable range, though OSM believes DOGM's calculations are too "lean"; that is, the lowest amounts are used in the baseline calculations.

A random sample inspection recently brought one bonding problem to light. It appears that the Centennial Mine is underbonded by approximately two-thirds. AFO knows that DOGM is working toward resolution of this situation and hopes resolution will occur prior to the close of this evaluation period. Please keep us apprised of this situation.

If you have any questions or comments, please contact me or Donna Griffin at (505) 766-1486.

Sincerely,

Robert H. Hagen, Director
Albuquerque Field Office

Enclosures

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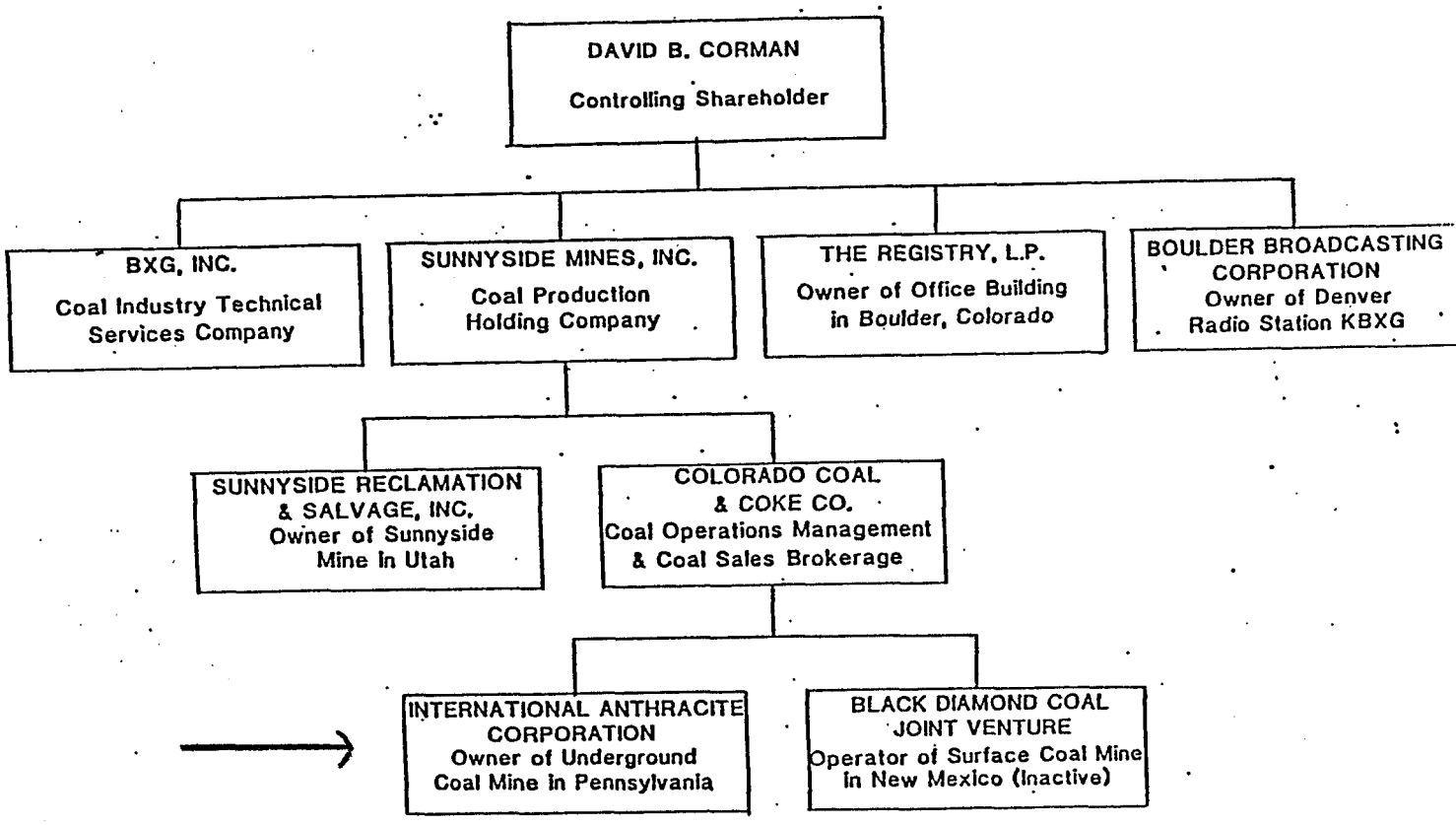
ALBUQUERQUE FIELD OFFICE

Jm
6-7-89



G-20 pg 9

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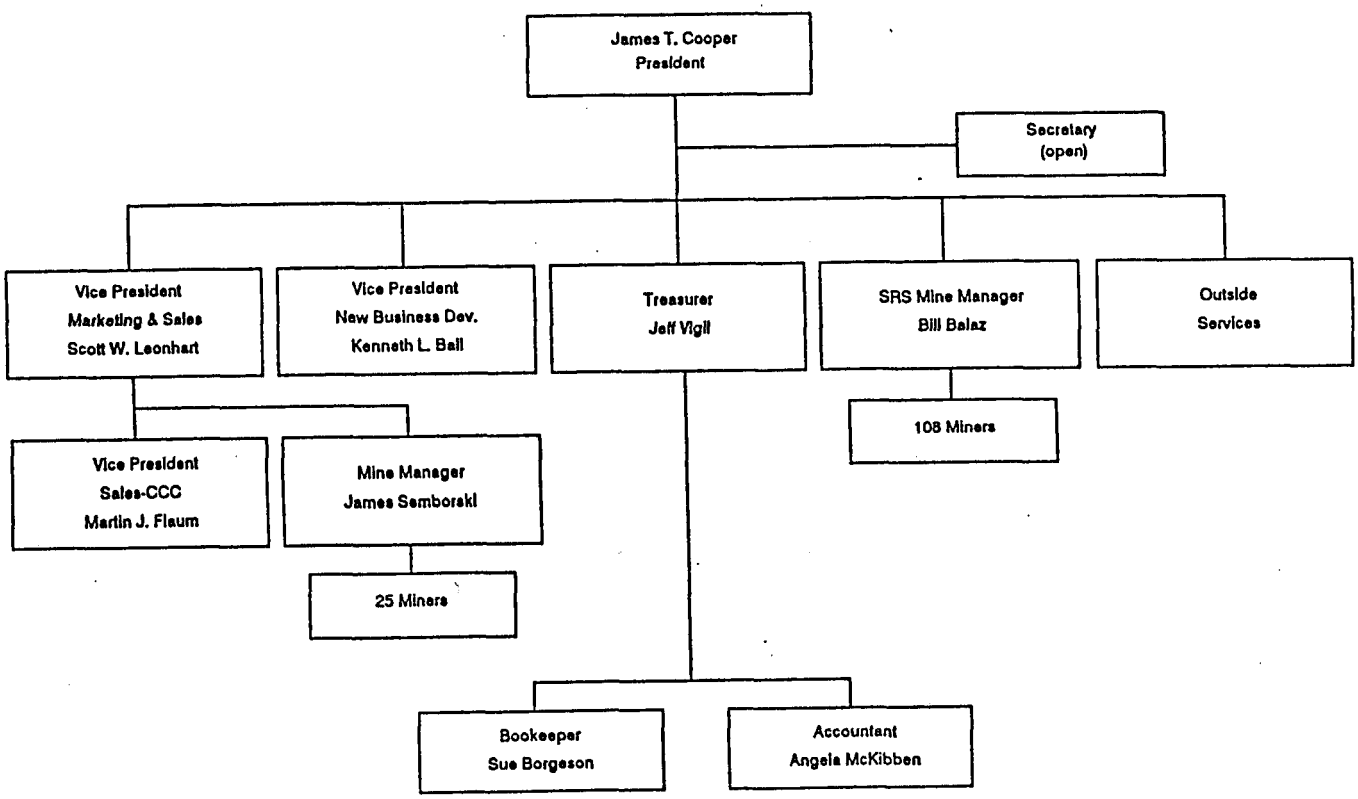
SUNNYSIDE MINES ORGANIZATIONAL CHART 5-15-89



G-20 p.9 of 9

FY 1990 PERMIT OVERSIGHT EVALUATION REPORT

STATE:

Utah

SUBJECT EVALUATED:

Review of five Bond Estimates currently held by the State of Utah.

OSMRE REVIEW STAFF:

Robert Inman, Mining Engineer
Karen F. Jass, Mining Engineer

STATE PERSONNEL CONTACTED:

Lowell Braxton
Pam Graubaugh-Littig
Sue Linner
Randy Harden
Lynn Kunzler
Bill Malencik

REVIEW DATES:

- Office visit to Utah Division of Oil, Gas, and Mining; January 29-31, 1990
- Phone call to Randy Harden/FAX - Deer Creek Mine; February 15, 1990
- Phone call to Pam Granbaugh-Littig - Sunnyside Mines; February 15, 1990
- Assignment; January 24 - February 28, 1990

STATE PROGRAM STANDARDS:

UMC 800.11(B) Requirement to File a Bond.
30 CFR 780.18 Reclamation Plan - General Requirements.

BACKGROUND:

Albuquerque Field Office chose several mines for which the State of Utah currently holds bonds, for review because of changes in their status.

REVIEW METHODOLOGY:

Permits: Castle Gate Coal Co. (ACT/007/004)
Sunnyside Reclamation and Salvage (ACT/007/007)
U.S. Fuel Co. (ACT/007/011)
Genwall Coal Co. (ACT/007/012)
Deer Creek (Waste Rock Storage) (ACT/015/018)

Review of bond documentation contained within permit application and other current files.

Estimates were compared to OSM's "Handbook for Calculation of Reclamation Bond Amounts;" Means Construction Cost Data 1989; Means Site Work cost Date 1986; Dataquest's Cost Reference Guide 1989.

FINDINGS AND CONCLUSIONS:

Utah Department of Oil, Gas, and Mining (UDOGM) reviews bond with any changes associated with the status of a mining operation, including ownership changes.

Bond amounts are escalated yearly using a 3-year average as presented in Means Cost Guide.

Sunnyside Mines

In reviewing the estimated costs of dismantling and removing facilities, the breakdown of costs referenced by Means Cost Guide did not appear to include the cost of hauling or burying material for disposal in this rural area as part of the demolition cost. OSM included a haul cost for the removal of demolished material.

The bond estimate addressed 17 portals and 2 shaft diameters. However, the permit application package (PAP), Chapter III, page 2, indicates a total of 33 portals and 8 shafts. It is unclear exactly what has been done in the way of sealing an unknown number of mine openings.

Culvert removal costs presented in the bond estimate did not correlate to figures in the Means Construction Cost Guide for removal of culvert material assumed to be concrete pipe. The figures used by the State of Utah were simply trench excavation costs.

OSM's estimate of the bond amount to be held by the State of Utah exceeds the currently held amount of $2,813,562 (1991 dollars) by 11.4 percent. Direct cost estimates were similar, but OSM's estimated indirect costs as recommended by the OSM bond calculation handbook were higher than the flat 10% used by Utah.

The State's original bond ($3,397,349 in 1990 dollars) included 4 feet of topsoil or suitable material to be replaced. The current estimate only addresses 1 foot of material, however the State has not indicated, by analysis or test plots results, that the reduced amount of cover is adequate for revegetation.

King Mine Nos. 4, 5, 6

There was an inconsistency in the bond estimate where units used did not correspond with the units in Means Cost Data (1986, 1988, 1989), nor was information provided to determine a conversion.

The mine bond estimate lists the sources for estimated unit costs. Using the Means Construction Cost Data 1989 and Means Site Work Cost Data 1986, it was not possible to match dollar figures or the line number.

The OSM estimate of $3,810,547 (1991 dollars) compares overall to the UDOGM estimate of by $3,779,407 (1991 dollars), or .08 percent an acceptable difference.

An area which was not sufficiently addressed was the amount of available topsoil and borrow material. It was assumed for this evaluation, the amount of material provided in the bond estimate was sufficient.

Castle Gate Complex

Demolition of facilities did not appear to include a hauling cost for the removal or burial of the material being disposed in this rural area.

Using the most recent submittal, which indicates of costs for each area, the format did not provide sufficient details to verify each figure and what was included for each cost. Again it was necessary to take some of the information at face value, as verification was not possible.

The current bond being held ($2,683,603) is approximately 7% less than the estimate made by OSM. This is an acceptable difference.

Deer Creek Mine - Course Refuse Storage Area

The reclamation bond for this project is an add on to the Deer Creek Mine reclamation bond. The storage area bond was calculated to be $417,244 including a 10% contingency, 2.3% escalation, and a 35% maintenance charge. The Deer Creek Mine bond was increased by $500,000, to include the refuse area into the Deer Creek Mine reclamation bond for a total of $1,724,000 (1989 Dollars). The refuse storage area bond is adequate when the estimated bond amount includes the maintenance cost estimate.

Wellington Preparation Plant

The Wellington Preparation Plant reclamation bond amount was reviewed because the amount has been reduced from $4,360,775 (1989 dollars) to $2,591,000 (1993 dollars) and also, a proposed change in the ownership of the property. The new owner has submitted the lower ($2,591,000) reclamation bond amount.

OSM has estimated the new reclamation bond amount ($2,591,000) in 1993 dollars is between 14 to 16% low. The reason for this difference in the proposed reclamation estimate is based upon an optimistic estimate of machine costs and machine productivity and also, a reduction of topsoil backfill material. The new estimate includes an unsubstantiated reduction in the unit cost for removal of concrete structure foundations. The bond estimate included addition errors in the tabulation of the bond amount.

QUALIFICATIONS ON VALIDITY OR ACCURACY:

Background information of these five bond estimates was lacking in areas such as adequate thickness and volumes of topsoil, haul distances, itemized machine costs, labor costs, production quantities, production schedules (shifts), inconsistent terminology (volume, areas), and incomplete or missing information.

The State of Utah has allowed a recalculation of bond estimates that have transferred or have the potential to transfer ownership. These properties were previously calculated with proper estimates. Some current estimates of these properties have indicated optimism in machine costs, machine production, and consequently have reduced the bond amounts.

DEFICIENCIES:

In reviewing the permit application packages to gather data for actual cost estimates, an inconsistency exists between the revegetation sections of the various permits. Dollar figures for seed and tree mixtures ranged from $125/acre to $1,490/acre for these five mines which lay within about a 50 mile radius of one another. In reviewing the bond estimate the State of Utah should assure a fairly consistent, reasonable current market cost for revegetation.

CORRECTIVE ACTION:

In addition, a system should be developed so all final bonding information is filed in such a manner that it is all in one place; not part in a PAP, part locked with legal bonding documents, and part with individuals who worked on a particular bond. A single bond file should start with the original application, including all revisions, escalations, amendments and adjustments in a chronological order. This will provide the State with a logical progression of a bond.

OSM ASSISTANCE:

Technical assistance and reference material is available upon request from the Technical Assistance Division.

WFO REVIEWER: Karen F. Jass DATE: 4/27/90

WFO REVIEWER: Robert Lerman DATE: (5) 5/1/90

WFO SUPERVISOR: Charles Harrison. DATE: 5/1/90

FY 1990 Permit Oversight Evaluation Report

STATE: Utah

SUBJECT EVALUATED: Performance bonds including program subelement 1., bond tracking and security systems; and program subelement 3., verification of bond validity, value, and lack of restrictions.

SUMMARY OF FINDINGS AND CONCLUSIONS: The State maintains good bond tracking and security systems. The computerized system tracks all pertinent data on the bonds covering each permit. Surety bonds and letters of credit are secured in a locked, fire-proof file. The State revised its bond forms and scheduled dates during this evaluation year for permittees to have their bonds re-issued on the new forms. In response to this yearly evaluation, the State has made additional revisions to their bond forms, incorporating some conditions that were previously not included. An additional condition required on bond forms is discussed in the "Corrective Actions" section of this report.

Five permits and associated bonding documents were evaluated. The bonding documents for one permit require the approval signature of the Director of the Division of Oil, Gas and Mining (DOGM). A certificate of deposit (currently made payable to the permittee) must be assigned to DOGM or made payable to, and deposited with, DOGM for safekeeping until release of the bond. Some deficiencies exist with one permittee's execution of a surety bond rider. Another permittee used a corporate seal that may not be the official seal of the corporation. One self-bonded permittee is owned by a corporation which is in bankruptcy and has apparently pledged the permittee's capitol stock as collateral for its pre-petition debt; this may weaken the financial and legal status of the permittee with respect to self-bonding.

The various permitting actions reviewed were properly administered by the State with respect to bonding. That is, prior to approved permit transfers and revisions, the necessary bonding documents were in place.

OSM REVIEW STAFF: Vicki J. Bryan

STATE PERSONNEL CONTACT: Lowell Braxton

REVIEW DATES: January 29, 1990 - February 1, 1990

STATE PROGRAM STANDARDS:

Utah Surface Coal Mining Rules
RG14-2J-800:
SMC 800.5
SMC 800.11
SMC 800.12
SMC 800.13
SMC 800.16
SMC 800.20
SMC 800.21
SMC 800.23

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BACKGROUND:

Bonding administration was selected as a review topic for the State of Utah as part of the multi-year review cycle for bond reviews. Two bonding subelements were reviewed: the State's maintenance of tracking and security systems for bonds; and the validity, value, and restrictions placed on bonds. The latter is scheduled for a one-time review unless problems are encountered during the oversight evaluation during the multi-year cycle.

REVIEW METHODOLOGY:

An on-site desk review was conducted at the State office, including discussions with State personnel about State bonding procedures. Bond instruments, files, and documents pertaining to bonding were reviewed.

The following permits and associated bonding documents were evaluated:

1. Permit No. ACT/015/018, Utah Power and Light Company, Deer Creek Mine, including Bond No. 9272158 dated 3/15/85; rider dated 9/8/88; Bond No. SL6388251 and rider dated 1/9/82.

2. Permit No. ACT/007/012, Genwal Coal Company, Wellington Preparation Plant, including Bond No. 5612986 dated 9/26/89.

3. Permit No. ACT/007/004, Castle Gate Coal Company, (subsidiary of Amax), Price River Complex, including Bond No. 9298055 dated 1/31/86.

4. Permit No. ACT/007/007, Sunnyside Reclamation and Salvage Inc., Sunnyside Mine, including photocopy of Certificate of Deposit (C.D.) No. 17288 issued 8/31/89 by the Rocky Mt. 1st Industrial Bank in Colorado Springs, Colorado (subsidiary of Zions Bank-Inv. Salt Lake City, Utah). A copy of the C.D. was mailed to the WFO reviewer following the on-site review. Other documents reviewed with respect to the Sunnyside Mine include: First Deed of Trust dated 8/28/89; Memorandum of Understanding between Utah and OSM dated 12/11/89; Subordination Agreement dated 8/28/89; Agreement and Release of Reclamation contract dated 8/28/89; closing documents for sale of Sunnyside Mine to the current permittee; Utah State Engineer's file #47-15 regarding conveyance of water rights; Deed and Assignment dated 3/9/89; Deed of Trust and Security Agreement dated 3/9/89; Final Release and Discharge of Kaiser Coal Company dated 3/9/89; Reclamation Contract dated 3/3/89; surface estate appraisal report by Reval, Inc., dated 2/24/89; letter dated 7/15/88 from Hinson-Barnett, consultants, on water rights report dated 8/24/89; Bankruptcy Court Notice dated 2/6/89 pursuant to "Rule 23" regarding the application by Kaiser Coal for approval of the Acquisition Agreement.

5. Permit No. ACT/007/011, U.S. Fuel, Hiawatha Mine, including self-bond dated 12/16/86; Surety Bond No. K01733369; U.S. Fuel's financial statements and supporting documentation from 1986 to the present; OSM-generated Dun and Bradstreet reports on U.S. Fuel and Sharon Steel, the parent company.

FINDINGS AND CONCLUSIONS:

Accomplishments:

The State has a good system for securing bond instruments. Original surety bonds and letters of credit are secured in a locked, fire-proof file. Access to the file is controlled, as only one or two staff members have keys to the file. The one C.D. reviewed is secured by the issuing bank.

With respect to bond tracking, the State maintains a comprehensive, computerized system with details on each permit and bond instrument. The tracking system also documents the rating assigned by Best for each surety company that has issued a surety bond.

The State utilizes a package of bonding and insurance documents, revised in 1988, that function as a reclamation agreement between the permittee and the State. The "reclamation agreement document" itself includes many of the regulatory terms and conditions of bonds, including indemnity language. The revised forms have improved the bonding instruments. The State also scheduled dates for permittees to resubmit their bond(s) on the new revised form(s) to coincide with impending permit renewals, transfers and mid-term reviews. Following this oversight visit, the State responded by making some additional changes to some of the bond forms in February, 1990. These revisions further enhance the enforceability of the bonds. The State is to be commended for its timely responsiveness.

Letter of credit No. 55412-IC, dated 3/1/89 for permit no. ACT/007033, Andalex Resources, Inc. was reviewed for validity and terms and conditions. This letter of credit meets all the terms and conditions required for letters of credit. This particular letter of credit will serve as an excellent example and standard for other letters of credit in the future.

Deficiencies

General Terms and Conditions of Surety Bonds

Not all of the terms and conditions in the State's regulations at SMC 800.16 are included in the surety bonds for the permits reviewed. However, as discussed above, the surety bond form, as revised by the State in February, 1990, will resolve this deficiency for future bonds.

For example, the surety bonds reviewed do not include indemnity language in compliance with SMC 800.5. Also, the requirement for a surety company to notify the State of an insolvency, pursuant to SMC 800.16 E.1., is not included as a condition in the bonds reviewed.

The State's "Reclamation Agreement" form does not require the surety company's signature. Therefore, some of the terms of the agreement need to also be reflected in the language of the surety bond form that is signed. For example, to comply with SMC 800.16 C. more definitively, some elements of items 1. and 2. of the agreement form

should be incorporated into the second paragraph of the surety bond form. Specifically, the bond needs to state that it is conditioned upon faithful performance of all the requirements of the Act, the bonding regulations, the Division and the approved permit, including completion of the reclamation plan. In addition, if the surety bond is covering a permit applicable to the State-Federal Cooperative Agreement at 30 CFR 944.30, then Article IX of the agreement requires that the bond also be conditioned upon compliance with all requirements of the SMCRA and the Program.

Permit Specific Findings:
The comments below pertain to validity, value, and restrictions on bond instruments.

1. Permit No. ACT/015/018, Utah Power and Light Company, Deer Creek Mine: This permit is covered by a surety bond in the amount of $1.7 million. The bond was executed on the older State form that does not include indemnity language or the surety insolvency notice requirement. Also, the bond specifies coverage for 26.5 acres; whereas the bond tracking data show 56 acres of disturbance in the permitted area. The State indicated that this discrepancy will be corrected in conjunction with the permit renewal scheduled in January, 1991. With the addition of a waste rock storage area to the permit on 9/8/88, the bond amount was increased via an increase rider. However, when the rider was executed, the corporate official who signed the rider did not specify his title or attach evidence of his authority to bind the corporation for the $1.7 million bond.

2. ACT/007/012, Genwal Coal Company, Wellington Preparation Plant: This permit was transferred to Genwal Coal Company on 10/10/89 following the State's acceptance of the surety bond. This bond for $2.6 million was executed on the older bond form that does not include all the terms at SMC 800.16. The bond form was properly executed by the permittee and surety company, however. To complete the State's acceptance process, the surety bond and the "Stipulation to Revise the Reclamation Agreement" should be signed by the Director of the DOGM. In addition, the original "Reclamation Agreement" (signed by the permittee when the previous letter of credit was submitted) should be signed and dated by DOGM.

3. Permit No. ACT/007/004, Castle Gate Coal Company, Price River Complex. This permit is covered by a $2.7 million surety bond prepared on a form that does not include all the terms and conditions of SMC 800.16. The bond form used was properly executed by the permittee and surety. However, in order to assure that the legal land description exhibit attached to the bond is regarded by the surety as a legal part of the surety bond, the surety company should sign and seal the exhibit.

4. Permit No. ACT/007/007, Sunnyside Reclamation and Salvage Inc., Sunnyside Mine. This permit is bonded by a combination of collateral consisting of a real property deed of trust for $2.6 million, and a certificate of deposit for $75 thousand. Pursuant to SMC 800.21 C., the conditions that must be met by the applicant

in order to post real property collateral include the following: a first deed of trust, or first mortgage, or first lien security interest granted by the applicant to the State; a description of the property; proof of possession and title; and an appraisal of the fair market value of the property. All of the above items were adequately prepared and provided to the State by the permittee. The property was appraised at values that exceed the required bond amount. The appraisers did state in the reports, however, that their conclusions are qualified by having a very short time-frame during which to conduct the appraisals. It is not clear whether the State subjected the appraised values to a margin that represents the ratio of bond value to market value, considering legal and liquidation fees, depreciation and marketability (SMC 800.21 E.) The bonding file does not include information on the use of a margin. Considering that the appraised value exceeds the amount of bond required, the point may be moot. However, application of or discussion about the margin as outlined at SMC 800.21 E. is recommended.

With respect to the Certificate of Deposit (C.D.), some deficiencies exist. The C.D. is made payable solely to the permittee and is in the possession of the issuing bank. The State's regulations at SMC 800.21 A. 3. require that a C.D. either be made payable to DOGM or be assigned to DOGM both in writing and upon the records of the bank. Following the annual evaluation visit, DOGM prescribed an "assignment of deposit" form for this C.D. since it is not made payable to DOGM. The assignment form, once executed by the permittee, will result in compliance with the above regulation.

5. Permit No. ACT/007/011, U.S. Fuel, Hiawatha Mine. This permit is bonded by a combination of a self-bond and a surety bond for a total of $3.8 million. The surety bond is properly executed, with the exceptions of the U.S. Fuel corporate seal, and lack of a certificate of authority for the vice president who signed the bond for U.S. Fuel. A seal is present, but the corporate seal does not appear to be the authentic corporate seal of U.S. Fuel. The seal affixed to the surety bond simply states "corporate seal," with no identifying information. On the other hand, the self-bond document was affixed with a corporate seal showing U.S. Fuel's name, year (1913), and state of incorporation. Also, without a power of attorney or certificate of authority for the signatory, it is not evident that the vice president who signed the bond had authority to bind the corporation.

With respect to the self-bond for this permit, the permittee meets the financial ratios and other requirements of the State's self-bonding regulations. However, the assets of this company are vulnerable. This is because 100% of the company's capital stock is owned by Sharon Steel, whose 1987 Chapter 11 bankruptcy is continuing, with no plan of reorganization yet approved. Sharon Steel's largest unsecured creditor reported in October, 1989 its desire to purchase all of Sharon Steel's steel-related assets, with all other assets being transferred to a new company to be owned by the creditors. It appears, therefore, that a sale of U.S. Fuel is

imminent. These future transactions may have an adverse effect on the financial and organizational stability of U.S. Fuel as a self-bonded permittee. The preamble to the Federal self-bonding regulations (FR 48 39422, August 10, 1983), after which the State's self-bonding program is patterned, states that the purpose of the required ratio of current assets to current liabilities is to assure "reasonable liquidity of the company." When taking a closer look at the composition of U.S. Fuel's current assets, 33% of the assets are funds that are due from affiliates (other subsidiaries of Sharon Steel) and other accounts receivable. These kinds of assets are the least liquid and are dependent upon U.S. Fuel being able to liquidate the funds due.

Another factor that could weaken the financial position of U.S. Fuel is that, (as stated in a January 1990 Dun and Bradstreet report on Sharon Steel), "investments [of Sharon Steel] consist of equity in subsidiaries" and that "certain of the pre-petition liabilities [of Sharon Steel] are secured by liens on the company's properties." In other words, there is a potential that U.S. Fuel's capitol stock, which is 100% owned by Sharon Steel, is pledged as collateral on Sharon Steel's long-term pre-petition debt. This will likely result in a sale and restructuring of U.S. Fuel.

Self-bonding programs are discretionary, and targeted for financially sound companies whose assets are sufficient to provide the funds that could potentially be owed under the self-bond indemnity agreement. U.S. Fuel's close relationship with Sharon Steel causes the permittee to be a greater risk to the State than contemplated by the regulations for self-bonded permittees. We recommend that, based on the factors discussed above, the permittee's self-bond be replaced with another form of bond before the parent company's bankruptcy progresses much further.

PROBABLE CAUSES:

The probable cause of the above concerns is the State's need for additional information on quality control of bonding instruments. When legal conventions such as proper corporate seals; evidence of authority to sign documents; complete execution, including all signatures and dates; and proper incorporation of exhibits to bonding instruments are consistently controlled, the enforceability of bonds is enhanced. This is important since bonds of this size may be challenged by a fiscally motivated surety company or bank during a forfeiture.

Another probable cause is the need to be more consistent in requiring compliance with the bonding regulations, especially the terms and conditions of bonds.

None of the concerns discussed above can be characterized as deficiencies in the bonding regulations of the approved State Program.

EFFECTS OF DEFICIENCIES:

As discussed above, documents that may be considered questionable because of the lack of a signature, date, corporate seal, title and

evidence of authority may be challenged during forfeiture when the sums are sizeable.

There is a potential that unless the C.D. for the Sunnyside Mine is assigned or made payable solely to DOGM, the funds are a vulnerable company asset that could be attached by the court should there be a bankruptcy of the permittee. Without the bank's written waiver of set-off and liens, the funds are vulnerable should the permittee not be honoring other financial obligations it has with the bank. In the event of a bank closure, the FDIC liquidator would pay the funds to the permittee, not to the State, so long as the account is in the name of the permittee.

With a future sale of U.S. Fuel likely and with no way to predict what the financial effects will be, the State is risking loss of the bonding guarantee provided by the self-bond.

With respect to the impact that the above concerns may have on reclamation, any deficiency that could affect the enforceability of a bond during a forfeiture could result in a loss of funds to complete reclamation. To avoid potential shortfalls or loss of funds during a forfeiture, all items on the face of a bond must be complete, accurate, current, and in total agreement with the regulations, permit, and any revision to the permit.

CORRECTIVE ACTIONS:
Corrective actions that are required to adequately implement the State program are as follows:

General Actions

1. The second paragraph of the surety bond form as revised on February 1990, must be expanded to include language stating that the bond is "conditioned upon faithful performance of all the requirements of the Act, the bonding regulations, the Division, and the approved permit, including completion of the reclamation plan."

2. In addition, the condition outlined in Article IX of the Cooperative Agreement must be added to the bond form.

Permit Specific Actions

1. The surety bond and stipulation to revise the reclamation agreement for permit Act/007/012, Genwal Coal Co. should be signed by the Director.

2. The certificate of deposit for the Sunnyside Mine, permit Act/007/007, should either be reissued as payable to DOGM (and OSM since Federal lands exist) or assigned to DOGM and OSM in writing. In keeping with SMC 800.12 A.1., the Division should keep custody of the C.D. until it is released. The State Treasurer's office may be able to hold it in safekeeping for the Division.

3. DOGM should question U.S. Fuel about the "corporate seal" that was affixed to the signature of the vice president who signed the

surety bond. If any items are questionable, DOGM should ask that the bond be re-executed.

Corrective Actions that are Recommended:

1. For those bonds executed on the older bond forms, general purpose riders could be prepared to add any terms and conditions needed on the bonds to update them.

2. Given U.S. Fuel's parent company's bankruptcy, and the resulting uncertainty about the future financial and organizational status of U.S Fuel, we recommend that U.S. Fuel substitute their self-bond with a surety bond or letter of credit.

WFO Reviewer Vicki J. Bryson Date 4/19/90

WFO Supervisor Lindsay Date 4/19/90

AFO Team Leader _____ Date _____

AFO Supervisor _____ Date _____