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From: Kurt Seel
To: Braxton, Lowell
Date: 5/24/02 11:17AM
Subject: Re: Lila informal

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Lowell,

I appreciate the opportunity to sit through the informal conference. After it became apparent that SUWA was merely going to read its 94 page memo, it was not as productive as I thought it might be.

The reason I contacted Jim Fulton at OSM earlier is that I, too, found the statute and regulations ambiguous. My best guess at the most reasonable interpretation of the statute and regulations is as follows. The statute (which is a higher authority than the regulations) seems to state that, if an informal conference is called, the Division will make a decision whether to grant or deny the permit, in whole or in part, within sixty days of the informal conference. See 40-10-14(1), (2). The statute does not expressly state that the presiding officer to the informal conference shall issue a decision (although the general rules governing informal conferences contemplates a written order or decision will be generated). The Division will consider the record from the informal conference in making its final decision to grant or deny the permit. See R645-300-131.100, i.e., the Division will consider "records of any informal conference" as part of its final decision to grant or deny the permit "application." Regulation 131.100 seems to indicate the "decision" in that section is the decision regarding the permit itself, not merely a decision on "completeness." [In fact, I can't find in the statute and regulations the "completeness" determination, although most people seem to accept the concept.]

The most confusing and ambiguous statements in the statute and regulations are the references to 1) "approval of," and 2) a decision to "grant or deny" . . . **"the application."** Do these phrases mean a completeness determination or do they mean a final decision on the permit itself? Utah Code 40-10-14(3) and R645-300-151 indicate that "approval" of the application means a final decision whether to "issue" grant or deny the permit itself. Of course, this is inconsistent with the "completeness" determination concept. The regulations also speak of "granting" and "denying" the "application" (versus "approving" or "disapproving" of the application). See R641-300-131.100. How does the Division "grant" an application? Does this mean granting "approval" of the application, which then returns us to 40-10-14(3), which states that "Upon approval of the application the permit shall be issued"

IN SUMMARY - At this time my best interpretation of the statute and regulations is that the Division has 60 days to consider all the permit application information, including the "records of any informal conference", to make a decision to grant or deny the permit in whole or in part. I recognize that my interpretation is contrary to your two possible interpretations, and all the anecdotal information regarding the informal conference process. Based solely upon the language of the statute and the regulations I can't come up with an internally consistent interpretation (In legal terms, I'm lost). I would choose the interpretation the Division has followed in the past (whatever it may be) because I do not have a conclusive interpretation. I will review and comment on your draft order for the informal conference. Thanks.

Kurt

>>> Lowell Braxton 05/23/02 05:07PM >>>

Kurt: Thanks for sitting through all of Tuesday's meetings and the informal conference. I'm sure you are more up to speed on issues than you were previously, but I know it was a long day! I've attached a draft order for the Lila informal that was held yesterday. What I'm trying to do is use the

conference as an opportunity to accept public comment, create a record, then use the order flowing from the informal conference as a mechanism for the Division to review the comments and make findings that fit our regulatory responsibility. I'd appreciate any input you have on the way this (draft) order is written.

At the same time, I'd appreciate your interpretation of R 645 131-100 considering the portion reading....."
. If an informal conference is held under R645-300-123 the decision will be made within 60 days of the close of the conference, unless a later time is necessary to provide an opportunity for a hearing under R645=300-210. My question is: does the 60 day time frame apply to a decision by the conference officer, or does the "decision" mean the Division has to make a " permit, modify or deny" decision on the application package.?? Obviously you need to consider my question in the context of the entire cite, not just the portion I quoted, above.

Back to the Draft Order: In case you can't read WORD, I'll put a hard copy of the draft order in inner office mail first thing tomorrow. I don't think there's a big hurry on this !

Thanks, Lowell

CC: Exeter, Shelley; Wright, Mary Ann