

MEMORANDUM

**TO:** Steve Alder, Mary Ann Wright, Lowell Braxton, Herb McHarg, Denise Dragoo, Katherine Weinberg

**FROM:** Alison Garner

**DATE:** July 1, 2004

**RE:** Informal Conference, July 7, 2004

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This memo outlines DOGM's understanding of the procedures for the informal conference to be held on July 7, 2004, regarding the Lila Canyon Extension, UtahAmerican Energy, Inc., Horse Canyon Mine.

The purpose of the informal conference is to allow "any person having an interest that is or may be adversely affected by the permit application," to raise issues for consideration by the Division in making its decision as to the permit application. R645-300-123.100. It is an information gathering opportunity for all parties. The conference is not a chance for objections, responses and replies, nor is it an occasion for argument. Rather, it is an opportunity for interested parties to raise issues for the Division's consideration. *Id.*

The request for an informal conference briefly summarizes the issues to be raised by the requestor at the conference. R645-300-123.110. Here, SUWA has requested a conference on the determination of administrative completeness pertaining to the Lila Canyon Extension, UtahAmerican Energy, Inc., Horse Canyon Mine. SUWA alleges the application is not technically adequate and also raises 23 separate issues in its request for an informal conference. SUWA may discuss any or all of the issues summarized in greater detail, and submit information and comment on the application.

A representative of the Division shall conduct the conference. R645-300-123.240. This representative, or presiding officer, may accept written or oral statements and any other relevant information from any party to the conference. *Id.* If necessary, the presiding officer shall have the authority to place time limits on the parties' presentations of oral comments. The presiding officer does not issue a decision document at the close of the informal conference. The conference is not adjudicatory in nature, but administrative, and for purposes of receiving factual and legal objections and comments on the permit application.

The rules and procedures for the conduct of the conference are somewhat confusing and circuitous. The Coal Act provides that the conference shall be held in accordance with the procedures described in Utah Code Ann. § 40-10-13 (2)(b), "irrespective of the requirements of Section 63-46b-5." Utah Code Ann. § 40-10-13. Section 63-46b-5, part of the Utah Administrative Procedures Act, sets out the procedures for informal adjudicative proceedings. The Utah Administrative Code states that the requirements of the Procedural Rules of the Board of Oil, Gas and Mining (R641 Rules) shall apply to the conduct of the informal conference. R645-300-123.240. The R641 Rules include the Conduct of hearings, including providing for the Rules of Evidence, sworn testimony, the order and presentation of evidence, a record of the hearing and discovery rules. The R641 Rules also state that the scope of the R641 Rules "will govern all proceedings before the Board of Oil, Gas & Mining or any hearing examiner designated by the Board. These rules provide the procedures for formal adjudicative proceedings. The rules for informal adjudicative proceedings are in the Coal Program Rules." R641-100-100. However, the Coal Program Rules provide that the R641 Rules apply. R645-300-123.240.

Accordingly, DOGM recommends the parties agree as to an informal procedure, combining the requirements of § 40-10-13, R645-300-123 and the R641 rules. A suggested agenda is as follows:

1. Welcome, Introduction, Background and Purpose
2. Presentation of the Mining and Reclamation Plan
3. Status of the Plan and the Division's Technical Review
4. Public Identification of Issues
5. Addressing Concerns
6. Adjournment

An electronic or stenographic record of the conference is created and maintained for reference of all the parties. R645-300-123.240. No findings of fact, conclusions of law or order are necessary as a result of the informal conference, except to close the conference, as appropriate.

Within 60 days of the close of the informal conference, the Division staff reviews the PAP, written comments and objections submitted, and the record of the informal conference and the Division issues a written decision, either granting, requiring modification of, or denying the application. R645-300-131.100. This is a decision on the application under R645-300-131, and is not a decision of the presiding officer. This 60-day limitation is mandatory, but is difficult to coordinate with the TA review that may need to be supplemented after the informal conference. DOGM recommends the presiding officer leave the conference open, then close the conference at a later date after giving public notice of the closure. DOGM also recommends the parties stipulate to a 30-day limit for submission of additional comments and evidence by the parties to the conference.