



UtahAmerican Energy, Inc.

November 8, 2005

HAND DELIVERED

Mr. John Baza
 Hearing Examiner
 Utah Division of Oil, Gas & Mining
 1594 West North Temple
 Salt Lake City, Utah 84114

Handwritten:
 J. Baza
 C/007/013

RE: *Horse Canyon Mine, Lila Canyon Extension, C/007/013, Southern Utah Wilderness Alliance Request for Information Conference per Utah Admin. R. 645-300-123*

Dear Mr. Baza:

UtahAmerican Energy, Inc. ("UEI") has reviewed the letter dated October 11, 2005, filed by the Southern Utah Wilderness Alliance ("SUWA"), seeking an informal conference. On July 7, 2004, the Utah Division of Oil, Gas & Mining ("Division"), held an informal conference in this matter. Pursuant to the Division's Order dated July 30, 2004 ("Order"), the record for the informal conference has remained opened pending issuance of the final technical adequacy determination ("TA"). At the request of the Division, UEI's counsel, Snell & Wilmer, responded to issues raised by SUWA on July 7, 2004 by letter dated March 30, 2005, enclosed. This letter was incorporated into the final TA issued on September 21, 2005. All parties to the July 7, 2004 informal conference were provided a copy of the TA and an opportunity for a meeting to discuss the Division's proposed determination. Order, ¶ 6. Consistent with the Order, the Division has scheduled today's supplemental meeting in continuation of the July 7, 2004 informal conference. UEI understands that this meeting is not a new informal conference and requests that participation at today's meeting be limited to those parties who originally appeared at the informal conference held on July 7, 2004.

UEI responds to SUWA's October 11, 2005 letter and incorporates its earlier responses to SUWA as follows:

1. **Acid- or toxic-forming materials.** The Lila Canyon Extension application (MRP-Part B) does not contain an analysis of acid- or toxic-forming material from the strata immediately above and below the coal seam to be mined. There are no data or analysis of material collected from the permit area, or information having equal value or effect. *See* Utah Admin. R645-301-624.300 and -626. Thus, DOGM's decision that the MRP-Part B is technically adequate is arbitrary and capricious.

UEI'S CONTINUING RESPONSE:

Contrary to SUWA's comment, DOGM has confirmed that drill log data was provided by UEI in strata above and below the Sunnyside seam (Appendix 6-1) and in roof, coal and floor material from the Sunnyside coal seam (Appendix 6-2). *See* TA, page 25. In addition, on the basis of this data, UEI requested and received an exemption as allowed under R645-301-624.626. DOGM has correctly determined that information having equal value for effect does exist. Page 26 the TA provides:

Appendix 6-2 contains a request for exemption from R645-301-624.300 (letter dated April 22, 2002). As authorized under R645-301-626, the Division is waiving additional collection and analyses of logs and samples from test borings or drill cores in the coal seam and the strata immediately above and below the coal seam. The Division finds that the collection and analysis of additional data from test borings or drill cores is unnecessary because information having equal value or effect is available to the Division in a satisfactory form. This information includes the plans and designs for the construction, operation and reclamation of the refuse pile, information from a number of sources on the soils, geology, hydrology and climate of the area, and the Permittee's commitment to analyze coalmine waste for acid- and toxic-forming properties. Information from additional test borings or drill cores would not serve to further reduce potential impacts. This waiver applies to the initial Horse Canyon - Part B - Lila Canyon Mine extension amendment only and does not preclude the Division from requiring such information in the future.

See March 30, 2005 letter at pp. 1-2.

2. **Subsurface water resource maps.** The MRP-Part B does not contain maps and cross-sections showing the aerial and vertical distribution of aquifers, and portrayal of seasonal differences of head indifferent aquifers within the permit area. *See* Utah Admin. R645-301-722.100. Thus, DOGM's decision that the MRP-Part B is technically adequate is arbitrary and capricious.

UEI'S CONTINUING RESPONSE:

DOGM has correctly determined that UEI is in compliance with R645-301-722.100. Page 31 of the TA States:

The Division received comments that the Permittee had not described seasonal variation in ground water – especially with maps or cross sections in compliance with R645 Rules R645-301-722.100. The Permittee is in compliance with the rule. Water levels for the IPA piezometers are tabulated in Appendix 7-1. Water levels have varied through time, but the data do not show distinct seasonal variation. Nevertheless, the Permittee has mapped a set of spring and fall water-level elevation contours on Figure 7-2A, which serve to emphasize the minor seasonal effect. Figure 7-2B graphically shows the temporal variations. Seasonal variation in springs is documented in App. 7-1, 7-2, and 7-6 and in data submitted to the Division's database: maps and cross sections are not amenable to showing the seasonal variation of these flows.

See March 30, 2005 letter at pp. 4-5.

3. **Surface water resources.** The MRP-Part B does not contain baseline information on seasonal flow rates or water quality descriptions for any of the ephemeral streams or the six intermittent streams within the permit area (Lila Canyon, Little Park Wash, Stinky Spring Wash, IPA # 1 Wash, Pine Springs Wash, and No Name Wash). See Utah Admin. R645-301-724.200. Thus, DOGM's decision that the MRP-Part B is technically adequate is arbitrary and capricious.

UEI'S CONTINUING RESPONSE:

DOGM has correctly determined that the Permittee has supplied sufficient information in the MRP-Part B to address the requirements of the regulations pertaining to hydrology. Page 27 of the TA states:

The Permittee has supplied sufficient information in the MRP-Part B to address the requirements of the regulations pertaining to hydrology. The following paragraphs support why the Division considers that the Permittee addressed the regulations. Chapter 7 presents surface water information for undisturbed and disturbed drainage areas. The Permittee conducted surveys of the stream channels to characterize channel reaches according to stream type, i.e., perennial, intermittent or ephemeral, and to establish the monitoring frequency or demonstrate factors required under Rule R645-301-724.200. Water emanating from a spring but remaining on the surface after some distance was classified as surface flow. Appendix 7-7 presents the stream channel characterizations for the Lila Extension, based on channel composition and biologic (plant and aquatic) communities present, as well as the classifications

established in the definitions under R645-301-100. This Appendix includes photographs of stream channel monitoring sites. The information presented demonstrates that stream channels are ephemeral.

See March 30, 2005 letter at pp. 5-7.

4. **Ground water quantity.** The MRP-Part B does not contain information on the location, seasonal quantity, or approximate rates of discharge for each water-bearing stratum above and potentially impacted stratum below the coal seam for the permit and adjacent areas. *See* Utah Admin. R645-301-724.100. Thus, DOGM's decision that the MRP-Part B is technically adequate is arbitrary and capricious.

UEI'S CONTINUING RESPONSE:

DOGM has correctly determined that the Permittee has supplied sufficient information in the MRP-Part B to address the requirements of the regulations pertaining to hydrology. Page 31 of the TA states:

The Division received comments that there are no baseline ground-water monitoring data on the springs to be monitored and that water-elevation data from the IPA piezometers are sporadic – not adequate baseline information. In addition to data collected between 1978 and 1996, the Permittee submitted at least two years of quarterly baseline data from the springs, streams, and piezometers. Data from October 2002 and earlier are provided in the permit application. Subsequent data have been submitted directly to the Division's coal database. As of the second quarter of 2004, the Permittee stopped collecting water samples from the Lila Canyon extension. The Permittee will recommence water sampling upon approval of the Lila Canyon Extension (E-mail from Jay Marshall to Pam Grubaugh-Littig, October 25, 2004),

See March 30, 2005 letter at pp. 7-9.

5. **Ground water quality.** The MRP-Part B does not contain descriptions of water quality for all ground-water resources within the permit and adjacent areas. *See* Utah Admin. R645-301-724.100. Thus, DOGM's decision that the MRP-Part B is technically adequate is arbitrary and capricious.

UEI'S CONTINUING RESPONSE:

DOGM has correctly determined that the Permittee has supplied sufficient information in the MRP-Part B to address the requirements of the regulations pertaining to hydrology. Page 31 of the TA states:

The Division received comments that there are no baseline ground-water monitoring data on the springs to be monitored and that water-elevation data from the IPA piezometers are sporadic – not adequate baseline information. In addition to data collected between 1978 and 1996, the Permittee submitted at least two years of quarterly baseline data from the springs, streams, and piezometers. Data from October 2002 and earlier are provided in the permit application. Subsequent data have been submitted directly to the Division's coal database. As of the second quarter of 2004, the Permittee stopped collecting water samples from the Lila Canyon extension. The Permittee will recommence water sampling upon approval of the Lila Canyon Extension (E-mail from Jay Marshall to Pam Grubaugh-Littig, October 25, 2004).

See March 30, 2005 letter at pp. 9-12.

6. **Coal mine waste.** UEI is proposing to end dump coal mine waste and use it as structural fill for a shop and warehouse and not place it in a disposal area. See Utah Admin. R645-301-528.320. Thus, DOGM's decision that the MRP-Part B is technically adequate is arbitrary and capricious.

UEI'S CONTINUING RESPONSE:

DOGM has correctly determined that the operator is in compliance with R645-301-528.320. Neither the OSM nor the Division has ever had any concerns about the use of dump trucks for moving and placing coalmine waste. Page 70-71 of the TA provides:

The Division received some public comments that placement of coal mine waste with dump trucks would violate R645-301-528.320 because of the prohibition of placement of coal mine waste by end or side dumping. In *A Dictionary of Mining, Mineral, and Related Terms* compiled and edited by Paul W. Thrush and Staff of the Bureau of Mines published 1968, the term end dumping is defined as: "Process in which earth is pushed over the edge of a deep fill and allowed to roll down the slope." The placement of coal mine waste in the refuse pile will be done in a

controlled manner and the material will not roll down the slope. The use of dump trucks is common in Utah for the transportation and placement of coal mine waste in refuse piles. Neither the OSM nor the Division has ever had any concerns about the use of dump trucks for moving and placing coal mine waste.

See March 30, 2005 letter at pp. 12-13.

7. **Insufficient baseline data for ground-water monitoring plan.** There are insufficient hydrologic baseline data upon which the ground-water monitoring plan can be based. *See* Utah Admin. R645-301-731.211. Thus, DOGM's decision that the MRP-Part B is technically adequate is arbitrary and capricious.

UEP'S CONTINUING RESPONSE:

Same as concerns #4 and #5 above. DOGM has correctly determined that the Permittee has supplied sufficient information in the MRP-Part B to address the requirements of the regulations pertaining to hydrology. Page 31 of the TA states:

The Division received comments that there are no baseline ground-water monitoring data on the springs to be monitored and that water-elevation data from the IPA piezometers are sporadic – not adequate baseline information. In addition to data collected between 1978 and 1996, the Permittee submitted at least two years of quarterly baseline data from the springs, streams, and piezometers. Data from October 2002 and earlier are provided in the permit application. Subsequent data have been submitted directly to the Division's coal database. As of the second quarter of 2004, the Permittee stopped collecting water samples from the Lila Canyon extension. The Permittee will recommence water sampling upon approval of the Lila Canyon Extension (E-mail from Jay Marshall to Pam Grubaugh-Littig, October 25, 2004).

See March 30, 2005 letter at p. 13.

8. **No baseline data for surface water monitoring plan.** There are no baseline data for any surface flows in the permit area; thus, there will be no basis for comparison during monitoring. *See* Utah Admin. R645-301-731.221. Thus, DOGM's decision that the MRP-Part B is technically adequate is arbitrary and capricious.

UEI'S CONTINUING RESPONSE:

Same as concerns #3 above. DOGM has correctly determined that the Permittee has supplied sufficient information in the MRP-Part B to address the requirements of the regulations pertaining to hydrology. Page 27-28 of the TA states:

Chapter 7 presents surface water information for undisturbed and disturbed drainage areas. The Permittee conducted surveys of the stream channels to characterize channel reaches according to stream type, i.e., perennial, intermittent or ephemeral, and to establish the monitoring frequency or demonstrate factors required under Rule R645-301-724.200. Water emanating from a spring but remaining on the surface after some distance was classified as surface flow. Appendix 7-7 presents the stream channel characterizations for the Lila Extension, based on channel composition and Biologic (plant and aquatic) communities present, as well as the classifications established in the definitions under R645-301-100. This Appendix includes photographs of stream channel monitoring sites. The information presented demonstrates that stream channels are ephemeral.

See March 30, 2005 letter at p. 13.

9. **The PHC is flawed.** The PHC determination and findings presented in the MRP-Part B are not based on baseline hydrologic, geologic and other information collected for the permit application. See Utah Admin. R645-301-728.200-728.300. Thus, DOGM's decision that the MRP-Part B is technically adequate is arbitrary and capricious.

UEI'S CONTINUING RESPONSE:

DOGM has correctly determined that the information on geology and hydrology is adequate to prepare the PHC. Page 39 of the TA provides:

Comments received by the Division expressed concerns that baseline data are inadequate to prepare the PHC determination and that potential adverse impacts to a regional aquifer and Range Creek have not been addressed in the PHC determination. Information on geology and hydrology is adequate to prepare the PHC. R645-301-728.300 of the Rules requires that the MRP contain specific findings.

See March 30, 2005 letter at p. 13.

10. **Water consumption.** The MRP-Part B contains inconsistent and conflicting descriptions of the quantities of water that will be consumed by the proposed mining operation, the source of the water, and the impacts associated with this water loss. Thus, DOGM's decision that the MRP-Part B is technically adequate is arbitrary and capricious.

UEI'S CONTINUING RESPONSE:

DOGM has correctly determined that Lila Canyon will not jeopardize the existence of or modify the critical habitat of the Colorado River endangered fish species. Page 42 of the TA provides:

Projected losses total 74 acre-ft/year, which is below the USFWS mitigation level of 100 acre-ft/year, so water consumption by the Lila Canyon underground coal mining operation will not jeopardize the existence of or adversely modify the critical habitat of the Colorado River endangered fish species (Appendix 7-3, **Water Consumption**).

See March 30, 2005 letter at p. 13-14.

11. **Operation Plan.** The plan presented in the MRP-Part B is not specific to the local hydrologic conditions and does not describe steps that will be taken to minimize disturbance to the hydrologic balance within the permit and adjacent areas or to prevent material damage outside the permit area. *See* Utah Admin. R645-301-731. Thus, DOGM's decision that the MRP-Part B is technically adequate is arbitrary and capricious.

UEI'S CONTINUING RESPONSE:

This is a catch all comment and includes items #1-#11 above. DOGM has correctly determined that the Permittee has supplied sufficient information in the MRP-Part B to address the requirements of the regulations pertaining to hydrology. Page 27 of the TA states:

The Permittee has supplied sufficient information in the MRP-Part B to address the requirements of the regulations pertaining to hydrology.

See March 30, 2005 letter at p. 14.

12. **Cumulative Hydrologic Impact Assessment (CHIA).** The information presented in the CHIA is not sufficient to allow the Division to establish a hydrologically reasonable CIA boundary, or to determine whether the proposed coal mining and reclamation operation has been designed to prevent material damage to the hydrologic balance outside the permit area. *See* Utah Admin. R645-301-729.

UEI'S CONTINUING RESPONSE:

The CHIA is prepared and written by DOGM not the operator. DOGM has correctly determined that the information needed to for the CHIA is available. Page 36 of the TA states:

Information needed to meet the regulatory requirements of R645-301-725 is available from federal, state, and a number of other sources. The Permittee is not required to provide data specifically for the CHIA determination but may gather and submit such information. The Division is not limited to information in the MRP in preparing the CHIA; however, data in the both Parts A and B of the Horse Canyon Mine MRP have been used in preparation of the CHIA.

13. **Transportation Facilities.** UEI has met with the Division regarding an overland conveyor, loadout, and rail spur to be located near the proposed Lila Canyon Extension, and UEI has stated its intention, in writing, to begin "[c]onstruction on these facilities" in April 2006 . UEI has also filed right-of-way applications with the Bureau of Land Management, Price field office, for these facilities. These proposed facilities fall within the definition of "surface coal mining operations" and thus must be included within the "affected area" to be permitted under the Surface Mining Control and Reclamation Act and Utah Coal Mining and Reclamation Act. *See Utah Admin. R645-301-527.* The MRP-Part B erroneously omits any discussion of these proposed facilities.

NEW COMMENT RESPONSE:

UEI has contacted DOGM to discuss a PROPOSED overland conveyor, loadout, and rail spur. UEI initially requested a determination from DOGM as to which facilities, if any, would be subject to a permitting action. DOGM requested a formal proposal prior to making that decision. UEI cannot, at this time, submit a formal proposal since the scope of the work has yet to be defined. It is unknown what, if anything, will be constructed, who will construct it, or even where it will be constructed. If and when a formal proposal is appropriate, the responsible party, whoever that might be, will submit the application to DOGM. At this time, there is no proposal pending before DOGM; therefore, DOGM has not and cannot address this issue.

Right-of-way applications have been filed with the BLM identifying a logical corridor across public land so that initial inventories can be completed. These inventories will be required for the BLM right-of-way approval independent from any further DOGM permitting.

UEI will move forward with the construction of the Lila Canyon Mine utilizing truck haulage as specified in the current permit application.

14. **Historic and Archeological Resource Information.** The MRP-B contains inadequate information regarding the cultural and historic resources listed or eligible for listing in the National Register of Historic Places within the permit and adjacent areas. *See* Utah Admin. R645-301-411. The TA also contains conflicting information regarding the "effect" of the proposed Lila Canyon Extension to cultural resources. For example, the TA states both that "Lila Canyon extension project will have 'no effect' to historic resources" and that "the Lila project will not likely affect 42EM2255 and 42EM2256." TA at 15. DOGM has also failed to comply with the requirements of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470, et seq., as required by Utah Admin. R645-300-113. Thus, DOGM's conclusion that the MPR-B is technically adequate is arbitrary and capricious.

UEI'S CONTINUING RESPONSE:

DOGM has correctly determined that the MRP-Part B met the requirements of R645-301-411 pertaining to historic resources. Page 14 of the TA provides:

The MRP-Part B met the requirements of R645-301-411 pertaining to historic resources. The MRP Confidential Binder includes numerous evaluations of historic resources that focus on the permit area). The MRP also includes narrative and maps that describe or illustrate locations of historic resources within or adjacent to the permit area. The Permittee summarizes the results and provides details of historic properties within the area (Confidential Binder, App. 4-1). There is proof of coordination efforts with SHPO. The Division, in consultation with SHPO, considers that the Lila Canyon extension project will have "no effect" to historic resources.

See March 30, 2005 letter at p. 20.

15. **Fish and Wildlife Resource Information.** The TA states that "[t]he Division, in consultation with DWR, requires the Permittee to conduct raptor surveys at least two years immediately prior to and one year following facilities construction." TA at 17. The MRP-B does not indicate whether such pre-construction monitoring has taken place (and if so for what years), though issuance of the permit would allow UEI to immediately commence surface disturbing operations, including facilities construction. The TA also acknowledges that "there is a high probability that [golden] eagles will abandon [their] nests because of proximity to operations. TA at 62. DOGM, however, is prohibited from approving an activity that results in the "taking" of a golden eagle. *See* Utah Admin. R645-301-358.200-.300. *See also* 16 U.S.C. § 1532(19) (explaining that "the term 'take' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct") (emphasis added). In addition, currently available information from the Division of Wildlife Resources and BLM

indicates that a portion of the project area may be located in "crucial value year long" habitat for pronghorn antelope; this is not reflected in the MRP-B or TA. See TA at 17. See also Draft Price field office resource management plan at Map 3-9 (2004) . Finally, the "fish and wildlife resource information" described in the MRP-B and TA is outdated (in some cases by several years) and thus does not comply with the requirements of Utah Admin. R645-301-320. Thus, DOGM's conclusion that the MPR-B is technically adequate is arbitrary and capricious.

UEI'S CONTINUING RESPONSE:

DOGM has correctly determined that Information provided in the MRP-Part B meets the Environmental - Fish and Wildlife Resource Information requirements of the Regulations. Page 19 of the TA states:

Findings:

Information provided in the MRP-Part B meets the Environmental-Fish and Wildlife Resource Information requirements of the Regulations.

Page 16 of the TA states:

The MRP-Part B met the requirements of R645-301-322 because there is adequate discussion, supporting documentation, or maps on fish and wildlife resources for the permit and adjacent areas (Vol. 2 App. 3-3 through 3-6). The Division received comments that the MRP-Part B does not contain site-specific resource information, fails to address high value wildlife habitats, and lacks sufficient information to design the protection plan. The Division, in consultation with DWR and BLM, determined the level of detail required for wildlife information. The agencies declined to require additional monitoring of the wildlife species.

See March 30, 2005 letter at pp. 16-18.

16. **Coal Haul Road.** The revised coal haul road (EC-126) fits within the definition of "surface coal mining operations" and thus must be included within the "affected area" to be permitted under the Surface Mining Control and Reclamation Act and Utah Coal Mining and Reclamation Act. See Utah Admin. R645-301-527. The MRP-Part B erroneously concludes that the revised road does not constitute "surface coal mining operations," and thus does not include EC-126 in the "affected area."

UEI'S CONTINUING RESPONSE:

The Board of Oil, Gas and Mining ("Board") has previously determined that EC-126 is a county road and should not be included in the permit. In addition, contrary to the allegations of SUWA, Emery County Road 126 has been found by the Division to be a "public road" which does not need to be permitted, consistent with Division policy and rules.

The Board has previously upheld DOGM's determination that the Lila Canyon Road is a county road, which should not be included in the permit. This ruling was not challenged by SUWA and is a final and non-appealable decision. *SUWA v. DOGM*, Docket No. 2001-027, Findings of Fact, Conclusions of Law and Order, dated December 14, 2001; upholding July 18, 2001 Analysis and Finding on the Lila Canyon Road ("Findings"), attached as Exhibit 16. SUWA's claim that the Lila Canyon Road, a public road, must be included within the permit area is contrary to Congress' intent in enacting SMCRA.

The Division specifically finds, "the Permittee met the requirements of R645-301-527 by classifying all roads, except the coal pile road, as a primary road." Technical Analysis (TA) at p. 67. The Division further finds that Emery County Road 126 is a public road that does not require permitting. TA at pp. 54, 68. Contrary to the allegations of SUWA, Emery County Road 126 has been found by the Division to be a "public road" which does not need to be permitted, consistent with Division policy and rules. See definition of "public road" at R645-100-200. Under the Division's public road policy, Emery County Road 126 is exempt from the "affected area" definition set forth at R645-100-200. The definition of "affected area" insofar as it excluded roads within the definition of "surface coal mining operations" was suspended at 51 Fed. Reg. 41960, Nov. 20, 1986. However, the State of Utah and the federal Office of Surface Mining ("OSM") have agreed to a public road policy. This policy is set forth in a July 3, 1995 letter from Jim Carter, former Director of the Division, to OSM. The Division has found that Emery County Road 126 meets these criteria. TA at p. 54, 68.

See March 30, 2005 letter at p. 21.

17. **Air Quality.** The TA is inconsistent on the question of when EC-126 (referred to as the "truck loadout road") will be paved. Compare TA at 55 (the truck loadout road "will be paved during construction") with TA at 54 ("[d]uring the initial construction and operation phase, the road [EC-126] will be graveled. When the need arises, EC 126 will be paved."). In addition, UEI's permit with the Division of Air Quality for the proposed Lila Canyon Mine is for the 1.5 million tons of coal per year-not the 2 million tons requested by UEI (TA at 55), nor the 4.5 million tons that UEI has stated to DOGM that it intends to process. See letter from Denise Dragoo, Esq., to Pamela Grubaugh-Littig (June 2, 2005), at 2.

UEI'S CONTINUING RESPONSE:

SUWA is incorrectly assuming that EC-126 and the Mine Loadout Road are the same road. SUWA is mistaken to assume that EC-126 and the truck loadout road are the same road. In fact they are two separate and distinct roads. EC-126 falls within the Emery County Road network designated as County Road #126. Emery County Road # 126 is the County owned access road running from Utah highway 191/6 to the mine site and continuing on to Horse Canyon, none of which is within UEI's permit area. The Truck Loadout Road is located within the permit area and runs from the office buildings to the truck loadout. The TA is **NOT** inconsistent and is correct in stating on page 55 "the truck loadout road will be paved during construction" and on page 54 "during the initial construction and operation phase, the road EC-126 will be graveled. When the need arises, EC 126 will be paved."

UEI has the appropriate air quality permit for the Lila Canyon Extension:

UEI has an approved air quality permit for 1.5 million tons of coal per rolling 12-month period which is adequate for initial anticipated levels of production. Production is strictly market driven. As the market demand increases, production is projected to increase up to 4.5 million tons per rolling 12-month period. As the mine production approaches the air quality limit, UEI will amend the air quality permit as per R307-401, UAC. Air quality fees are paid on permitted emissions and not on actual emissions. It would be unnecessary and an unwise business decision to permit and pay emission fees on 4.5 million tons when the mine is only producing 1.5 million.

UEI appreciates this opportunity to respond once again to SUWA's comments.

Sincerely,


Jay Marshall