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August 2, 2007

Mary Ann Wright (maryannwright@utah.gov)
Utah Division of Oil, Gas and Mining
1594 West North Temple
P.O. Box 145801
Salt Lake City, Utah 84114

Re: Failure to Comply with Utah Admin. R645-103-234
Public Notice and Opportunity for Hearing Regarding Coal Haul Road (EC 126)
Horse Canyon Mine-Lila Canyon Extension, C/007/013

Dear Mary Ann:

I am writing to you regarding the requirements contained in Utah Admin R645-103-234 concerning public notice and hearings for public roads located within 100 feet of a permit area as they pertain to the Horse Canyon Mine-Lila Canyon Extension. As the Division noted in its recently finalized Technical Analysis (TA) for this mine, these requirements have not yet been met:

[t]here was no notice of the public road [EC 126] within 100 feet of the permit area. Before construction of the mine may begin, the Permittee must also comply with the requirements of R645-103-234.200 through R645-103-234.300 and provide opportunity for public hearing.

TA at 11. In particular, the Rules require that either the Division or Emery County take the following steps to apprise the public “[w]here the coal mining and reclamation operation is proposed to be conducted within 100 feet . . . of the outside right-of-way line of any public road . . . or when the applicant proposes to relocate or close any public road:”

234.200: Provide an opportunity for a public hearing in the locality of the proposed coal mining and reclamation operation for the purpose of determining whether the interests of the public and affected landowners will be protected; [and]

234.300: If a public hearing is requested, provide appropriate advance notice of the public hearing, to be published in a newspaper of general circulation in the affected locale at least two weeks prior to the hearing.

Utah Admin. R645-103-234.200-.300 (emphasis added).

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SUWA's review of Emery County Planning Commission Minutes from 1999 and the other materials provided in UEI's July 25, 2007 letter to the Division regarding R645-103-234.200-.300 confirms the Division's conclusion that the requirements of this provision have not yet been met for the Lila Canyon Mine. The general nature of the public notice for Emery County's Planning and Zoning Commission (Exhibit A-2 to UEI's July 25, 2007 letter), Emery County Commission (Exhibit B-1 to UEI's July 25, 2007 letter) and the maps in the "Large Site Plan" (Exhibit A-1 to UEI's July 25, 2007 letter) were plainly insufficient under R645-103-234.200-.300 to alert both the public and adjacent landowners of the potential for coal mining operations within 100 feet of EC 126. Moreover, any hearing conducted by the Bureau of Land Management in 1999-2000 on that agency's environmental assessment prepared to analyze the environmental effects of rights-of-way for the Coal Haul Road and surface facilities would not substitute for the notice and hearing mandated by the Rules which require that the Division of Emery County conduct such a public hearing. See Utah Admin. R645-103-234.200.

We bring this to your attention in light of statements made by UtahAmerican Energy, Inc. (UEI) and its counsel that the company hopes to begin construction of the mine (i.e., clearing vegetation and constructing sedimentation ponds) in the near future – activities that the are clearly prohibited until the appropriate notice and opportunities for a public hearing have been provided.

Feel free to contact me with any questions or concerns regarding this matter: 486-3161 x.3981.

Sincerely,

/s/ Stephen Bloch

Stephen Bloch
Staff Attorney

cc: Steven Alder, Assistant State Attorney General (e-mail only)
Jim Allen, Assistant State Attorney General (e-mail only)
Denise Drago, Snell & Wilmer (e-mail only)