

Snell & Wilmer
 L.L.P.
 LAW OFFICES

15 West South Temple
 Suite 1200
 Beneficial Tower
 Salt Lake City, UT 84101
 801.257.1900
 801.257.1800 (Fax)
 www.swlaw.com

Denise A. Dragoo, Esq.
 (801) 257-1998
 ddragoo@swlaw.com

Incoming
 C0070013

#3408

& DENVER

cc: Priscilla LAS VEGAS

ORANGE COUNTY

PHOENIX

SALT LAKE CITY

TUCSON

December 21, 2009

VIA CERTIFIED MAIL

John Baza
 Director
 Utah Division of Oil, Gas & Mining
 1594 West North Temple
 Salt Lake City, UT 84114-5801

**RE: Request for Extension in Abatement Period, NOV-N-10045
 Horse Canyon Mine, Lila Canyon Extension, C-007/0013**

Dear Director Baza:

On behalf of UtahAmerican Energy, Inc. ("UEI"), we respectfully request an extension of time in which to abate Notice of Violation N-10045 ("NOV"). Pursuant to R645-400-327.100 and .400, an extension of time to abate the NOV is authorized because UEI timely applied for, and has diligently pursued approval of designs and plans to the approved mining and reclamation plan ("MRP") to, among other things, change the location of the rock slopes. In addition, with the onset of winter, construction abatement activities are precluded until spring. As set forth during the informal conference and in the attached letter dated December 16, 2009, UEI has been diligently pursuing an MRP amendment to address rock slope location and design since May 18, 2007. When the NOV was issued on September 23, 2009, the Division had not yet responded to the latest MRP revisions submitted by UEI on July 15, 2009. Additional deficiencies were identified by the Division on November 5, 2009. UEI requests an extension until February 4, 2010 to respond to these deficiencies.

UEI further responds to the requested abatement action as follows:

1. Place Sediment Control at the Base of Warehouse Bench Slope:

As discussed during the informal conference, UEI disputes this portion of the violation. Sediment control has been in place since March, 2008 and has never been removed. As confirmed by the statement of Tom Suchoski, attached as Exhibit G, as of March 13, 2009 sediment control was in place at the construction site. Further, the statement of Scamp

Director John Baza
December 21, 2009
Page 2

Excavation attached as Exhibit F, confirms that as of November 5, 2009, the drainage ditch remained in place. The inspector testified at the informal conference that construction activity that could have affected drainage had not commenced on the date the NOV issued, September 23, 2009. UEI disputes the fact of violation regarding this portion of the NOV, however, in any case, the sediment control is in place and the violation is abated.

2. Salvage Topsoil From the Area Between the Warehouse Bench and the Coal Stockpile Bench:

UEI disputes the fact of violation regarding this salvage operation. Construction at the mine site is ongoing and topsoil is not required to be salvaged until construction is complete. The salvage operation requested will require the operator to issue a contract for additional construction work. Due to winter conditions, the construction activities cannot commence until May, 2010. If the fact of violation is upheld, over the objection of UEI, additional time to abate the violation due to climate conditions is requested until May 5, 2010. See R645-400-327.400.

3. Mark Remaining Undisturbed Islands with Signs:

Signs were installed by UEI immediately following issuance of the NOV.

4. Amend MRP to Identify Remaining Salvage Locations and to Specify a Subsoil Stockpile:

UEI contests the fact of violation because the MRP requires an "as built map" not an interim map. If the fact of violation is upheld, the operator requests an extension until February 5, 2010 to amend the MRP.

5. Amend Appendix 5-5 safety factor analysis.

This requirement is currently addressed in the reclamation section of the MRP and should not be the basis of a violation. If the fact of violation is upheld, an extension until February 5, 2010 is requested to amend the MRP.

6. Use Geotech Sampling and Analysis of Underground Waste to Support New Waste Disposed and a Design.

The operator disputes the fact of violation, however, should be fact of violation be upheld, the Division has agreed to accept published, commonly accepted data rather than geotechnical sampling to support the waste disposal design and safety factor. This information would be submitted to the Division by February 5, 2010.

Director John Baza
December 21, 2009
Page 3

7. Appendix 5-7, Fig. 1 & 2.

This appendix relates to rock slope material and has apparently been cited by mistake.

We appreciate your consideration in this matter.

Very truly yours,



Denise A. Dragoo

DD:pdm

cc: Jay Marshall, UtahAmerican Energy, Inc.
Daron Haddock, Utah Division of Oil, Gas & Mining

Encl.

15 West South Temple
Suite 1200
Beneficial Tower
Salt Lake City, UT 84101
801.257.1900
801.257.1800 (Fax)
www.swlaw.com

Denise A. Drago, Esq.
(801) 257-1998
ddragoo@swlaw.com

DENVER

LAS VEGAS

ORANGE COUNTY

PHOENIX

SALT LAKE CITY

TUCSON

December 16, 2009

HAND DELIVERY

Joe Helfrich
Assessment Officer
Utah Division of Oil, Gas & Mining
1594 West North Temple
Salt Lake City, UT 84114-5801

***RE: Fact of Violation/Assessment Factors – Notice of Violation - N-10045
Horse Canyon Mine, Lila Canyon Extension, C/007/0013***

Dear Mr. Helfrich:

On behalf of UtahAmerican Energy, Inc. (“UEI”), we hereby contest the fact of violation and request that the Division vacate Notice of Violation (“NOV”) No. N-10045. If the NOV is not vacated, we request that the penalty assessment be reduced based on the following information.

BACKGROUND STATEMENT

1. On May 18, 2007, the Division issued to UEI Mine Permit No. C/007/013 authorizing UEI to conduct coal mining and reclamation operations within the permit area of the Lila Canyon Extension, Horse Canyon Mine (“MRP”).
2. On May 1, 2008, UEI submitted to the Division a revision to the approved MRP to, among other things, change the location of the rock slopes (“Mine Plan Amendment”).
3. On December 15, 2008, UEI issued a construction contract for the Lila Canyon Mine. Although the Mine Plan Amendment was not formally approved, the Division informed UEI that they could proceed with construction and change the location of the rock slopes while the Division considered the Mine Plan Amendment.

Joe Helfrich
December 16, 2009
Page 2

4. On January 26, 2009, the Division requested UEI to address certain deficiencies in the Mine Plan Amendment.
5. On July 15, 2009, UEI addressed the January 26, 2009 deficiencies and resubmitted the Mine Plan Amendment to the Division.
6. On September 23, 2009, the Division issued NOV No. N-10045 to UEI alleging failure to operate according to the approved mine plan (R645-301-142, R645-300-143), failure to trap sediment (R645-301-724.124), failure to segregate subsoil (R645-301-232.500), improper timing of soil removal (R645-301-232.600), and failure to obtain coal mine waste design certification and stability. NOV attached at Exhibit A.
7. On October 29, 2009, the Division issued UEI a proposed penalty assessment for NOV No. N-10045, copy attached at Exhibit B.
8. On November 5, 2009, the Division returned the Mine Plan Amendment to UEI with additional new deficiencies beyond those identified on January 26, 2009.
9. On November 23, 2009, UEI filed a request for informal conference to review the fact of violation and, in the alternative, an assessment conference to reduce the penalty assessment for NOV N-10045.
10. The Division scheduled this matter for informal review on December 16, 2009.

ARGUMENT – FACT OF VIOLATION

UEI contests the fact of violation of the NOV and requests the discussion to vacate the NOV, as follows:

1. Alleged failure to place underground development waste in excavated pits as described in Appendix 5-7.

Contrary to the allegations of the NOV, Appendix 5-7 of the approved MRP does discuss disposal of development waste in excavated pits. However, the location and method of handling the rock slope development waste was changed in the May 1, 2008 submittal currently under review. See Exhibits C and D. Per the agreement of Daron Haddock, UEI is following the May 2008 Mine Plan Amendment as it relates to disposal of the mine development waste.

Joe Helfrich
December 16, 2009
Page 3

2. Failure to salvage and store subsoil for use in final reclamation as described in Sec. 232.500, 241, 242.100 and shown on Plate 2-4.

- a) Contrary to the allegations of the NOV, the performance standards at R645-301-232.500 are being followed by UEI. (See Exhibit D, p. 13 of MRP which provides that as fill material and requires an "as-built map" to show the location of soil materials used as fill material. In addition, the attached statement from J.P. Paluso, P.E. with EIS Environmental, dated November 30, 2009 confirms that the MRP authorized use of the material from the rock slopes for creation of the warehouse pad. Copy attached as Exhibit E. Topsoil and surface vegetation was removed prior to construction as shown by Mr. Paluso's photographs. Id. Finally, the attached statement dated November 5, 2009 from Scamp Excavation, Inc. confirms that topsoil was removed from the toe of the slope. Copy attached as Exhibit F.
- b) Section 242.100 is not applicable because this rule refers to reclamation and UEI is not in reclamation at this time.
- c) Plate 2-4 was removed from the permit in the May 1, 2008 submittal. The information that was previously contained on Plate 2-4 was redundant.

3. Failure to protect undisturbed areas as described in Sections 231.100 and 234.200 of the MRP.

Section 231.100 is not applicable because this rule refers to topsoil handling and not to undisturbed areas.

Consistent with Section 234.200 signs will be posted at the boundary between the disturbed area and undisturbed area when the final delineation between "disturbed" and "undisturbed" is established.

4. Failure to treat and contain sediment from the underground development waste.

Contrary to the allegations of the NOV, all sediment from the underground development waste was being contained and/or treated at the time of the violation. See attached statement dated December 7, 2009 from Tom Suchoski, Hydrologic Design, Inc., confirming that drainage from the warehouse and coal pad area are controlled. Copy attached as Exhibit G. See also statements from J.P. Paluso and Scamp Excavation, attached as Exhibits E and F.

ARGUMENT -- PENALTY ASSESSMENT

As set forth above, UEI requests that the Division vacate the NOV. However, if, over UEI's objection, the fact of violation is upheld, UEI requests that the assessment office significantly reduce the penalty, as follows:

A. History of Previous Violations, R645-401-311.

UEI does not dispute this portion of the proposed assessment.

B. Seriousness of Violation – R645-401-312.

UEI disputes characterization of the NOV as an "event" violation. UEI is operating under the Mine Plan Amendment which was submitted to the Division which has been pending approval by the Division for more than one (1) year and seven (7) months. The Division has allowed UEI to proceed with construction activities on the basis of the Mine Plan Amendment. UEI disputes the inspector's conclusion that these activities resulted in the loss of reclamation and revegetation potential. At most, this is a paperwork or "hindrance" violation and does not constitute an "event" violation.

Contrary to the Division's "explanation of points", the operator is in compliance with the Mine Plan Amendment, Appendix 5-7, attached as Exhibit C. Further, Chapter 2 of the MRP, at p. 13, attached as Exhibit D, allows subsoil ranging in thickness from 12-30 inches in depth to be used as fill material. Specifically, subsoils are allowed to be stored as pad material. Id. The final location of subsoil will be verified in an "as-built" map. Id. Finally, contrary to the allegations of the inspector, mine waste has not extended onto adjacent undisturbed land. Rather, as demonstrated by the November 30, 2009 statement by JT Paluso and accompany photos, topsoil removal was conducted according to plan. See Exhibit E. No damage points should be assessed.

C. Degree of Fault – R645-401-313.

UEI is operating in compliance with its Mine Plan Amendment and should not be assessed any points for negligence. Contrary to the inspector's statement, comments made at an informal conference in November, 2005, pre-date MRP approval by the Division on May 18, 2007 and are not binding because they are not set forth in the MRP. The MRP binds the operators not comments made at an informal conference pre-dating approval of the mine permit. The MRP confirms that "there is not a subsoil stock pile required for this project." MRP at 16. Contrary to the inspector's allegations, UEI

provided the Division with a revised plan for handling materials on May 1, 2008, more than seven (7) months before the construction contract was let on December 15, 2008. At the time the construction contract was issued, the Division had informally approved the Mine Plan Amendment.

Also, contrary to the proposed penalty assessment, the failure to provide a safety factor calculation is a permit deficiency, not an "event" violation. At most, this omission is a "hindrance" or "paperwork" violation, which is being addressed by UEI in response to the Division's November 5, 2009 deficiency list for the Mine Plan Amendment.

Contrary to the inspector's allegations, UEI has retained a contractor to monitor topsoil and subsoil activities. See Statement of J.T. Paluso, P.E. dated November 30, 2009 which addresses material generated from the rock slopes and used to construct surface pads, as approved in the permit. Exhibit E at p. 2; MRP at p. 13.

Finally, as stated above, contrary to the inspector's allegations, mine waste has not been deposited onto adjacent lands. See attached statements of Tom Suchoski dated December 7, 2009 (Exhibit E), J.T. Paluso, dated November 30, 2009 (Exhibit E) and Shane Campbell, dated November 5, 2009 (Exhibit F).

D. Good Faith in Addressing Compliance – R645-401-314.

UEI should be assigned good faith points for rapid compliance. UEI has complied with the requirements of its pending MRP and disputes that further action is required other than to obtain formal Division approval of the Amended Mine Plan.

CONCLUSION

In summary, UEI requests the Division to vacate the NOV and formally approve the Amended Mine Permit. IN the alternative, if the NOV is upheld, it should be reduced to a "hindrance," paperwork violation. No "event" violation has occurred, UEI is operating in compliance with the informally approved MRP and UEI should not be penalized for the lengthy review time required by the Division to formally approve its May 1, 2008 submission.

Joe Helfrich
December 16, 2009
Page 6

We appreciate your consideration in this matter.

Very truly yours,



Denise A. Drago

DD:pdm

cc: Jay Marshall, UtahAmerican Energy, Inc.
Daron Haddock, Utah Division of Oil, Gas & Mining

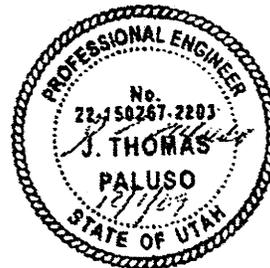
EXHIBIT E

EIS ENVIRONMENTAL & ENGINEERING CONSULTING

435-472-3814 / 800-641-2927 / FAX 435-472-8780 / tompaluso@precs.com / 31 NORTH MAIN STREET HELPER, UTAH 84526

MEMO

MEMO TO: Jay Marshall-Lila Canyon Mine
MEMO FROM: J. T. Paluso, P. E.
DATE: November 30, 2009
SUBJECT: DOGM Violation No. 10045



The purpose of this memo is to address issues related to DOGM Violation No. 10045. It is my understanding that Lila Canyon Mine has been issued a violation for covering unreclaimed topsoil located near the future warehouse-building site.

EIS Environmental & Engineering Consulting (EIS) and particularly myself, have been involved from the beginning of the permitting process on this new mine. Starting in December 2008, I have been involved with all topsoil removal activities associated with Lila Canyon Mine. This includes the following topsoil removal activities:

- Construct stormwater detention ponds.
- Construct portal access road.
- Remove topsoil from the west portion of the coal stockpile area. This area was needed to provide storage space for material generated during the construction of the underground rock slopes.
- Remove topsoil from the warehouse pad area. This area was also needed to provide storage space for material generated from the rock slope construction work.
- Construct employee parking and temporary bathhouse area. This area was needed to provide parking space and bathhouse facilities for the crews developing the rock slopes.

Violation No. 10045 was written for allegedly covering topsoil at the warehouse site with fill material from the rock slopes. Material from the rock slopes is permitted to be used for the creation of the warehouse pad. Refer to the attached February 6, 2009, photographs. I took these photographs during the grubbing and topsoil removal process prior to the construction of the warehouse pad. As you can see from the photographs, the surface vegetation was removed and the topsoil was adequately removed and placed in the topsoil pile.

As approved in the permit, material generated from the rock slopes that was used to construct surface pads, including the warehouse pad, was to be covered with four feet of surface material. Due to the phased construction of the various pads and availability of material, it became necessary in a few places to remove additional topsoil from the toe of the warehouse pad. This was necessary to prevent non-topsoil fill material from covering undisturbed topsoil islands prior to its removal in the next phase of topsoil removal. Any material that is touching undisturbed islands is topsoil. This topsoil will be removed during the next phase of topsoil removal.

From the photographs taken on November 6, 2009, you can see that the topsoil has been removed. The earthen ditch at the toe of the slope needs to be cleaned. Rocks from the placement of material, have rolled down the slope and need to be removed.

I hereby certify, to the best of my knowledge, that topsoil was removed prior to the placement of rock slope material and the four feet of surface fill material. I further certify the above to be a true and accurate reflection of my observations and opinions.

FEBRUARY 6, 2009 PHOTOGRAPHS



VEGETATION REMOVAL NEAR WAREHOUSE SITE



TOPSOIL REMOVED NEAR WAREHOUSE SITE

NOVEMBER 6, 2009 PHOTOGRAPHS



VIEW LOOKING SOUTH FROM TOP OF WAREHOUSE PAD



VIEW LOOKING NORTH FROM TOP OF WAREHOUSE PAD

EXHIBIT F

Scamp Excavation, Inc
PO Box 50, Wellington, UT 84542
Phone: (435) 636-8101 Fax: (435) 637-5696
E-Mail: SEOPLLC@EMERYTELCOM.NET

"24 hours a day, 7 days a week"

November 05, 2009

To Whom it May Concern,

Re: Lila Canyon Mine

Before work was started on the warehouse pad, there was a functional drainage ditch at the toe of the slope which reported the drainage water to the sediment pond for treatment.

The extra material removed from the toe of the slope did not cover any topsoil. The topsoil had been removed. At this time there is a new drainage ditch at the toe of the slope, and all of the topsoil was removed. The ditch reports to the sediment pond.

Thank-you

Shane Campbell
President/Scamp Excavation, Inc.

EXHIBIT G

December 7, 2009

HYDROLOGIC DESIGN INC.

10969 Topview Road
South Jordan, Utah 84095
Office/Fax: (801) 576-9259
Cell: (801) 608-2414
E-mail: tjsuchoski@hydrologicdesign.com

Mr. Jay Marshall, P.E.
Mine Engineer
UtahAmerican Energy Inc.
Lila Canyon Mine
794 North "C" Canyon Road
P.O. Box 1077
East Carbon, UT 84520

Re: Drainage Review of Construction Site, Lila Canyon Surface Facilities

Dear Jay:

On March 13, 2009, you and I toured the Lila Canyon mine site and reviewed the existing drainage conditions. While the site was not complete, we discussed the need for the drainage from the disturbed areas to drain to a sediment control facility. As part of the site review, the warehouse and coal pad areas were checked. While the warehouse pad was unfinished; it was verified that drainage from the pad area was directed to drain toward the coal pad via a ditch at the toe of the slope from the warehouse pad. The coal pad was bermed along the edge of the pad at the top of the slope and runoff was directed by the berms to drain to an outlet structure which discharged to a ditch at the toe of the slope. This toe ditch directed any collected flow to the sediment pond.

This summary describes our discussion on-site during our review. Please review and let me know if you need any other information.

Sincerely,



Thomas J. Suchoski
President/Hydrologist
Hydrologic Design Inc.