


TECHNICAL MEMORANDUM

Utah Coal Regulatory Program

February 9, 2009

TO: Internal File

THRU: Dave Darby, Lead 

FROM: Ingrid Wieser, Environmental Scientist II *ww 4/8/09*

RE: Midterm Permit Review, UtahAmerican Energy, Horse Canyon Mine, C/007/0013, Task ID # 3042

SUMMARY:

On September 8, 2008, the Division notified UtahAmerican Energy of the commencement of the 2008 Midterm Permit Review of Horse Canyon Mine. The following were the items chosen for review:

1. A review of the mine plan to ensure that the requirements of all permit conditions, division orders, notice of violation abatement plans, and permittee initiated plan changes are appropriately incorporated into the mine plan document.
2. A review to ensure that the mine plan has been updated to reflect changes in the Utah Coal Regulatory Program that have occurred subsequent to permit approval (example: compliance with U.S. Fish and Wildlife Department - Colorado River Endangered Fish Recovery Program).
3. A review of the applicable portions of the permit to ensure that the mine plan contains commitments for application of the best technology currently available (BTCA) to prevent additional contributions of suspended solids to stream flows outside of the permit area.
4. An AVS check to insure that Ownership and Control information is current and correct, verify compliance status of unabated enforcement actions, determine status of any outstanding finalized penalties, and verify that there are no demonstrated patterns of violation.
5. A review of the bond to ensure that it is in order and that the cost estimate is accurate and is escalated to the appropriate current-year dollars.

TECHNICAL MEMO

6. A review of the mining and reclamation plan for compliance with operator commitments related to variances or special permit conditions (including but not limited to subsidence control/monitoring plans and reporting requirements, variances to AOC, experimental practices, electronic database water monitoring reporting, raptor surveys, revegetation test plots, etc.).
7. The Division may conduct a technical site visit, in conjunction with the assigned compliance inspector, to document the status and effectiveness of operational, reclamation, and contemporaneous reclamation practices.

DEFICIENCIES:

R645-301-322, The Permittee must amend the MRP- Part B Appendix 7-3 page 19-22 to indicate that UEI is aware that regardless of state-appropriated water rights held by the Permittee, any water consumption over 100 acre-feet per year is subject to a per acre-foot fee payable to the USFWS. And, that the actual water consumption reported in the annual report once mining operations has commenced might be subject to a Section 7 consultation with the USFWS.

TECHNICAL ANALYSIS:

GENERAL CONTENTS

ENVIRONMENTAL RESOURCE INFORMATION

Regulatory Reference: Pub. L 95-87 Sections 507(b), 508(a), and 516(b); 30 CFR 783., et. al.

GENERAL

Regulatory Reference: 30 CFR 783.12; R645-301-411, -301-521, -301-721.

Analysis:

The Permit for Horse Canyon Mine was reissued on May 18, 2007 with an attachment of special conditions that UEI had to comply with. The Conditions were clarified on August 3, 2007.

In a letter to UEI dated October 15, 2007, the Division notified UEI that conditions #2, 3a, 3c, 3e, 3f, 3g and 4 have been met. Three conditions were listed as ongoing and attached to that letter. Those conditions were the following:

1. UEI will submit water quality data for the Horse Canyon Mine, in an electronic format through the Electronic Data Input web site.
2. UEI will follow the Programmatic Agreement if cultural resource sites are discovered within the permit or adjacent areas.
3. UEI will: 1.) provide for conducting yearly fly-over raptor surveys; 2) immediately contact UDOGM, USFWS, UDWR and BLM if raptors are tending nests or are nesting in areas near the area to be mined (mining in the subsidence zone and below the cliffs next to the subsidence zone) in the current nesting season or in the coming nesting season (the following year); 3) implement the Best Technology Available to provide for the protection of the raptors and their nests. This BTA will be determined by the agencies and then implemented by UEI. Implementation of BTA measures may include fencing of the nests, or avoidance of the area and / or may also include the need to apply for a 'take' permit from USFWS; and 4) provide a complete report of the yearly surveys to UDOGM.

UEI has met these obligations and should continue to meet them on an ongoing basis. UEI is currently in consultation with the Division on appropriate avoidance and mitigation measures for active raptor nests within the Lila Mine buffer area.

Findings:

The information provided in the plan is adequate to meet the minimum requirements of this section.

FISH AND WILDLIFE RESOURCE INFORMATION

Regulatory Reference: 30 CFR 784.21; R645-301-322.

Analysis:

The USFWS has determined that water depletions from the Upper Colorado River System are a major source of impact to four endangered fish species (Colorado pikeminnow [squawfish], humpback chub, bonytail chub, and razorback sucker). In appendix 7-3, "Probable Hydrological Consequences" page 19, The Permittee estimated that mining operations would use an average of approximately 81 acre-feet of water, annually. The USFWS considers that this volume of water will adversely affect the four endangered Colorado River fish. The USFWS Recovery Implementation Program is the reasonable and prudent alternative to avoid the

TECHNICAL MEMO

likelihood of jeopardy to these fish. The Permittee has committed to report actual water depletion values annually in their Annual Report. If values increase over 100 acre-feet of water, the Permittee will mitigate their impact by contributing a one-time fee to the Recovery Program.

The Permittee stated that the mine holds water rights in excess of 326 acre feet of water per year, and this would offset any water consumption over 100 acre feet of water. However, state appropriated water rights are a separate issue, according to the USFWS, and do not have any bearing on the depletion calculations required by the Colorado River Fish Recovery Program.

Findings:

Information provided in the Mining and Reclamation Plan- Part B, is not considered adequate to meet the minimum R645-301-322 section requirements of the regulations. Prior to approval, the Permittee must provide the following in accordance with:

R645-301-322: The Permittee must amend the MRP- Part B Appendix 7-3 page 19-22 to indicate that UEI is aware that regardless of state-appropriated water rights held by the Permittee, any water consumption over 100 acre-feet per year is subject to a per acre-foot fee payable to the USFWS. And, that the actual water consumption reported in the annual report once mining operations have commenced might be subject to a Section 7 consultation with the USFWS.

RECOMMENDATIONS:

The Midterm Review is not recommended for approval at this time.