

EVENT VIOLATION INSPECTOR'S STATEMENT

Company/Mine: UtahAmerican Energy/Horse Canyon Mine
 Permit #: C/007/013

NOV # 10045
 Violation # 1 of 1

A. SERIOUSNESS

1. What type of event is applicable to the regulation cited? Refer to the DOGM reference list of event below and remember that **the event is NOT the same as the violation.** Mark and explain each event.

- | | | |
|-------------------------------------|----|----------------------------------------------------------------|
| <input type="checkbox"/> | a. | Activity outside the approved permit area. |
| <input type="checkbox"/> | b. | Injury to the public (public safety). |
| <input type="checkbox"/> | c. | Damage to property. |
| <input checked="" type="checkbox"/> | d. | Conducting activities without appropriate approvals. |
| <input type="checkbox"/> | e. | Environmental harm. |
| <input type="checkbox"/> | f. | Water pollution. |
| <input checked="" type="checkbox"/> | g. | Loss of reclamation/revegetation potential. |
| <input type="checkbox"/> | h. | Reduced establishment, diverse and effective vegetative cover. |
| <input type="checkbox"/> | i. | No event occurred as a result of the violation. |
| <input type="checkbox"/> | j. | Other. |

Explanation: Construction at the UEI Lila Canyon Mine Site is not following the approved plan.

1)The coal mine waste is not being placed in a pit as described in the plan, but is being dumped in lifts on the warehouse pad and compacted.

2)Subsoil beneath the pads was not separately salvaged and placed for use in final reclamation as described in the approved MRP.

3) Mine development waste from the material storage pad has encroached on an adjacent, undisturbed island of land.

2. Has the even occurred? Yes

If yes, describe it. If no, what would cause it to occur and what is the probability of the event(s) occurring? (None, Unlikely, Likely).

Explanation: 1)Appendix 5-7 and associated Figures 1 and 2 of the approved plan describes burial in pits underneath 48 inches of cover with a 3.0 factor of safety, but the mine waste is not being placed as described in the plan.

2) Chap. 2 of the approved MRP Sections 232.500, 241, and 242.100 and Salvageable Soils Map App. A-2 describe salvage of subsoil to a depth of 30 - 40 inches during construction, for placement in accessible locations for use during final reclamation as part of the 4 ft of cover over

the mine waste, and for reconstruction of a deeper soil profile in some locations. The subsoil salvage and monitoring has not occurred as described. Subsoil was mixed with fill for construction of the coal and warehouse pads and is lost for use during final reclamation.

3) Mine waste at the angle of repose had spread out onto an adjacent island of undisturbed land.

3. Did any damage occur as a result of the violation? Yes

If yes, describe the duration and extent of the damage or impact. How much damage may have occurred if the violation had not been discovered by a DOGM inspector? Describe this potential damage and whether or not it would extend off the disturbed and/or permit area.

Explanation: Loss of reclamation potential due to lack of reclamation soil depth and lack of cover to meet the four foot cover requirement for coal mine waste.

B. DEGREE OF FAULT (Check the statements which apply to the violation and discuss).

Was the violation not the fault of the operator (due to vandalism or an act of God), explain. Remember that the permittee is considered responsible for the actions of all persons working on the mine site.

Explanation: _____

Was the violation the result of not knowing about DOGM regulations, indifference to DOGM regulations or the result of lack of reasonable care.

Explanation: The violation was a result of indifference to DOGM regulations. The Utah Coal Mining Permit is dated May 18, 2007. Cut/fill estimates dated November 2007 and were the basis for bidding and letting the contract in November 2007. The revised construction plan that included these revised 2007 cut/fill estimates was first received by the Division in July 2008 (and returned deficient in January 2009, Task 3017). There were no changes to the subsoil handling commitments made in Chapter 2 of the revised plan.

An email from Wayne Western to Jay Marshall on November 5, 2007 summarizes a telephone conversation thusly: "UEI plans to change the location of the coal storage pad, bath house and warehouse. Those changes will require an amendment before construction occurs."

Development of the rock tunnels began in Dec. 2008. Construction of sediment ponds was underway from February through March 2009. Construction of the coal pad and the materials pad has been simultaneous with tunnel development.

Inconsistencies with onsite development and the approved plan were first noted in Inspection Report #2019 (dated May 28, 2009) which precipitated an email from Dana Dean, Associate Director Mining, to Jay Marshall on June 1, 2009 that summarized a March 11, 2009 onsite meeting as follows: "You were directed to work within the approved plan, except where changes were necessary to install hydrologic structures; and to get your amended plan back to us as soon as possible.. To avoid further confusion and inefficiency, we need a quick response to the January 2009 deficiency letter regarding your application to revise the plan for the disturbed area. Please submit that no later than June 18 to avoid compliance action.. ."

The revised amended plan was received by the Division on July 15, 2009. At the time of NOV issuance the amendment to the MRP was under Division review. The revision of the plan does not contain changes to the subsoil handling commitments or the safety factor analysis in Appendix 5.5 or the coal mine waste reclamation contours Fig. 1 & 2 in App. 5.7.

- If the actual or potential environmental harm or harm to the public should have been evident to a careful operator, describe the situation and what, if anything, the operator did to correct it prior to being cited.

Explanation: During an informal conference held in November 2005, UEI was aware of public comment on the controlled placement mine waste at the mine site and the need for subsoil cover over the mine waste. The commenters specifically requested a separate storage pile for subsoil, but were assured by UEI and the Division that the mine development waste from the rock tunnel development would be buried in pits beneath the operations pad (described in App. 5-7) and that suitable subsoil would be placed in locations where it could be retrieved for final reclamation to re-build deep soils and to be used for four feet of cover over mine waste. UEI wrote the commitments in the plan and should have been aware of them.

Commitments to protect the subsoil resource for use as final cover are found in Sections 232.500; 241; and 242.100. UEI did employ a contractor to monitor the salvage of topsoil, but not subsoil. UEI has buried useful subsoil beneath and within the approximately 12 acres of materials and beneath coal storage pads. UEI has presented the November 2007 cut/fill analysis as evidence that the subsoil is being tracked and has been placed within the coal and warehouse pads. (However the bonding scenario and reclamation plans do not show that it will be retrieved from the coal and warehouse pads for use in final reclamation.) After issuance of the citation, UEI began removal of subsoil from a location beneath the upper portal access road, in connection with construction of a conveyor bent. (This activity is not described in either the approved plan or the amendment under review.) Subsoil to a depth of 15 feet from the slope beneath the upper portal access road was placed in lifts on the face of the warehouse pad outslope. UEI has stated that this subsoil will be used as the final four feet of cover over the mine waste, if necessary. No written documentation has been received to date. The suitability of this material has not described in the previous soil survey and has not been established.

UEI engineers are aware of the Utah Coal mining requirements for design, certification, and stability of refuse piles, however there was no safety factor calculation provided for the new design in the revised plan received in July 2008 or July 2009. UEI has requested additional time to run geotechnical analysis calculations, and that they will utilize representative numbers for the calculations rather than sampling the waste to acquire geotechnical information specific to the site.

UEI is aware of the requirement to trap and retain sediment in disturbed areas. However, mine waste at the angle of repose spread out onto adjacent undisturbed islands. UEI installed a ditch and berm to protect the adjacent undisturbed islands as noted in the October 29, 2009 inspection report. Signs have not yet been installed. UEI has stated they will not utilize a 20 ft buffer as stated in the plan. The Division recognized the difficulty of utilizing 20 foot buffers with the present construction design and amended the abatement requirement.

- Was the operator in violation of a specific permit condition?

Explanation: _____

- Has DOGM or OSM cited the violation in the past? If so, give the dates and the type of warning or enforcement action taken.

Explanation: Failure to follow the approved plan was cited on March 19, 2009 in NOV 10036, which was vacated on May 14, 2009.

C. GOOD FAITH

1. In order to receive good faith for compliance with an NOV or CO, the violation must have been abated before the abatement deadline. If you think this applies, describe how rapid compliance was achieved (give date) and describe the measures the operator took to comply as rapidly as possible.

Explanation: As verified during an inspection on 10/29/2009, a berm/ditch was installed at the toe of the warehouse pad to separate the mine waste from the unsalvaged island of topsoil/subsoil. At UEI's request, the NOV was modified on 11/2/2009 to eliminate the abatement requirement stated in mining and reclamation plan of creating a 20 ft buffer between mining and undisturbed islands. The abatement now requires modification of the MRP narrative. On 11/3/2009 Jay Marshall stated that he has purchased signs for the undisturbed islands and that he is consulting with an engineer concerning the necessity of geotechnical sampling for the stability analysis to provide site specific density, shear strength and friction angle information.

Additional points of contention appear to be the need to identify locations of remaining and alternative suitable subsoil; and the revision of final contours and cross-sections drawings provided in App. 5-7. The design change application refers to Plate 5-7 C for final contours of the site, but this map does not show the elevation of the final placement of the coal mine waste within the fill.

2. Explain whether or not the operator had the necessary resources on site to achieve compliance.

Explanation: The Permittee cannot make signs or perform the geotechnical analysis. However, the Permittee could order the signs and take the samples for geotechnical analysis. The Permittee could evaluate, locate, and map remaining available subsoil or engage a consultant. The Permittee could develop the requested final reclamation cross-sections (Figure 1 & 2 of App. 5-7). At Mr. Marshall's request the NOV was modified to extend the abatement time to November 30, 2009.

3. Was the submission of plans prior to physical activity required by this NOV / CO? No If yes, explain.

Explanation: Information was requested while the physical activity was ongoing. The abatement requests an amendment to the MRP to identify remaining suitable subsoil locations on a map and to specify the subsoil stockpile location(s) and to modify the Figures 1 and 2 included with Appendix 5-7 to reflect the final reclamation redesigned refuse site. This NOV also requests documentation of the stability of the mine waste pads under construction, but did not stop the work in progress. Change of design plans under review by the Division do not include the information requested for abatement.

PRISCILLA BURTON
Authorized Representative


Signature

November 4, 2009
Date