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JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas and Mining

JOHN R. BAZA
Division Director

Outgoing

C0070013

OK

Task # 3223

March 19, 2009

CERTIFIED MAIL RETURN RECEIPT

7004 2510 0004 1824 9658

Jay Marshall, Resident Agent
UtahAmerican Energy, Inc.
P.O. Box 910
East Carbon, Utah 84520

Subject: Rejection of Conditions for Working thru Exclusionary Periods, Task ID #3223, Horse Canyon Mine, C/007/0013

Dear Mr. Marshall:

The Division received your application for the above-noted permit change on March 5, 2009. Pursuant to R645-303-221, the Division completed the requisite 15-day Initial Completeness Review (ICR) and denies this application for a technical review.

Please note that the Division's attempts to approve a mitigation plan that would allow UEI to conduct mining activities during wildlife exclusionary periods have not been successful to date. Therefore a notice of violation is being issued to UEI. In addition, a memo to file from Joe Helfrich is attached to assist you in making the necessary revisions to your application.

If you have any questions, please call Joe Helfrich at (801) 538-5290 for further details.

Sincerely,

James D. Smith
Permit Supervisor

JDS/sqs
cc: Price Field Office
O:\007013.HOR\FINAL\WG3223\ICRrejection.doc



7004 2530 0004 1624 9658

U.S. Postal Service™
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OFFICIAL USE

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| | |
|---|--|
| Sent To | |
| Jay Marshall | |
| Street, Apt. No.; or PO Box No. PO BOX 910 | |
| City, State, ZIP+4 East Carbon UT 84520-0910 | |

TECHNICAL MEMORANDUM

Utah Coal Regulatory Program

March 11, 2009

TO: Internal File

THRU: Jim Smith, Permit Supervisor *JS 03/19/09*

THRU: Dave Darby, Environmental Scientist III, Lead *DD*

FROM: Joe Helfrich, Biologist *JH*

RE: Mining activities during exclusionary periods, UtahAmerican Energy Inc., Lila Canyon Mine, C/007/0013, Task # 3223

SUMMARY:

On February 3, a field review by personnel from the Division observed the Lila Canyon Mine portals under construction. The Zero portal had been blasted to a depth of about 12 feet and the other two portals (One and Two) were being prepped for blasting. The time limit for surface blasting had expired after February 1, 2009, which put mining activities into the exclusionary period. The operator was informed that blasting of the other two portals could not continue unless it could be shown that there were no adverse impacts to nesting birds, and received U.S. Fish and Wildlife Service's and Utah Division of Wildlife Resource's consent.

This document includes a review of the information submitted by the UtahAmerican Energy on January 31, February 9, and March 5th 2009 to conduct blasting operations in the exclusionary period. The review also includes the U.S. Fish and Wildlife Service's (Service) stipulations prepared by Nathan Darnall to allow blasting of the portals.

The following deficiencies were noted in the review of this application:

DEFICIENCIES

R645-301-120, the information in the application needs to be formatted in accordance with the R645 rules and presented as commitments for insertion in the approved MRP. The plans must be included in Section 333.300 and Appendix 3-5 of the MRP-Part B.

R645-301-130, the data from the two surveys conducted to date does not include information about the status of the nests in the Golden Eagle territory that would be ground surveyed in lieu of the helicopter survey. The DWR had requested that the nests within the territory be monitored. The ground survey data needs to be submitted to the Division by the permittee or his designated agent and marked as confidential

R645-301-333, -301-342, -301-358 Page 20 paragraph 2 of the application needs to be revised. The first sentence needs to be deleted. The raptor ground surveys have been revised to include the status of Bighorn sheep observed during the survey. However they do not include the status of the nest or nests in that territory. UEI must obtain written approval from DWR, FWS and DOGM to discontinue monitoring after March 15, 2009. Also the permittee is required to monitor raven nests.

The Service, in consultation with UDWR, would be willing to allow limited surface blasting at the mine with the following stipulations, these stipulations need to also be correctly formatted and incorporated in the approved MRP.

1) That Utah American Energy or its employees mine follows its own recommendation for use of explosives for surface blasting. What constitutes surface blasting is not completely clear, but surface blasting is likely to involve more than one round of blasting to get underground. Unless UDOGM has a different definition of "underground" we will assume that surface blasting occurs until the portal is more than 25 feet underground, at which time larger charges could be used if needed. Surface blasting noise levels are not to exceed 75 decibells. Blasting records will include at a minimum the amount of charge, time of blast and distance to the face.

2) That portal canopies be used for surface blasts to contain rock and to focus noise away from the nests. Blast blankets are also required. There is no evidence that they were used.

3) That dosimeter readings have been collected during surface blasts (at a safe distance) to compare sub-surface and surface blasts. Data from one or more distances has been collected, such as 100 feet (to compare with the earlier blast measurement), 200 feet (to compare with earlier ambient measurement) and/or greater distances to determine attenuation. Photocopies of the blasting data at the two locations for each blast needs to be included along with corresponding data from the biologist present at the time of the blast.

4) That a biologist with education or experience in raptor behavior, identification and survey protocol as determined by Nathan Darnall, FWS, Jim Parrish, Leroy Mead, DWR, Joe Helfrich, DOGM and Derris Jones, EIS, will monitor the eagles and nests within ½ mile of the disturbed area boundary prior to and during any and all surface blasts less than 25 feet

from the face of the rock surface not including the canopy. The monitoring will follow the 2008 protocol and the current 2009 protocol as approved by DOGM in consultation with DWR and FWS. The biologist should monitor the noise level using a dosimeter from the observation point where the status of the nests can be observed during the blasts. The purpose of this monitoring is to also record the noise levels at that distance from the mining activities and determine if the eagles respond negatively to the blasts (e.g., flight response). If negative responses are observed, any and all surface blasting shall cease immediately, and the Service, UDWR and DOGM will be contacted for additional guidance. The information regarding the qualifications of the biologists was not submitted until after the blasts occurred. The information received from EIS is different than that received from UEI. That needs to be clarified.

5) That surface blasts, (any and all less than 25 feet from the face of the rock surface not including the canopy), only occur if eagles are not present at the nest or nests within ½ mile from the disturbed area boundary). If an eagle is incubating eggs and would respond negatively to the blast (e.g., quickly fly away) there is a chance that the eggs could be harmed. To avoid this possibility, any and all surface blasting can only occur when the birds are not at or perched near the nest. A biologist with education or experience in raptor behavior, identification and survey protocol as determined by Nathan Darnall, FWS, Jim Parrish, Leroy Mead, DWR, Joe Helfrich, DOGM and Derris Jones, EIS will monitor the eagles and nests within ½ mile of the disturbed area boundary prior to and during any and all surface blasts less than 25 feet from the face of the rock surface not including the canopy. The monitoring will follow the 2008 protocol and the current 2009 protocol as approved by DOGM in consultation with DWR and FWS. The biologist should monitor the noise level using a dosimeter from the observation point where the status of the nests can be observed.

January 31, 2009 Letter

On Page 1 item # 4, the application needs to include a protocol for and a commitment to monitor for Ferruginous hawks within ½ mile of the mining activities at present. The plan needs to be included in the proposed 2009 monitoring plan. If it is determined that Eagles are occupying nests within ½ mile of the mining activities the ferruginous hawk surveys may be discontinued. The ground surveys do not include ferruginous hawk data.

Page 2 item # 4 paragraph 2, delete the last sentence.

2009 Eagle Monitoring Plan

The plan needs to include a commitment to ground survey the nests identified (list the nests) in the aerial survey and the data from those nests.

Page 1, Solution

Delete (hen on eggs), as the nest could be occupied.

TECHNICAL ANALYSIS:

GENERAL CONTENTS

PERMIT APPLICATION FORMAT AND CONTENTS

Regulatory Reference: 30 CFR 777.11; R645-301-120.

Analysis:

The information in the application is in the form of correspondence. The information in the application needs to be formatted in accordance with the R645 rules and presented as commitments for insertion in the approved MRP. Prior to noting that the permittees MRP contained specific language pertaining to the location of plans the Division staff had suggested incorporating the plans into appendix 3 that does not exist. The review of the permittees MRP clearly describes where the plans are to be incorporated. Specifically the conditions of the MRP require the plans to be submitted for incorporation into appendix 3-5 of the MRP-Part B. The plans must be included in Section 358.100 (Chapter 3 MRP-Part B) as a compliment to the existing commitment on page 38(Chapter 3 MRP-Part B) as well as in section 333.300(Chapter 3 MRP-Part B) as a part of the existing "protection" list. (R645-301-322.100, -322.220)

Findings:

The information in the application is not adequate to meet the requirements of this section of the regulations;

R645-301-120, the information in the application needs to be formatted in accordance with the R645 rules and presented as commitments for insertion in the approved MRP. Specifically the conditions of the MRP require the plans to be submitted for incorporation into sections 333.300 and appendix 3-5 of the MRP-Part B. Appendix 3 does not exist, appropriate sections of the MRP need to be revised accordingly.

REPORTING OF TECHNICAL DATA

Regulatory Reference: 30 CFR 777.13; R645-301-130.

Analysis:

The data from the two surveys conducted to date does not include information about the status of the nests in the territory that would be ground surveyed in lieu of the helicopter survey. The DWR had requested that the nests within the territory be monitored.

Findings:

The information in the application is not adequate to meet the requirements of this section of the regulations;

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PROTECTION OF FISH, WILDLIFE, AND RELATED ENVIRONMENTAL VALUES

Regulatory Reference: 30 CFR Sec. 817.97; R645-301-333, -301-342, -301-358.

Analysis:

Page 20 paragraph 2 of the application needs to be revised. The first sentence needs to be deleted. The raptor ground surveys have been revised to include the status of Bighorn sheep observed during the survey. However they do not include the status of the nest or nests in that territory. UEI must obtain written approval from DWR, FWS and DOGM to discontinue monitoring after March 15, 2009. Also the permittee is required to monitor raven nests.

The Service, in consultation with UDWR, would be willing to allow limited surface blasting at the mine with the following stipulations, these stipulation need to also be correctly formatted and incorporated in the approved MRP.

- 1) That Utah American Energy or its employees mine follows its own recommendation for use of explosives for surface blasting. What constitutes surface blasting is not completely clear, but surface blasting is likely to involve more than one round of blasting to get underground. Unless UDOGM has a different definition of "underground" we will assume that surface blasting occurs until the portal is more than 25 feet underground, at which time larger charges could be used if needed. Surface blasting noise levels are not to exceed 75 decibells.

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Blasting records will include at a minimum the amount of charge, time of blast and distance to the face.

- 2) That portal canopies be used for surface blasts to contain rock and to focus noise away from the nests. Blast blankets are also required.
- 3) That dosimeter readings have been collected during surface blasts (at a safe distance) to compare sub-surface and surface blasts. Data from one or more distances has been collected, such as 100 feet (to compare with the earlier blast measurement), 200 feet (to compare with earlier ambient measurement) and/or greater distances to determine attenuation. Photocopies of the blasting data at the two locations for each blast needs to be included along with corresponding data from the biologist present at the time of the blast.
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RECOMMENDATIONS:

The application is not recommended for approval at this time.



Citation for Non-Compliance Utah Coal Regulatory Program

1594 West North Temple, Salt Lake City, UT 84114

Phone: (801) 538-5340 Fax: (801) 359-3940

Citation #: **10036**

Permit Number: **C0070013**

Date Issued:



NOTICE OF VIOLATION



CESSATION ORDER (CO)



FAILURE TO ABATE CO

Permittee Name: UtahAmerican Energy Inc.

Inspector Number and ID: **1** **JHELFRIC**

Mine Name: Horse Canyon Mine

Date and Time of Inspection: **03/16/2009**

Certified Return Receipt Number:

Date and Time of Service: **03/19/2009**

Nature of condition, practice, or violation:

Failure to conduct coal mining operations only as described in the approved MRP.

Failure to comply with the terms and conditions of the permit, (Attachment A Special Condition #4, item #4 of the permit).

Failure to format the required mitigation plans in accordance with the R645 rules and the approved MRP and include the correctly formatted mitigation plans for incorporation in Sections 333.300 and Appendix 3-5 of the MRP-Part B.

Provisions of Act, regulations, or permit violated:

R645-300-142

R645-300-143

R645-301-120



This order requires Cessation of ALL mining activities. (Check box if appropriate.)



Condition, practice, or violation is creating an imminent danger to health or safety of the public.



Permittee is/has been conducting mining activities without a Permit.



Condition, practice, or violation is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.



Permittee has failed to abate Violation(s) included in Notice of Violation or Cessation Order within time for abatement originally fixed or subsequently extended.



This order requires Cessation of PORTION(S) of mining activities.

Mining activities to be ceased immediately: Yes No

Abatement Times (if applicable).

Action(s) required: Yes No

The permittee must comply with the deficiencies noted in the Division's technical analysis dated March 11, 2009. Plans must be complete and adequate for incorporation in the referenced sections of the MRP. A hard copy of the correctly formatted mitigation plans must be received at the Division's office in Salt Lake by no later than 5:00 PM Thursday, March 25, 2009 and approved by March 30, 2009.

J ay Marshall

(Print) Permittee Representative

JOE HELFRICH

(Print) DOGM Representative

Permittee Representative's Signature - Date

DOGM Representative's Signature - Date

Joseph C. Helfrich 3-19-09

SEE REVERSE SIDE Of This Form For Instructions And Additional Information

IMPORTANT – READ CAREFULLY

Pursuant to the Utah Coal Mined Land Reclamation Act, Utah Code Ann. § 40-10-1 et. seq. (Act), the undersigned authorized representative of the Division of Oil, Gas, and Mining (DOGM) has conducted an inspection and found that a Notice of Violation or Cessation Order must be issued.

This order shall remain in effect until it is modified, terminated or vacated by written notice of an authorized representative of DOGM.

1. PENALTIES.

Proposed assessment. DOGM assesses fines based upon a proposed recommendation by an assessment officer. If there is additional information you wish DOGM to consider regarding the cessation order and proposed fine, please submit that to DOGM within *15 days of the date this notice or order is served on you or your agent*. Such information will be used by the assessment officer in determining facts surrounding the violation(s) and amount of penalty. Once DOGM has determined the proper penalty, it will serve the proposed assessment on you or your agent, no later than 30 days of the issuance of this notice or order. See Utah Admin. Code R645-401-600 et. seq.

The penalty will be final unless you or your agent file, within 15 days of receipt of the proposed assessment, a written request for an informal hearing before the assessment officer.

Assessment. For each violation included in this notice, a penalty of up to \$5,000 may be assessed for each separate day the violation continues.

If you fail to abate any violation within the time set for abatement or for meeting any interim step, you will be assessed an additional minimum penalty of \$750 for each day of continuing violation beyond the time set for abatement. You will be issued a Cessation Order requiring cessation of surface coal mining operations or the portion of the operations relevant to the violation.

2. INFORMAL PUBLIC HEARING.

On the reverse side of this page, an authorized representative has made a finding as to whether or not this notice requires cessation of mining. If this order or notice requires cessation of mining, expressly or in practical effect, you may request that an informal public hearing be held at or near the mine site. If you wish an informal public hearing be held, please contact an authorized representative from DOGM. See Utah Admin. Code R645-400-350 et seq. Once an informal public hearing is scheduled, you will be notified of the date, time, and location of the hearing.

If this notice requires cessation of mining, it will expire within 30 days from the date you are notified unless an informal public hearing is held or waived, or the condition, practice, or violation is abated within the 30-day period.

3. FORMAL REVIEW AND TEMPORARY RELIEF.

You may appeal this notice or order to the Board of Oil, Gas, and Mining by submitting an application for hearing within 30 days of receipt of this notice or order. See Utah Admin. Code R645-300-164.300. Please submit the application for hearing to:

Secretary
Board of Oil, Gas, and Mining
1594 West North Temple, Suite 1210
PO Box 145801
Salt Lake City, Utah 84114-5801

If applying for a formal board hearing, you may submit with your petition for review a request for “*temporary relief*” from this notice. Procedures for obtaining a formal board hearing are contained in the Board’s Rules of Practice and Procedure and in Utah Admin. Code R645-401-800 et. seq.

4. EFFECT ON PERMIT.

The permit may be suspended or revoked if it is determined that a pattern of violations of the Act, regulations or permit conditions exists, and that the violations were caused by an unwarranted or willful failure to comply.

For further information, consult Utah Code Ann. § 40-10-20 through 40-10-23 and Utah Admin. Code R645-400-300 et. seq. and R645-401 et. seq., or contact the Division of Oil, Gas, and Mining at (801) 538-5340.