

**BEFORE THE DIVISION OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH**

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**IN THE MATTER OF THE  
INFORMAL ASSESSMENT  
CONFERENCE for CESSATION  
ORDER; UTAH AMERICAN  
ENERGY; CENTENNIAL MINE  
C/0070019, CARBON COUNTY,  
UTAH**

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**FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER**

**CAUSE NO. C/0070019**

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On June 28, 2018, the Division of Oil, Gas and Mining (Division) held an Informal Assessment Conference (Conference) as provided for by Utah Administrative Code Rule R645-401-700 in response to the written request by operator Utah American Energy (UAE) to review the fact of the violation for a field-issued Cessation Order (CO). The Division issued the CO to UAE on June 1, 2018 for operations at the Centennial Mine C/007/019, Carbon County, Utah. The Conference Officer, having considered the parties' arguments hereby orders the CO UPHeld in part, with respect to wells above the area where UAE has relinquished its mineral leases with the Bureau of Land Management (BLM), and otherwise VACATED.

**INTRODUCTION**

The Division issued the CO because three degasification wells (hereinafter "the leaking wells") on the surface above the Centennial Mine's underground operations were leaking gas. The Division alleged that the leaking wells presented an imminent danger to public health and safety. According to Utah Administrative Code 645-400-300.322.100, such a finding by the Division requires it to immediately issue a CO. The CO cited R645-301-551 for the violation and required UAE to cease activities associated with the leaking wells, flag the leaking wells to indicate the threat, and eventually completely close the leaking wells. The CO also required

complete closure and reclamation of seven other degasification well sites above the Centennial Mine.

UAE responded to the CO by requesting an Informal Assessment Conference on June 6, 2018; within the 30-day timeframe allowed by Utah Administrative Code Rule R645-401-700. UAE requested the Conference before the Division assessed a penalty associated with the violation. Thus, only the fact of the violation itself, not proposed assessment, was at issue during the Conference. At the Conference, UAE alleged that the CO was invalid because the rule cited by the inspector, Utah Administrative Code Rule R645-301-551, did not apply without being triggered by final reclamation. UAE argued that final reclamation of any of its degasification wells would be inappropriate because the wells could be necessary for ventilation should the Centennial Mine start to operate again.

,After the conference, the Conference Officer issued a request for a technical report from UAE explaining why all ten degasification wells in the Division's CO would be necessary for future mining operations. The Conference Officer also gave the Division an opportunity to respond to UAE's technical report. UAE timely filed a report and the Division timely responded, as will be outlined below.

## **PARTIES**

The Conference was conducted as an informal adjudicative proceeding. Dana Dean, Associate Director of the Division's Mining Program served as the Conference Officer. Meg Osswald, Assistant Attorney General, represented the Conference Officer. Priscilla Burton, Division Inspector, presented the facts and arguments in support of the CO and Daron Haddock, Division Coal Program Environmental Manager, and Steve Christensen, Division Permit Supervisor, also attended to support the reasoning for the CO. Steve Alder, Assistant Attorney General, represented the Division. David Canning, Matthew Efaw, Karin Madsen, and Andrew Rall attended the hearing as permittee representatives on behalf of UAE. Denise Dragoo, Snell and Wilmer LLP., acted as legal counsel for UAE and the presented bulk of the position and arguments on behalf of UAE. No recording or transcript of the conference was made.

## FINDINGS

Based on the information provided at the Conference, by the Parties' supplemental responses, and in the Division's permit files for the Centennial Mine, the Conference Officer makes the following findings of fact:

1. The Centennial Mine has been in temporary cessation since April 2008, with its most recent update approved for five years as of December 4, 2017.
2. The Centennial Mine's Mining and Reclamation Plan (MRP) allows for degasification (hereinafter sometimes "degas," "gob vent," or GVH") wells and incorporates a corresponding gob vent hole operating agreement.
3. The gob vent hole operating agreement between UAE and Oso Energy Resources Group gives Liberty Pioneer Energy Source (Liberty), as Oso's successor, the right to capture and sell gas from the degas wells, but delegates certain maintenance responsibilities, such as leak repair, for the degas wells to UAE.
4. The most up-to-date GVH Locations Map in the MRP shows thirteen existing, unreclaimed degasification wells associated with the Centennial Mine's operations: 3, 4, 5A, 6, 7, 7A, 8, 8A, 9, 11, 12, 13, 14; two reclaimed sites: 1, 5 and three sites with a pad only: 15, 16, 17.
5. The Division's Inspection Report for May 31, 2018 found that degas wells 12 and 14 have also been reclaimed, degas well 13 has been sealed but collector pipe remains, and degas wells 15, 16, and 17 were never drilled and the well sites are reclaimed but collector pipe remains.
6. During the inspection, the Division also found that degasification wells 5A, 7, and 9 were continuing to leak gas, as it had found and alerted UAE previously.
7. The Inspection Report found that the volume of leaking gas posed an imminent danger to the public health and safety because it could ignite and cause a loss of life or property.
8. As a result of the inspection, the Division issued a CO requiring:
  - a. Immediate flagging of the three leaking well sites with danger/keep away signs or flagging.
  - b. An expert's assessment of closure for the leaking wells by June 8, 2018.
  - c. Complete closure of the leaking wells by June 29, 2018.
  - d. Complete closure of wells 3, 4, 6, 7A, 8, 8A and 11 by July 28, 2018.

- e. Removal of all equipment and completion of final reclamation of all well pads by August 10, 2018.
9. In response to the CO, UAE repaired the leaking wells and flagged the well locations.
10. UAE also requested an informal conference in response to the CO to review the fact of the violation via a letter from its attorney on June 6, 2018.
11. In its request for an informal conference, UAE argued that the CO must be vacated because the Division failed to make findings necessary to trigger Utah Administrative Code Rule R645-301-551.
12. According to UAE's letter, Utah Administrative Code Rule R645-301-551 could only be triggered by the Division finding that the wells are no longer needed at the Centennial Mine and finding no adverse environmental or health and safety affects with respect to eliminating the degas wells.
13. At the Conference, the Division argued that all remaining degas wells must be plugged as mandated by the CO as part of concurrent reclamation because they are no longer operative to remove gas from the mine and Liberty was no longer interested in extracting and selling gas from the wells.
14. UAE responded that although the wells are not currently being used, and Liberty is not currently extracting and selling gas, the wells could be necessary to vent the Centennial Mine should it become operational in the future and Liberty would extract and sell gas if enough gas were available in the future.
15. After the Conference, the Conference Officer requested a follow up PE Certified Technical Report from UAE showing that the degas wells would be necessary for future mining operations and gave the Division an opportunity to respond to the report.
16. UAE provided a Technical Report from its Engineer David Canning, who is a certified P.E. in Colorado, but Mr. Canning did not certify the Report.
17. The narrative portion of the Report renewed UAE's argument from the conference that it should not be required to plug any degas wells because future gas removal needs from the mine and the future movement of gas through the underground operations are unpredictable.
18. The Report also included a general description of Design & Procedures for GVH and degasification systems, describing the typical parameters for GVH use, but not providing

specifics with respect to the Centennial Mine or the need for the degas wells at issue in this case.

19. The Division responded by renewing its finding that the degas wells no longer provide ventilation assistance because the Technical Report failed to provide enough detail to show otherwise, that the degas wells are no longer being maintained in accordance with the MSHA ventilation plan, and, as a result, renewed its finding that all ten degas wells should be reclaimed.
20. After the Conference and the supplemental responses, on August 20, 2018, the Division Received a letter from the BLM stating its position that “any gob vent hole that penetrates non-leased federal coal resources has no authorization from the BLM and the hole is in trespass and must be promptly plugged and abandoned and reclaimed . . . the BLM will not consider granting . . . the holes to be left unplugged for speculative future use.”
21. Degas wells 3, 4, 5A, 6, 7, 7A, and 11 are located above mine operations where UAE has relinquished its BLM leases.
22. Degas wells 8, 8A, and 9 are located above mine operations in the Mathis Fee Lease area where UAE continues to hold valid mineral rights.
23. The August 20, 2018 letter from the BLM did not affect the Conference Officer’s decision because the decision was already made (though the order not yet issued) and because the parties did not have an opportunity to respond to the letter.

## **CONCLUSIONS OF LAW**

### The Leaking Degasification Wells

24. The Division was justified in issuing the CO because the leaking wells presented an imminent danger to the public health and safety.
25. According to Utah Administrative Code 645-400-300.322.100, when a condition presents an imminent danger to the public health and safety, the Division is required to immediately issue a CO.
26. UAE was aware of, but failed to fix the leaking wells until the Division issued the CO.

27. The Division's issuance of the CO under a reclamation-focused Rule does not negate the fact of the violation because leaking, unmarked, and unsecured wells pose a substantial risk to the public that must not be allowed to persist.

#### The Mathis Fee Wells

28. The Division was not justified in the CO's requirement to plug and reclaim of all degas wells absent finding that the wells will not be necessary for future mining operations.
29. The Coal Mining Reclamation Act and corresponding rules allow for temporary cessation of mining and do not give the Division authority to make judgements for a permittee regarding whether future mining will be technically rational or economical. *See* Utah Code Utah Code § 40-10-1, et. seq.; Utah Administrative Code Rule R 634-515-300.
30. Where UAE has the legal right to mine in the future on the Mathis Fee Lease, the degasification wells above that area could be necessary for future mining operations even if access, coal availability, or economic viability are tenuous.

#### The Relinquished Lease Wells

31. The Coal Mining Reclamation Act aims to ensure that reclamation will occur as contemporaneously as possible. Utah Code § 40-10-2.
32. To that end, Utah Administrative Code Rule R645-301-551 requires permanent closure by casing and sealing of underground openings when no longer needed and upon the Division's finding of no adverse environmental or health and safety effects.
33. There is no evidence to show that the degas wells above the relinquished BLM leases could be necessary for UAE's future mining operations or to show that Liberty would have the right to produce from the wells above the relinquished leases.
34. Where UAE does not have the legal right to mine in the future above the relinquished BLM leases, the degasification wells in that area cannot be left unplugged and unreclaimed.

## ORDER

Based on the Findings of Fact and Conclusions of Law outlined above, the fact of the violation and required remedies are UPHeld in part and VACATED in part as follows:

- a. UAE shall cap and seal (where necessary), remove all equipment, complete final reclamation, and provide an expert's plugging report for the wells and well sites above the area where it has relinquished its leases from the BLM, specifically degas wells 3, 4, 5A, 6, 7, 7A, 11, 12, 13, 14, 15, 16, and 17, as soon as practicable but no later than August 1, 2019.
- b. The CO's requirement to cap and seal the wells and reclaim the well sites above the Mathis Fee Lease, specifically degas wells 8, 8A, and 9, is vacated.

ORDERED this 27<sup>th</sup> day of August, 2018



Dana Dean, Associate Director  
Utah Division of Oil, Gas and Mining  
Assessment Conference Officer

## NOTICE OF RIGHT TO APPEAL

UAE, as the operator of the Centennial Mine, has the right to appeal the Conference Officer's Order to the Utah Board of Oil, Gas and Mining (the Board) under Utah Code § 40-10-20 and Utah Administrative Code Rule R645-410-810. To exercise this right to appeal, UAE must, "within 30 days of receipt of the decision made by the division in the informal conference, request a hearing before the Board" Utah Code § 40-10-20(2)(d). This Assessment will be final in 30 days unless appealed to the Utah Board of Oil, Gas and Mining. *See also* Utah Admin. Code R. 645-401-810. If UAE appeals this Order, the hearing before the Board will be formal, and review of the fact of violation "will be conducted by the Board under the provisions of the procedural rules of the Board (R641 Rules)." *Id.* R. 645-401-830.