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A Professional Corporation  
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NAME: PAMELA GRUBAUGH-LITTIG, DOGM  
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FROM:

NAME: DENISE A. DRAGOO  
CITY/STATE: Salt Lake City, Utah  
RE: Horizon Mine, ACT/007/020, Cessation Order C98-26-1-1  
COMMENT:

*ACT/007/020 #5  
NOV file  
Copy Joe - Pam  
Mary Ann*

TOTAL NUMBER OF PAGES: 5 (INCLUDING COVER LETTER)

DATE: January 28, 1998  
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Client Name: HM LLC

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DENISE A. DRAGOO

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ADDRESS ALL CORRESPONDENCE TO  
 POST OFFICE BOX 45340  
 84145-0340

January 28, 1998

**VIA FACSIMILE & U.S. MAIL**

Ms. Pamela Grubaugh-Littig  
 Assessment Officer  
 Utah Division of Oil, Gas & Mining  
 1594 West North Temple, Suite 1210  
 P.O. Box 145801  
 Salt Lake City, Utah 84114-5801

**RE: Horizon Mine, ACT/007/020, Cessation Order C98-26-1-1**

Dear Ms. Littig:

Pursuant to R645-401-600, this information is being provided on behalf of Horizon Mining, LLC ("Horizon") to mitigate any proposed penalty assessment regarding the above-referenced cessation order. The Utah Division of Oil, Gas & Mining ("Division") issued Cessation Order No. 98-26-1-1 on January 13, 1998 ("Order") alleging violation of R645-300-143. Horizon contests this violation. This Order alleges that Horizon installed 100 feet of culvert without prior approval from the Division. Earthfax Engineering confirms that the plan for extension of this culvert has been pending before the Division since September, 1997. Some 400 feet of the same culvert was approved in the previous MRP at the time Earthfax submitted the amendment. The Order is invalid on its face and should be vacated because there is no "imminent harm" under Utah Code Ann. § 40-10-22(b) and R645-400-300. Specifically, R645-400-312 allows an operation which is an "integral uninterrupted extension of previously permitted operations." In this case, the 100' culvert was an extension of a 400' culvert previously permitted by Horizon. See *White Oak Mining & Construction Co., Inc. v. OSM*, 138 IBLA 109 (Feb. 4, 1997).

Finally, enclosed is a letter dated January 22, 1998 from William Malencik, the Division inspector who issued the CO posing several questions regarding this matter. The questions posed by this letter are untimely and should have been addressed before the Order was issued. Therefore, Horizon respectfully submits this information pursuant to R645-401-600 rather than responding to this letter.

The excessive delay of nearly four months in Division approval of a 100' culvert extension may be challenged under Utah Code Ann. § 40-10-12(1)(b) which provides that a "revision shall be approved within the period established by the Division." Pursuant to R645-303-221, an application for permit change is to be responded to within 15 days of receipt. A minor modification "will" be approved by the Division within 60 days of receipt of a complete application. R645-303-228. The initial amendment submitted in September, 1997, should have been approved in 60 days or less.

VAN COTT, BAGLEY, CORNWALL & McCARTHY

Ms. Pamela Grubaugh-Littig  
January 28, 1998  
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Finally, Horizon requests an informal conference to challenge the fact of violation and any proposed assessment before the Division.

Very truly yours,



Denise A. Drago

DAD:jmc:161889

Enclosures

cc: Larry Jones

William Malencik (via facsimile and U.S. mail)



State of Utah  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

Michael O. Leavitt  
Governor  
Ted Stewart  
Executive Director  
James W. Carter  
Division Director

1594 West North Temple, Suite 1210  
Box 145801  
Salt Lake City, Utah 84114-5801  
(801) 538-5340  
(801) 359-3940 (Fax)

January 22, 1998

Denise Dragoo, Resident Agent  
Horizon Coal Company  
Van Cott, Bagley, Cornwall, & McCarthy  
50 South Main Street, Suite 1600  
Salt Lake City, Utah 84111-1495

*Copy Je*

RE: CO #98-26-1-1, Culvert Project, Horizon Coal Company, Horizon Mine, ACT/007/020,  
Folder #5, Carbon County, Utah

#5 #2

Dear Ms. Dragoo:

This letter has reference to the culvert project, ie., permit amendment application #97D, January inspection, and especially to the cessation order #98-26-1-1. I need your help to gather additional facts before I can close the January inspection. Should you have a problem with my request, please let me know.

On January 12 & 13, 1998, a field inspection was performed on the Horizon Coal Mine. A cessation order was issued because the culvert, et al., project was undertaken even though the mine officials should or must have known the culvert amendment application was pending and not approved.

Currently, I have not been able to ascertain what mine officials issued the culvert start order. Also, I want to provide you the opportunity to include, as part of my inspection record, any information that you believe is appropriate to the cessation order and the January inspection.

I still have some unfinished work on this inspection. This is why I need your help to expedite the closure of the January inspection. Please provide the following information:

- (1) Name and phone number of the person that issued the culvert start order.
- (2) Written information from an appropriate Horizon official or from you as resident agent that would:
  - (a) Identify and explain in some detail each exigency pertinent to starting the culvert installation.



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D. Dragoo/Horizon  
CO #98-26-1-1  
January 22, 1998

- (b) Provide any other information you may want to submit at this time to be included as part of the inspection and cessation order record.

This information, together with other information, will be used to prepare the inspection report and inspector's statement on the cessation order.

It appears to me this incident is lose/lose for nearly everyone. I have come to this conclusion, even though I do not have, in my possession, all the concomitant facts on the renumerated incident. This is another reason why I have written this letter.

Your usual prompt reply would be most appreciated.

Sincerely,



Wm. J. Malencik  
Reclamation Specialist

sd  
cc: