



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

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May 22, 1998

TO: Mine File

FROM: Lowell P. Braxton, Acting Director *LPB*

RE: Pattern of Violations Evaluation, Horizon Coal Company, LLC, Horizon Mine, ACT/007/020, Folder #5, Carbon County, Utah

Language contemplating a review for a pattern of violations is found in the regulations governing Utah's Coal Regulatory Program:

R645-400-332. Pattern of Violation.

332.100. The Director may determine that a pattern of violations exists or has existed, based upon two or more Division inspections of the permit area within a 12-month period, after considering the circumstances, including:

332.110. The number of violations, cited on more than one occasion, of the same or related requirements of the State Program or the permit; and

332.120. The number of violations, cited on more than one occasion, of different requirements of the State Program or the permit; and

332.130. The extent to which the violations were isolated departures from lawful conduct.

This review considers notice of violations N97-26-7-1, N97-45-1-1 and N98-26-2-1 (the Violations) which were issued to Horizon Coal between August 21, 1997 and February 23, 1998, (3 violations within a "floating" 12-month period).

N97-26-7-1 was issued August 21, 1997, "for failure to receive Division of Oil, Gas and Mining approval before modifying an undisturbed diversion." The regulation cited was R645-400-143.

N97-45-1-1 was issued September 18, 1997, "for failure to conduct all coal mining and reclamation operations "Act" operations only as described in the approved application; failure to comply with terms and conditions of the approved Mining and Reclamation Plan." The regulation cited was R645-300-142, 143.

N98-26-2-1 was issued February 23, 1998, "for failure to receive Division of Oil, Gas and Mining approval before installing/extending an existing 36" undisturbed drainage culvert, a new smaller culvert that is not identified in the pending amendment, removal and storage of topsoil, and extending the mine pad." The regulation cited was R645-300-143.

R645-300-143 reads: The permittee will comply with the terms and conditions of the permit, all applicable performance standards and requirements of the State Program.

Since the three subject violations were written for violation of the same regulation, justification exists for continuing the patterns investigation.

Status of the Violations

N97-26-7-1: An informal fact of violation hearing was held November 14, 1997. The fact was upheld by the Division Director, and no appeal was brought before the Board of Oil, Gas and Mining.

The Finding of Fact document for the informal hearing contains the following directive to the permittee: "Before mechanized activities occur within the permit area of a coal mine, and especially when these activities will be conducted by persons who are at times under contract to the Permittee, and more particularly when these activities will be supervised by a person who also represents the Permittee, it is incumbent on the Permittee that the Division of Oil, Gas and Mining be appraised of these activities and that the Division be given an opportunity to determine if these activities constitute "Coal Mining and Reclamation Operations" or the other relevant information contemplated in the Utah Coal Regulatory Program requirements."

The violation was terminated Mach 4, 1998.

After termination the proposed penalty was mailed to the Permittee by the Assessment Officer with an opportunity to request an Assessment Conference.

N97-45-1-1: An informal fact of violation hearing was held November 19, 1997. The fact was upheld by the Division Director, and no appeal was brought before the Board of Oil, Gas and Mining.

The Finding of Fact document for the informal hearing contains the following directive to the permittee: "Before mechanized activities occur within the permit area of a coal mine, and especially when these activities will be conducted by persons who are at times under contract to the Permittee, and more particularly when these activities will be supervised by a person who also represents the Permittee, it is incumbent on the Permittee that the Division of Oil, Gas and Mining be appraised of these activities, and that the Division be given an opportunity to determine if these activities constitute "Coal Mining and Reclamation Operations" or the "other relevant information" contemplated in the Utah Coal Regulatory Program requirements. In the event that proposed activities are regulated by the Division of Oil, Gas and Mining, the Permittee must ensure the activities have been approved prior to their initiation and are appropriately reflected in the permit."

The violation was terminated March 26, 1998.

After termination the proposed penalty was mailed to the Permittee by the Assessment Officer with an opportunity to request an Assessment Conference.

N98-26-2-1: No appeal of the fact of this violation was made.

The violation was terminated May 21, 1998.

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The penalty was finalized April 24, 1998. No timely appeal of the proposed penalty was submitted.

The Division Director, the Associate Director of Mining, Permit Supervisor, Joe Helfrich and Senior Reclamation Specialist, and Wm. Malencik met with the representatives of the Permittee on March, 20, 1998 in Price, Utah, and Division management and representatives of the Permittee met in Salt Lake City, Utah, on March 23, 1998. Those meetings discussed patterns of violations conceptually, but did not dwell on the specifics of the violations outlined above. The meetings suggested that the Permittee and its representatives have a much clearer understanding of the ramifications of continued coal mining and reclamation activities that are not supported by approvals in the Mining and Reclamation Plan.

R645-400-332.200 reads: If after the review described in R645-400-332, the Director determines that a pattern of violation exists or has existed and that each violation was caused by the Permittee willfully or through unwarranted failure to comply, he or she will recommend that the Board issue an Order to Show Cause as provided in R645-400-331.

Having reviewed the specifics of the above three notices of violation and in consideration of the above noted discussions with the Permittee, the Division Director at this time opts to not make a finding that these violations were caused by the permittee willfully or through unwarranted failure to comply. If new violations are upheld such that any of the violations that are the subject of this memo fall within the floating 12-month period cited in R645-400-332, the Director reserves the right to review any of the subject NOV's under the requirements of R645-400-332-100 through 130. Meantime, for all Notices of Violation that may be issued to Horizon Coal between the date of this memo and February 23, 1999, for failure to have adequate permits before beginning coal mining and reclamation operations, the Assessment Officer is ordered to assess a minimum of 20 negligence points when proposing the penalty.

vb

cc: D. Drago, Horizon Mining, LLC
M. Wright
D. Moquin
P. Grubaugh-Littig

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