

*orig mine file
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DIVISION OF
OIL, GAS & MINING

*Asst. Sec. 1001
#2*

Adam S. Affleck

September 10, 1990

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Ms. Dianne Nielson
Mr. Lowell Braxton
Division of Oil, Gas and Mining
3 Triad Center, Suite 350
Salt Lake City, Utah 84101

Dear Dianne and Lowell:

By letter dated August 30, 1990, the Utah Division of Oil, Gas and Mining (the "Division") informed North American Equities, Ltd. ("NAE") that it must submit an application for permit renewal prior to September 12, 1990. However, according to applicable Utah statutes and rules, permit renewal is not required when only reclamation operations remain to be conducted at a mine site. Consequently, the Division's request is without basis or authority and should be immediately withdrawn.

The Coal Mining and Reclamation statutes are clear that no permit is required for reclamation operations. Section 40-10-9 of the Utah Code requires a person to obtain a permit only if that person intends to engage in "surface mining operations." Sections 40-10-3(17) and (18) clearly distinguish reclamation operations from surface mining operations, and since a permit is not required for reclamation operations, it is contrary to statute to require renewal of a permit where only reclamation remains to be done.

The Utah Coal Mining Rules similarly contemplate that renewal of a permit will be required only for mining, as opposed to reclamation. For example, the rules define renewal of a permit as follows:

"Renewal of a Permit" means, for the purposes of R614-302-300, a decision by the Division to extend the time by which the permittee may complete mining within the boundaries of the original permit.¹

Even if the Division, through strained construction, concluded the rules did require permit renewal where only reclamation operations were left, such construction would exceed the statutory authority of the rules themselves. Section 40-10-6.5 of the Utah Code prohibits the Board from promulgating rules more stringent than the federal regulations. Effective May 5, 1989, several amendments were made to federal surface coal mining and reclamation regulations clarifying and clearly providing that permit renewal is not required where only reclamation obligations remain at a permitted mine site. See 54 Fed. Reg. 13814 (April 5, 1989).² Thus, Utah's newly promulgated rules (effective April 12, 1990) could not have required and do not require renewal of permits for reclamation only.

The federal register commentary to the amendments explained it made no sense to require permit renewal where only reclamation activities remained because reclamation obligations, including bonding and insurance obligations, were not tied to a permit, but to obligations arising upon commencement of surface mining operations. See 54 Fed. Reg.

1 Also it should be noted that the definition of "Mining" in the rules include only:

(a) extracting coal from the earth or coal waste piles and transporting it within or from the permit area; and (b) the processing, cleaning, concentrating, preparing or loading of coal where such operations occur at a place other than a mine site.

Utah Admin. R. 614-100-200.

2 For example, 30 C.F.R. § 773.11 was amended, in part, to read as follows:

A permittee need not renew the permit if no surface coal mining operations will be conducted under the permit and solely reclamation activities remain to be done.

30 C.F.R. § 773.11 (1989).

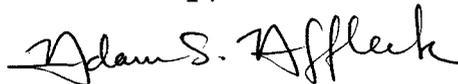
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13814-13821. The commentary further noted that the changes were not intended to change the requirements of SMCRA or the federal regulations, but to eliminate inconsistent, wasteful, and unrequired renewal procedures where only reclamation was left.

Based on the foregoing, any assertion by the Division that renewal is required by the Utah Coal Mining rules suffers from lack of statutory authority and is void. Since NAE's deadline is September 12, 1990, your immediate attention to this matter is required. If the request is not withdrawn, NAE will consider other legal alternatives to resolve this matter.

Please call Richie D. Haddock or me at your earliest convenience with your response.

Sincerely,



Adam S. Affleck

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cc. Tom Mitchell, Esq. (Hand-Delivered)
Richie D. Haddock, Esq.
William B. Prince, Esq.
Jill Hodge