

RECEIVED

FEB 01 1993

 DIVISION OF
 OIL GAS & MINING

January 25, 1993

Board of Oil, Gas and Mining
 Division of Oil, Gas and Mining
 355 West North Temple
 3 Triad Center, Suite 350
 Salt Lake City, Utah 84180-1203

Re: Blazon Mine, UDOGM INA/007/021, Carbon County, Utah

Dear Board,

LOWELL

This letter is a Citizens Complaint, listed below are the complaints past and present, along with the regulations we feel have been ignored both by the Division and the Board.

1. Division failure to maintain files in a concise and orderly manner to allow review of public documents.
2. "Unwarranted failure to comply" with respect to the outstanding violations (NOV N91-39-4-2, 1 of 2 and 2 of 2) for failure to abate.
3. A complete valid MRP is not in existence nor has there been one since the operation was idled.
4. The Boards analogy of what constitutes "Land Owner Consent" exhibited gross negligence with total disregard of regulations.
5. The Boards failure to mandate the Permittee/Operator to abide and conform to the Statute Provisions of the R645-Rules.

Complaint 1. Division failure to maintain files in a concise and orderly manner for public review.

Comments. Having made many trips to the Salt Lake Division office in the last six months to review the Blazon files, and to this point in time, I am still unable to find a complete chronology file, complete valid permit, or a complete "as built" reclamation file, nor a OSM correspondence file pertaining to the bond forfeiture. This has in the past and continues to hamper my review of the events which have occurred, as well as being an unnecessary burden financially. Since the Operator is compelled to submit all materials and update all information required by Division, the Division is obligated to maintain these records in a concise and orderly manner, it must insisted this situation be mitigated in the very near future. The Division has not, nor is it currently acting in accordance with the provisions of the State and Federal Laws in this matter, therefore we believe our rights have been and are continuing to be violated. Should legal counsel be needed to pursue these complaints, additional legal costs incurred due to the condition of these files, compensation for said costs will be included.

Complaint 2. A complete valid MRP is not in existence nor has there been one since the operation was idled.

Comments. Both the MRP and Reclamation Plan, are erroneous, incomplete, and inaccurate as the applicant did not comply with R645-301-512 Certification and R645-301-521.150. Land Surface Configuration Maps, as it states "these maps will clearly indicate sufficient slope measurements or surface contours to adequately represent the existing land surface configuration.....and the area affected by surface operations and facilities for the purposes of UNDERGROUND COAL.....according to the following:" where it states "Each measurement will consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed, or, where this is by the division. Maps will be prepared and certified according to 645-301-512.", how can the approved design drawings be so inaccurate the mass balance calculations have an error of such magnitude of error (20 to 30 percent) resulting in "not enough material to complete the highwall". It is inconceivable this would be allowed by the Division or worse yet, having the Board condoned the situation, by releasing any bond amount. Had the Board prudently reviewed the State of Utah Coal Mining Rules, the Operator would have been forced to comply with the Regulations.

In R645-302-270. Variances From Approximate Original Contour Restoration Requirements, as specified in R645-302-271.700 where it states "The watershed of lands within the proposed permit and adjacent areas will be improved by the coal mining and reclamation operations when compared with the condition of the watershed before mining or with its condition if the approximate original contour were to be restored. The watershed will deemed improved only if:" and where 301-271.710 states "The amount of total suspended solids or other pollutants discharged to ground or surface water from the permit area will be reduced, so as to improve the public or private uses or the ecology of such water, or flood hazards within the watershed containing the permit area will be reduced by reduction of the peak flow discharge from precipitation events or thaws; and.....302-271.900. After Division approval, the watershed of the permit and adjacent areas is shown to be improved." The watershed has been and continues to be unimproved as the runoff from the highwall discharges into Mud creek through silt fence above the Bypass Structure in Little Snyder, through the silt fence south of the "Pad" area.

Should an event occur causing excess flow or plugging of the Bypass Structure inlet, neither the depression nor the berm will function because of the design. Furthermore this 50 year event structure could not possibly meet above mentioned regulation as if it were not suspect of failure, an overflow wouldn't be necessary. It should further be noted, the ditches which collect flow of water and sediment from the operators reclamation attempt is directed into the "Sediment Pond" NAE claimed to be left for the Land Owner via the "Land Owner Consent Letter". The Division and Board has forced the Landowner to accept the liability of the operators reclamation attempt by allowing the Operator to direct any flow or potential flow of water and sediment to the "Sediment Pond". The State has no authority to obligate the Land Owner to the provide a sediment pond for the Operator reclamation attempt.

UDOGM has admitted these conditions do exist, refer to UDOGM Inspection Reports dated 9/25/92 and 10/12/92.

R645-302-272. states that "If a variance is granted under R645-302-270:" and 301-272.100 states, "The requirements of R645-301-270 will be included as a specific condition of the permit; and 272.200 will be specifically marked as containing a variance from approximate original contour. The Division failed to require the Operator to comply with this requirement from the time the erroneous land owner consent letter was submitted as part of the MRP. Without requiring the MRP to be marked as such, public participation and recipitating agencies were not properly introduced to the contents of this permit, therefore it is believed the intentions or the obligations of the Division permit process were not meet. Again, the permit was invalidated.

R645-302-273 states, "A permit incorporating a variance under R645-302-270 will be reviewed by the Division, at least every 30 months following the issuance of the permit to evaluate.....is proceeding in accordance with the terms of the variance.", however, the Division has not reviewed the MRP every 30 months nor did the permittee demonstrate (R645-302-275) to the Division.....need not be held. The Blazon (public) files contains no such documentation reflecting an exemption of the 30 month requirement for review or any explanation as to why the Division has not reviewed the permit as dictated by the regulations. Violations during, but more assuredly since ceasing operations would surely have disallowed such an exemption from being issued. Without proper and timely reviews as specified in the bonding requirements, compliance of the bonding cost index adjustment never takes place. Due to the past actions of the Division and Board, resulting in forfeiture of the totally insufficient bond, and the landowner has been expected to accept that fact.

Complaint 3. The Boards analogy of what constitutes "Land Owner Consent" exhibited gross negligence and with total disregard of the Regulations.

Comments. R645-302-270. Variances from Approximate Original Contour Restoration Requirements., states "The Division may issue approval or, if applicable, a permit for non-mountaintop removal mining which includes a variance from the requirements of.... R645-301-553.600 through R645-301-553.900, and R645-301-234 to restore the disturbed areas to their approximate original contour. The permit may contain such a variance only if the Division finds, in writing, that the applicant has demonstrated, on the basis of a complete application, that the following requirements are satisfied:" while R645-302-271.100 through 301-275. R645-302-271.600., states "The surface landowner of the lands within the permit area has knowingly requested, in writing as part of the permit application, that a variance be granted so as to render the land, after reclamation, suitable for an industrial, commercial, residential or public use (including recreational facilities). The request will be made separately from any surface owner consent given for the operations under R645-301-114 and will show an understanding that the variance could not be granted without the owner's request...."; These provisions were never met, the "original" letter was accepted by the Board as a "blanket" consent, which is clearly not within their jurisdiction, in no way gives them the discretionary authority to flagrantly disregard mandatory provisions. The surface landowners legal interests have not been protected from these operations and the obligations established under the permit have not continued throughout the reclamation process.

It is our opinion that the Utah Coal Mining and Reclamation Act, (U.C.A) 40-10-2.

Purpose., which states, "It is the purpose of this chapter to: (1) Grant to the Board and Division of Oil, Gas, and Mining the necessary authority to assure exclusive jurisdiction over non-federal lands and cooperative jurisdiction over federal lands in regard to regulation of coal mining and reclamation operations as authorized pursuant to Public Law 95-87.", and "(2) Assure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances thereto are fully protected from these operations.", meant such protection would be provided.

The regulation, R645-301-412. Reclamation Plan. and R645-301-412.100. Postmining Land-Use Plan., states "Each application will contain a detailed description of the proposed use, following reclamation, of the land within the proposed permit area, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land-use policies and plans.", and states "R645-301-412.130. Where a land use different from the premining land use is proposed, all materials needed for approval of the alternative use under R645-301-412.100 through R645-301-413.334, R645-302-270, R645-302-271.100 through R645-302-271.400, R645-302-271.600, R645-302-271.800 and R645-302-900;" and where R645-301-412.140., states "The consideration which has been given to making all of the proposed coal mining and reclamation operation consistent with surface owner plans and applicable Utah and local land-use plans and programs.", also where R645-301-111.100 Objectives., states "The objectives of R645-301-100 are to insure that all relevant information on the ownership and control of persons who conduct coal mining and reclamation operations, the ownership and control of the property to be affected by the operation, the compliance status and history of those persons, and other important information is provided in the application to the Division.", The Power of Attorney certainly is important information required by the Division and Board, to represent and negotiate for Jack Otani said Power of Attorney had to be in place before I could representing or negotiate for Jack Otani. With that mandatory requirement being paramount, the Division will provide Mr. William H. Haynes letter proving power of attorney to represent and negotiate for Jack Otani in any facet of the permitting process. Should there be no power of attorney, the "Land Owners Consent" letter is null and void, thus invalidating both the MRP and Reclamation Plan.

Complaint 4. The Boards failure to mandate the Permittee/Operator to abide and conform to the statute provisions of the R645- Coal Mine Rules.

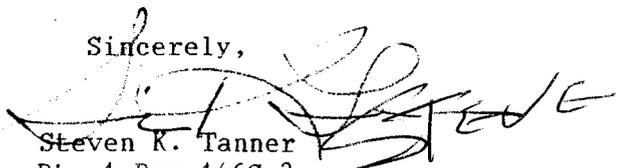
Comment. With in R645-303-230. Permit Renewals. where R645-303-232.500., states "Irrespective of any other R645 rule requirements for permitting coal mining and reclamation operations, a permittee may renew a permit for the purpose of reclamation only if solely reclamation activities remain to be done and no coal will be extracted, processed, or handled. Obligations established under a permit will continue regardless of whether the authorization to extract, process, or handle coal has expired or has been terminated, revoked, or suspended.", it becomes very clear this obligation was totally ignored by the Board and the Division.

Complaint 5. "Unwarranted failure to comply" with respect to the outstanding violations (NOV N91-39-4-2, 1 of 2 and 2 of 2) for failure to abate.

Comment. These Violations were issued under a closure order, how much is the civil pentalty to date and has the Division acted upon this matter as afforded by R645-402-200 through 402-220, and if not why?

Thank you for your time and consideration in this matter.

Sincerely,



Steven K. Tanner
Rt. 1 Box 146G-3
Helper, Utah 84526