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State of Utah

DEPARTMENT OF NATURAL RESOURCES

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Outgoing
C0070033
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April 28, 2009

Dave Shaver, Manager
Andalex Resources, Inc.
P.O. Box 910
East Carbon, Utah 84520-0910

Subject: Wildcat Loadout Expansion, Andalex Resources, Inc., Wildcat Loadout, C/007/0033,
Task ID #2966

Dear Mr. Shaver:

The Division has reviewed your application to expand the Wildcat Loadout.

The Division has determined that there are deficiencies that must be addressed before the Division can find that the requirements of the R645 Coal Mining Rules have been met and approve the application. Those deficiencies are listed in an attachment to this letter. For the purpose of settling Division Order DO 2031, the Division recommends that the Permittee respond by June 30 with an amendment to proceed with **Phase 1** only - removing coal fines and topsoil from the zone of heaviest deposition, replacing existing sediment pond B with pond G-1, and treating a short segment of road PR-5 with gravel and magnesium chloride. An amendment addressing **Phase 2** of the expansion could then be submitted as a separate application.

Initials in parentheses identify the author(s) of each deficiency so that your staff can directly communicate with those individuals should any questions arise during preparation of your response.

The plans as submitted are denied and are being returned to you. Please resubmit the entire application. If you have any questions, please call me at (801) 538-5262.

Sincerely

James D. Smith
Permit Supervisor

JDS/sqs
Attachment
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Deficiency List
Task ID # 2966
Wildcat Loadout Expansion

The members of the review team include the following individuals:

JHH	Joe Helfrich	(801) 538-5290
IW	Ingrid Wieser	(801) 538-5318
PWB	Priscilla Burton	(435) 613-3733
JDS	Jim Smith	(801) 538-5262
PH	Pete Hess	(435) 613-3731

R645-103-234, [PWB] Plate 1A shows coal mining and reclamation operations within 100 feet of the public Trestle Road. The Permittee must obtain the necessary approvals from the road authority for construction of sediment ponds within 100 feet of Trestle Road and the Division must provide an opportunity for a public hearing. In the absence of any specific approvals, the application must state that the activity within 100 feet of the Trestle road right of way is limited to access and haulage roads, as is the case with limitations placed on activity within 100 feet of the Consumers Road.

R645-103-235, [PWB] The narrative suggests in Section R645-301-114 that the SMCRA permit area boundary is to be enlarged to coincide with the BLM right of way that was recently "squared up." However, "permit area" is a defined term under SMCRA (R645-100-200) and means "...the area of land upon which the operator proposes to conduct coal mining and reclamation operations under the permit ...". SMCRA also clearly limits coal mining and reclamation operations within 300 feet of an occupied dwelling. Incorporating the occupied buildings into the permit area amounts to conducting operations within 300 feet of the occupied dwellings. The Permittee has two choices, either create a permit area boundary that is unique from the BLM right of way, such that it allows for expansion, but does not include occupied dwellings or in accordance with R645-103-235, the Permittee must obtain a waiver from the owners of the buildings within the permit area allowing coal mining and reclamation activity within 300 feet of the occupied buildings.

R645-300-113 and 300-124.330, [PWB] Appendix B Part A-16 is not confidential as it is simply correspondence from the Division of State History to Mike Glasson, recommending clearance for the Wildcat Loadout. There is no mention of any sensitive information in the letter. The Permittee must remove any references to this being a confidential document and submit it as part of the MRP accessible to the public.

R645-300-121.150, [JDS] The current operation is within 100 feet of Consumer Road. When the Division first issued the Wildcat Loadout a permit in 1989, the Division found that the loadout had been using Consumers as a coal haul road prior to August 3, 1977, and use of the road was subject to a valid existing right and there was no need for public notice. However, the current proposal is for new disturbance within 100 feet of Trestle Road (BLM) to Drunkards Wash. This road is not included in the valid existing right

finding of the initial permit, and therefore the Permittee must advertise as required by R645-300-121 and include the information required by R645-300-121.150 for mine operations within 100 feet of the right-of-way of a public road.

R645-301-112.300, [PWB] MRP Section R645-301-112 identifies the Applicant as Andalex Resources, Inc. Tower Division. The 2004 DOGM permit is issued to Andalex Resources, Inc. Andalex Resources, Inc /Tower Division is included in the AVS system as entity 123355. According to the AVS database, this entity holds the permit for both Wildcat and Centennial Mines. Andalex Resources, Inc is entity number 112234. Andalex Resources, Inc. does not hold any Utah permits, according to the AVS system. According to the AVS database, UtahAmerican Energy, Inc. (entity 146487) is the parent entity to Andalex Resources, Inc., but not to Andalex Resources, Inc. /Tower Division.

- If Andalex Resources Inc. /Tower Division still exists as stated in the MRP Section R645-301-112 and as shown on the organizational family tree in Appendix A Part 1, then the Permittee must provide the officers and directors (include beginning and ending dates) for the Tower Division in Appendix A, Part 1.
- If Andalex Resources Inc. /Tower Division does not exist, provide a date for its dissolution and supporting documents for the transfer of the assets of the company to Andalex Resources, Inc. (so that the AVS database may be updated), and remove the Tower Division from the ownership family tree in Appendix A, Part 1 and from the narrative in MRP Section R645-301-112.

R645-301-112.300, [PWB] Include Murray Energy Holdings Co. at the top of the organizational tree in Appendix A Part 1.

R645-301-112.600, [PWB] The statement in Section 112.500 that all lands “contiguous to the permit are owned by the United States” is not accurate, as shown on Plate 16.

- Clearly show the boundary between SITLA surface and BLM to the east of Section 33 and on either side of Sections 3 and 4, T. 14 S. and between Sections 34 and 3 on the boundary of Ts. 13 and 14 S., and provide a legend for the permit area designation on Plate 16.
- Plate 16 indicates BLM land ownership contiguous to the permit area on the north; however, in this location, Plate 1A describes buildings “owned by others” within and adjacent to the permit area in this same location. Please make the appropriate changes to the text and/or plates.

R645-301-115.300 and R645-301-121, [PWB] Plate 16 indicates that Consumers Road [Carbon County] and Trestle Road [BLM] cross the permit area. Plate 16 incorrectly shows Consumers Road as State Highway 139.

- Please correct the narrative Section R645-301-115.300 that states that the permit area is not within 100 feet of a public road, and
- Correct all Plates to remove the State Highway designation from Consumers Road.

R645-301-117.200, [PWB] Provide an affidavit of publication as part of this significant revision. The publication must include the public road description that is required by R645-300-

121 (see deficiency above under R645-300-121.150).

R645-301-121.200, [PWB] The permit area is described as 270 acres in the public notice and this equates to the existing 100 acre permit area plus the recently approved 150 acre Right of Way by the Bureau of Land Management Lease Area, with a miscellaneous 20 acres. Please explain the boundary of the 270 acres using narrative or maps.

R645-301-122.200, [JDS] Appendix J (p. 2) states that Garley Spring is shown on Figure III-2 in Chapter III; this is a relict reference to the old format. This figure is no longer in the MRP and the Permittee needs to update or remove this reference.

R645-301-122.200, [JDS] Appendix J (p. 4) states that a surface water monitoring plan has been described in Chapter IV, Part K, section 8 of the PAP; this is a relict reference to the old format and does not match the format of the current MRP and the Permittee needs to update or remove this reference.

R645-301-140, [JCH, IW] The application needs to include a recent raptor survey and wildlife maps for high value habitat species, and crucial mule deer winter range.

R645-301-141, [PWB] The plate provided in Appendix U shows the major drainages and the existing ROW.

- It must also have topographic lines labeled.
- It must include the radial stacker and indicate radial stacker drop points and the extent of the coal pile at the time of sampling.
- The Plate in Appendix U must include all permit area roads (currently PR-1 through PR-10) so that the location of the coal fines accumulation points can be determined in reference to the operational structures.

R645-301-220 and -121.200, [PWB] The application states in several places that Priscilla Burton, DOGM, conducted a soil survey of the proposed material storage area; since I did not complete an Order I soil survey these statements should more accurately read, "Priscilla Burton provided a courtesy soil evaluation of four backhoe pits" and the cover page for Appendix D Supplement should more accurately be titled "Soils Analysis Material Storage Area."

R645-301-230 and -121.100, [PWB] Appendix N should include a copy of Lynn Kunzler's memo dated November 17, 1989, which indicates that the seed mix reported in Appendix N, Table 9 was not seeded but was modified with approval. The mix that was applied to the spoil pile plots had no shrub seed and did not include *Stipa comata*, but did include *Elymus cinereus* (Basin wildrye) and *Agropyron trachycaulum* (slender wheatgrass).

- Section R645-301-224, p. 2-9 states that a second quantitative evaluation of fill slopes will occur in 2006. Please discuss the results and provide the location of the 2006 evaluation.

- Appendix N should include the 1997 Topsoil Test plot evaluations conducted by Dr. Patrick Collins. If the Permittee cannot locate their copy, an electronic copy was filed with the Division as 2003\Incoming\0001.pdf .
- Section R645-301-224 of the application should state that the 1994 test plots were evaluated in 1997 and should provide a location for the results of the evaluation. Further the plan should state that the test plots were eliminated in 2000, when the surface of the new topsoil pile B was reseeded, and the plan should provide the interim mix used in 2000 on the topsoil pile B.

R645-301-231.100, [PWB] To ensure that topsoil is protected from coal fines during the salvage operation, the application must state that coal fines greater than two inches deep will be removed during both Phase 1 and 2 operations. The Applicant should evaluate the use of a scrapers rather than graders for this purpose.

- As proposed on Plates 13A and B, the stockpiles have their steepest slopes to the west face, which is a very intense exposure to summer sun. The Permittee should make the stockpiles have a lesser slope on the west site and cover the west and south slope with brush after seeding.
- The plan must state that pond embankments will be clearly marked as topsoil storage.
- App. S, p. 10 states that topsoil above the high water mark of the pond embankments will be seeded. Since there will be little water accumulated in these oversized ponds, App. S., p. 10 must specify that the entire inslope and outslope of the topsoil embankments will be seeded (not just above the high water mark).
- The interim mix described in Section R645-301-212 for seeding of the topsoil stockpiles and the drop zone should be revised to eliminate Fairway crested wheatgrass and the wheat grass species and shrub species that have been unsuccessful in previous trials. Instead, the interim mix should include native species found in the Gordon Creek vicinity that might be locally collected (such as *Ceratoides lanata*, winterfat, and *Artemisia nova*, black sagebrush, and *Bouteloua gracilis*, blue grama grass and *Stipa hymenoides*, Indian ricegrass). These suggestions are supported by Patrick Collins, July 1997 Evaluation of the Test Plots (2003\Incoming\0001.pdf).
- Appendix S should clearly indicate that there will be no alfalfa hay incorporated or placed on the surface of the topsoil stockpiles.
- Appendix S should indicate that after seeding topsoil stockpiles will be hand raked.

R645-301-240 and -121.100, [PWB] With the expansion plans, the statement in Section R645-301-240 that mulching and seeding will occur over a 61-acre area should be corrected to read that mulching and seeding will occur over an 81-acre area.

- The headings in the final seed mix table provided in Section R645-301-240 should be checked for accuracy.
- A commitment in the plan should establish that prior to reclamation, the final seed mix will be re-evaluated for correlation with successful species establishment on the spoil and topsoil test plots and topsoil stockpiles.

R645-301-244, [PWB] Gouges are described as 18 in. deep x 2 - 3 ft. wide, spaced 6 – 10 ft. apart (Section R645-301-240). On such a gentle slope, the gouges will serve less to control erosion and more to provide for water collection. The problems with creating gouges in this manner are that the gouges will be deeper than replaced topsoil and the topsoil that is removed from the gouge becomes a mound adjacent to the gouge, with steep slopes that will not retain seed, and the gouge may expose compacted fill soil. Gouging will be used during operations to promote vegetation growth in the drop zone and to collect coal fines. This method could be alternated with ripping of the surface to a depth of 12 inches and both measures could be qualitatively evaluated for success at final reclamation. The Permittee could commit to using the most effective roughening technique (either ripping or gouging at final reclamation).

R645-301-322, [JCH, IW] The application needs to include a recent raptor survey for the proposed 18.09 acre disturbance or confirmation from a qualified individual in raptor biology or closely related field that the 2006 survey data is accurate for the ½ mile buffer zone restriction and wildlife maps for high value habitat species”. The results of the 2006 raptor survey are included in the, “Finding of No Significant Impact” document prepared by the BLM, (Appendix T) but it is only relevant to the coal fine clean up disturbance of 2.36 acres. The Permittee has proposed an 18.09-acre disturbance for the expansion of the Wildcat Loadout facility.

- P. 3-10 includes a description of the wildlife. This information was excerpted from the BLM EA, Appendix T. The text in the EA, pp. 14 and 15, tables 4.1 and 4.2 refer to 2.34 acres of disturbance, two ditches and a sediment pond, whereas the application includes 18.09 acres of proposed disturbance. The application needs to be revised to include wildlife resource information for the additional proposed disturbance.
- The application also needs to include a current list of threatened and endangered wildlife species.

R645-301-322, -301-333, -301-342, -301-358, [JCH, IW] Appendix F, p. 93 of the wildlife resources information identifies the current permit area as critical valued deer and elk winter range. However p. 13 of Appendix T (the EA document prepared by the BLM) includes the additional disturbance of 2.34 acres as” crucial deer winter range and specifies elk range as not being within the limits of the project area. The Permittee needs to have an individual qualified in big game wildlife management clarify this inconsistency.

- A list of threatened or endangered species should be included in the application. (P. 92 of Appendix F refers to Appendix A- a list of threatened or endangered species. This needs to be included in the application).
- P. 12 of Appendix T states that there is a Threatened and Endangered species habitat delineation, no such appendix can be found and it needs to be included in the application.
- The mitigation plan needs to be accompanied by an updated map including the location of the one-to-one mitigation area, 18.9 acres, associated with the 2008 modification plan.

R645-301-330, [JCH, IW] The Permittee needs to describe how they intend to protect vegetation and minimize disturbances. There are numerous references to this information in various

appendices, but a summarized plan needs to be included in this section. The mitigation plan needs to be accompanied by a map that includes the one-to-one acreage, 18.9 acres, in the 2008 Modification plan as noted in the Fish and Wildlife section of the operation plan.

R645-301-411, [JCH, IW] Land Use resource information is included in volumes 1, chapter 4 of the application. It includes fish and wildlife habitat and recreation lands and rangelands. Grazing and crucial deer winter uses have been the most intense uses of the permit and disturbed areas. There are inconsistencies in the application with the present, continued and post-mining land uses. Although one of the uses has historically been grazing, the EA prepared by the BLM includes a stipulation that requires the new permit boundary to be fenced to prevent grazing and provide access to wildlife (Appendix B part A-12 BLM Right of Way Amendment # 5, Feb 5, 2007). Assuming that the new permit boundary will be fenced, grazing should be deleted from the application as a current or postmining land use.

R645-301-412, [JCH, IW] The Permittee needs to alter the current and post-mining land use to describe where grazing will be excluded according to Appendix T.

R645-301-355, [JCH, IW] The Permittee must demonstrate that Mulching and other Soil Stabilizing Practices will occur during reclamation on the entire area to be disturbed. The Permit Applicant needs to update the acreage of the disturbed area to be reclaimed.

R645-301-512.120, [JDS] The Permittee must have the PE sign and date the PE stamp on Plates 1, 1A, 1A-a and 2, which show surface facilities. This can be done at the time clean copies are submitted, after all other deficiencies have been addressed.

R645-301-521.141, [PWB] The 81.79-acre disturbed area described in MRP Section R645-301-212 is not shown on Plate 1A for the proposed expansion. The proposed disturbed area boundary, which corresponds with the proposed placement of perimeter markers (R645-301-521), must be shown on all maps.

R645-301-521.163, [JDS] The Permittee must show the Proposed Disturbed Area Boundary on Plate 1-A and any other appropriate map or plan.

R645-301-536.510, [PH] The Permittee must amend the Wildcat MRP to accept coal processing waste from the Horse Canyon Mine, permit area "B" coal processing facility. This revision must address the requirements of:

R645-301-512.230: Refuse Pile Design Certification

R645-301-514.200; Refuse Pile Inspections

R645-301-528.320; Coal Mine Waste

R645-301- 536 through 536.200 et al; Coal Mine Waste / Placement

R645-301-536.500; Disposal in Special Areas

R645-542.730; Reclamation Compatible with Natural Surroundings / Post Mining Land Use

R645-301-746.100; Coal Mine Waste / General Requirements.

R645-301-542.640, [PH] The Permittee must provide sufficient information for removing and disposing of road-surfacing materials (asphalt) that are incompatible with the post-mining land use and re-vegetation requirements.

R6345-301-731.730, [JDS] The Permittee needs to add the locations for WCW-2 and WCW-4 to Plate 2.

R645-301-741, [JDS] Plate 3-G and 3-H are the same, both showing the existing depression area west of the railroad, but there is no plate showing the proposed modifications of Sedimentation Pond F. The Permittee needs to provide a plate showing the proposed modifications of Sedimentation Pond F.

R645-301-122.200, -532, -742, [JDS] Plate 2 shows ASCA 5, which is to be eliminated, but none of the new or retained ASCAs are shown on this or any other a map. The Permittee must show the ASCAs on an appropriate map.

R645-301-122.200, -532, -742, [JDS] The Permittee must identify drainage area DA-40 on Plate 2 or another appropriate map.

R645-301-742.231: Alternate Sediment Control Areas, [PH] The following must be submitted for each of the ten proposed topsoil storage piles (“G”, “H”, “I”, “J”, “K”, “L”, “M”, “N”, “O”, and “P”):

- a) A design.
- b) The design must show that effluent standards will be met.
- c) Must be shown on MRP Map.
- d) Must be discussed in MRP Text.
- e) Must be maintained.
- f) Adequate storage.
- g) Sediment removal.
- h) Must treat runoff.
- i) Must be approved by the DOGM.

R645-301-763.100, [PH] The Permittee must amend the current proposal for reclaiming the ponds as part of the Phase I reclamation or provide a demonstration that effluent limitations can be met through the implementation of other sediment control methods.

R645-301-800, [PH] The Permittee must post an additional \$ 217,000 in bond in order to implement the changes associated with the 2008 Modification Plan.

R645-303-212 and R645-301-121.200, [PWB] The commitment provided in Appendix U to monitor the coal fines monthly should indicate how monitoring information will be reported to the Division, e.g., in the Annual Report.

- Does the volume stated on Plate 13 C and in Plate 13A for topsoil stockpile M include the existing volume of topsoil pile A? If so, is the volume of topsoil pile A counted twice in the mass balance table on Plate 13C?

R645-301-553, [PWB] The cut/fill legend on Plate 9 appears to be the reverse of what is intended, since the area of cut to re-establish the main drainage through the site is shown as a fill. This legend must be corrected.

- Cut/fill evaluations (coloration and calculation) shown on Plate 9 should be extended to include the sediment ponds east of the drop zone area.
- Plate 9 does not show the permanent impoundments west of the railroad tracks, which are shown on Plate 1A.
- Plate 9 does not illustrate areas where coal mine refuse will be cut from the coal stockpile pad prior to being filled and graded. Areas of coal mine waste to be cut prior to final grading should be outlined on a map.
- The scale of Plate 9 is such that the final grading of the refuse pile cannot be determined. The scale of Plate 9 should match that of Plate 1A, and Plate 9 should indicate four feet of cover over the regraded coal mine waste pile.
- Plate 9 needs to show existing contours in the disturbed area.
- Color gradations on Plate 9 are so minimal that the difference between 7, 8, 9, 10, 11, or 12 feet of cut/fill cannot be ascertained. The Plate should be revised to use more distinctive colors or the cut fill could be shown with a series of cross sections, or both.

R645-303-212 and 301-527.230, [PWB] To best address the problem of coal fines identified in DO-231, the entire length of PR-5 from the loadout tower to its intersection with PR-1 should be graveled and treated with magnesium chloride in Phase 1 of the operation plan.

- Plate 1A should show the location of the limited access road to be established along the drop zone perimeter ditch.