0010

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

Michael O. Leavitt
Governor

Ted Stewart
Executive Director

Lowell P. Braxton
Division Director

1594 West North Temple, Suite 1210
PO Box 145801
Salt Lake City, Utah 84114-5801
801-538-5340
801-359-3940 (Fax)
801-538-7223 (TDD)

March 27, 1998

To: Mary Ann Wright, Associate Director, Mining

From: Pamela Grubaugh-Littig, Permit Supervisor

Re: Attorney General Review Requested, Insurance - Explosives Coverage, Canyon Fuel Company, LLC, Skyline Mine, ACT/007/005, Soldier Canyon Mine, ACT/007/018, Banning Loadout, ACT/007/034, Dugout Canyon Mine, ACT/007/039, SUFCO Mine, ACT/041/002, Folder #3, Carbon and Sevier Counties, Utah

There have been some questions recently about the "Explosives vs. Explosion" language in the coverage for public liability insurance. Most of the Certificates of Insurance for coal mining operations note "XCU" on the certificate which, I believe, has met the requirements of R645-301-890.100 (attached).

On a recent inspection at Skyline Mine, Steve Demczak, Division inspector, asked Chris Hansen from Canyon Fuel Company, LLC about the terms on their Certificate of Insurance "Explosion & Collapse Hazard Underground and Surface". Chris Hansen called me about this and I told him that I would look into the situation. I faxed Kerry Frame, also with Canyon Fuel Company, LLC, a copy of our regulations.

Today, Mr. Frame faxed me a memo that he sent to their Insurance Division Administrator, (attached). The rule (R645-301-890.100) states that, "Such policy will provide for personal injury and prroperty damage protection in an amount adequate to compensate any persons injured or property damaged as a result of the coal mining and relcamation operation, including the use of explosives and **who are entitled to compensaion under the applicable provision of state law.**

The Insurance Division Administrator in speaking to Mr. Frame stated that "it may be that the applicable state law contains limiting language to minimize those who would be eligible; in which case the coverage would be strengthened. However, she does not know but what the state law language that applies which may broaden enbtitlement ot the general public such that other parties not directly involved in an incident might be included." Without a copy of the state law in hand defining who is 'entitled', she cannot explicitly state that the requirements of the DOGM's rules are met."

In response to her questions I am requesting specific clarification is requested as to which other state law languages are referenced. Thank you.

Attachments

Canyon Fuel Company **Internal Correspondence**

Date: March 27, 1998

To: Chris Hansen

From: Kerry Frame

Subject: Explosives Insurance

I have enquired with Julia Fisher about our coverage for "use of explosives." She is the Insurance Division Administrator for Atlantic Richfield in Los Angeles.

She confirmed that our liability insurance x,c,u clause is three separate coverages. The "explosion" coverage extends to third parties that are injured as a result of our actions with the use of explosives -- whether on the surface or underground. For example, if we experienced a catastrophy as a result of an incident related to one of our powder magazines on our surface facilities, third party personal injuries and property damage would be covered up to amounts shown on the certificate. Of course, our own employees would be covered under our Worker's Compensation insurance.

Julia did have one concern, however, about the language under section R645-301-890.100 of the DOGM's regulations wherein it says ". . . and who are entitled to compensation under the applicable provisions of state law." It may be that the applicable state law contains limiting language to minimize those who would be eligible; in which case our coverage would be strengthened. However, she does not know but what the state law language may broaden entitlement to the general public such that other parties not directly involved in an incident might be included. Without a copy of the state law in hand defining who is "entitled", Julia can not explicitly state that we meet this requirement of DOGM's rules. We need specific clarification from DOGM as to which other state law language they are referencing.

KAF

xc: Mike Davis
Julia Fisher
Jim Hunter
Rick Parkins
Wess Sorensen
Dave Spillman

ACORD. CERTIFICATE OF INSURANCE

DATE (MM/DD/YY) 03/28/97

PRODUCER
Johnson & Higgins of California
Casualty Department
2029 Century Park East
Los Angeles, CA 90067
Tel: (310) 551-4687
U65WA-U5H OLIN

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANIES AFFORDING COVERAGE

COMPANY A: INDEMNITY INSURANCE COMPANY OF NORTH AMERICA
COMPANY B:
COMPANY C:
COMPANY D:

INSURED
ATLANTIC RICHFIELD COMPANY, ITS
SUBSIDIARIES AND SUBSIDIARIES
INCLUDING CANYON FUEL COMPANY, LLC.
6955 SOUTH UNION PARK CENTER
SUITE 550
MIDVALE, UTAH 84047

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY	ISL G1 423250-0	12-20-96	01-01-99	BODILY INJURY OCC	$ N/A
	X COMPREHENSIVE FORM				BODILY INJURY AGG	$ N/A
	X PREMISES/OPERATIONS				PROPERTY DAMAGE OCC	$ N/A
	X UNDERGROUND EXPLOSION & COLLAPSE HAZARD / Surface				PROPERTY DAMAGE AGG	$ N/A
	X PRODUCTS/COMPLETED OPER				BI & PD COMBINED OCC	$ 2,000,000
	X CONTRACTUAL				BI & PD COMBINED AGG	$ 4,000,000
	X INDEPENDENT CONTRACTORS				PERSONAL INJURY AGG	$ N/A
	X BROAD FORM PROPERTY DAMAGE					
	X PERSONAL INJURY					
	AUTOMOBILE LIABILITY				BODILY INJURY (Per person)	$
	ANY AUTO					
	ALL OWNED AUTOS (Private Pass)					
	ALL OWNED AUTOS (Other than Private Passenger)				BODILY INJURY (Per accident)	$
	HIRED AUTOS					
	NON-OWNED AUTOS				PROPERTY DAMAGE	$
	GARAGE LIABILITY					
					BODILY INJURY & PROPERTY DAMAGE COMBINED	$
	EXCESS LIABILITY				EACH OCCURRENCE	$
	UMBRELLA FORM				AGGREGATE	$
	OTHER THAN UMBRELLA FORM					$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				STATUTORY LIMITS	
	THE PROPRIETOR/ PARTNERS/EXECUTIVE OFFICERS ARE: INCL / EXCL				EACH ACCIDENT	$
					DISEASE - POLICY LIMIT	$
					DISEASE - EACH EMPLOYEE	$
	OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS (LIMITS MAY BE SUBJECT TO RETENTIONS)

SKYLINE MINE IS INCLUDED AS A NAMED INSURED UNDER THE REFERENCED POLICY(S) AS RESPECTS TO PERMIT NO. ACT/007/005.

THIS CERTIFICATE IS ISSUED IN LIEU OF CERTIFICATE DATED DECEMBER 18, 1996.

CERTIFICATE HOLDER

STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS, AND MINING
1594 WEST NORTH TEMPLE, SUITE 1210
P.O. BOX 145801
SALT LAKE CITY, UTAH 84114-5801

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ~~DELIVER~~ MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, ~~BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.~~

AUTHORIZED REPRESENTATIVE

public hearing will be held in the locality of the coal mining and reclamation operations from which bond release is sought, or at the location of the Division office, at the option of the objector.

880.700. For the purpose of the hearing under R645-301-880.600, the Division will have the authority to administer oaths, subpoena witnesses or written or printed material, compel the attendance of witnesses or the production of materials and take evidence including, but not limited to, inspection of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing will be made and a transcript will be made available on the motion of any party or by order of the Division.

880.800. Without prejudice to the right of an objector or the applicant, the Division may hold an informal conference as provided in UCA 40-10-13(a) of the Act to resolve such written objections. The Division will make a record of the informal conference unless waived by all parties, which will be accessible to all parties. The Division will also furnish all parties of the informal conference with a written finding of the Division based on the informal conference and the reasons for said finding.

880.900. Forfeiture of Bonds.

880.910. If an operator refuses or is unable to conduct reclamation of an unabated violation, if the terms of the permit are not met, or if the operator defaults on the conditions under which the bond was accepted, the Division will take the following action to forfeit all or part of a bond or bonds for any permit area or an increment of a permit area:

880.911. Send written notification by certified mail, return receipt requested, to the permittee and the surety on the bond, if any, informing them of the determination to forfeit all or part of the bond including the reasons for the forfeiture and the amount to be forfeited. The amount will be based on the estimated total cost of achieving the reclamation plan requirements;

880.912. Advise the permittee and surety, if applicable, of the conditions under which forfeiture may be avoided. Such conditions may include, but are not limited to:

880.912.1. Agreement by the permittee or another party to perform reclamation operations in accordance with a compliance schedule which meets the conditions of the permit, the reclamation plan and the State Program and a demonstration that such party has the ability to satisfy the conditions; or

880.912.2. The Division may allow a surety to complete the reclamation plan, or the portion of the reclamation plan applicable to the bonded phase or increment, if the surety can demonstrate an ability to complete the reclamation in accordance with the approved reclamation plan. Except where the Division may approve partial release authorized under R645-301-880.100 through R645-301-880.800, no surety liability will be released until successful completion of all reclamation under the terms of the permit, including applicable liability periods of R645-301-820.300.

880.920. In the event forfeiture of the bond is required by this section, the Division will:

880.921. Proceed to collect the forfeited amount as provided by applicable laws for the collection of defaulted bonds or other debts if actions to avoid forfeiture have not been taken, or if rights of appeal, if any, have not been exercised within a time established by the Division, or if such appeal, if taken, is unsuccessful; and

880.922. Use funds collected from bond forfeiture to complete the reclamation plan, or portion thereof, on the permit area or increment, to which bond coverage applies.

880.930. Upon default, the Division may cause the forfeiture of any and all bonds deposited to complete reclamation for which the bonds were posted. Bond liability will extend to the entire permit area under conditions of forfeiture.

880.931. In the event the estimated amount forfeited is insufficient to pay for the full cost of reclamation, the operator will be liable for remaining costs. The Division may complete, or authorize completion of, reclamation of the bonded area and may recover from the operator all costs of reclamation in excess of the amount forfeited.

880.932. In the event the amount of performance bond forfeited was more than the amount necessary to complete reclamation, the unused funds will be returned by the Division to the party from whom they were collected.

890. Terms and Conditions for Liability Insurance.

890.100. The Division will require the applicant to submit as part of its permit application a certificate issued by an insurance company authorized to do business in Utah certifying that the applicant has a public liability insurance policy in force for the coal mining and reclamation activities for which the permit is sought. Such policy will provide for personal injury and property damage protection in an amount adequate to compensate any persons injured or property damaged as a result of the coal mining and reclamation operations, including the use of explosives and who are entitled to compensation under the applicable provisions of state law. Minimum insurance coverage for bodily injury and property damage will be $300,000 for each occurrence and $500,000 aggregate.

890.200. The policy will be maintained in full force during the life of the permit or any renewal thereof, including the liability period necessary to complete all reclamation operations under this chapter.

890.300. The policy will include a rider requiring that the insurer notify the Division whenever substantive changes are made in the policy including any termination or failure to renew.

890.400. The Division may accept from the applicant, in lieu of a certificate for a public liability insurance policy, satisfactory evidence from the applicant that it satisfies applicable state self-insurance requirements approved as part of the State Program and the requirements of R645-301-890.100 through R645-301-890.300.

KEY: reclamation, coal mines
December 18, 1995 **40-10-1 et seq.**

Kerry Frame
FAX 801-569-4799

Kerry Frame give call 3/27