

C/007641 Incoming



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November 10, 2016

RECEIVED
NOV 14
DIV. OF OIL, GAS & MINING

Dana Dean
Associate Director
Utah Division of Oil, Gas & Mining
1594 W. North Temple, Suite 1210
PO Box 145801
Salt Lake City, Utah 84114-5801

Re: Request for Reduction of Penalty Assessment or Informal Conference for Proposed Penalty Assessment, Notice of Violation No. 21186, for the West Ridge Mine Permit No. C/0007/0041

Dear Associate Director Dean:

UtahAmerican Energy, Inc. ("UEI"), pursuant to Utah Admin. Code R645-401-700, hereby objects to the Utah Division of Oil, Gas and Mining's ("Division's") proposed penalty assessment for Violation No. 21186 ("NOV") and requests reduction of the penalty assessment. If the assessment is not substantially reduced, we request an informal assessment conference. If possible, we ask that this informal conference be held by telephone at a date and time to be confirmed. The assessment is inconsistent with Division rules governing penalty determinations under R645-401-320. Further, the Division's proposed assessment relies on incorrect assumptions regarding the operational status of the mine and the scope of the alleged violation.

Penalties assessed by the Division are based on a point system established under R645-401-320. Here, the Division determined that the alleged violation warranted a total of 30 points, amounting to a monetary penalty of \$1,100. A previous violation regarding a similar matter was assessed at \$176. UEI objects to the Division's determination and requests that the Division reconsider its penalty determination. The following summarizes UEI's objections and proposes an alternative penalty assessment.

	DOGM Proposed Penalty Assessment	UEI's Position
Total Violation History	1	0
Total Seriousness Points	13	1-4
Total Negligence Points	16	0
Total Good Faith Points	0	-1 to -10
Total Assessed Points	30	0-4
Total Assessed Fine	\$1,100	\$0-\$88

A. The Division Erred in Assessing 1 Penalty Point for Violation History

Under R645-401-321, the Division is required to consider previous violations. For purposes of penalty aggravation, the Division is limited to considering prior violations assessed during the previous twelve month period.¹ Here, the Division incorrectly aggravates the penalty assessment for NOV 21186 based on prior violation, NOV 21156. The Notice of Violation for NOV 21156 was issued on September 10, 2015. The Notice of Violation for 21186 was issued on September 15, 2016, more than twelve months later. The Division is, therefore, precluded from considering NOV 21156 as a “previous violation” for purposes of penalty aggravation. The assessment should be reduced to “0” points.

B. The Alleged Violation Did Not Hinder Enforcement, and Does Not Warrant A 13 Point Penalty Aggravation.

The seriousness of the violation is based on the likelihood and extent of potential or actual impact on the public or environmental harm based on the extent to which the event occurred that the standard was designed to prevent.² Where the violation stems from an administrative oversight, a paperwork violation, the seriousness of a violation is based on the degree to which enforcement was hindered by the alleged noncompliance.³

Here, the Division determined that UEI’s alleged failure to timely submit seismic monitoring information during mining was a “hindrance” to enforcement and warranted an assessment of 13 points. Because the mine has been sealed since February, is in “temporary cessation,” and is currently inactive, seismic monitoring of nonexistent mining activity should not be required under Appendix 5-13A. West Ridge requested that seismic monitoring cease in a letter to DOGM dated November 18, 2015. The DOGM and Dam Safety have continued to require monitoring; however because mining has ceased, this monitoring should cease. RB&G has continued to conduct seismic monitoring for West Ridge, including a report dated July 31, 2016, which was updated August 30, 2016. Mr. Christensen issued the NOV on September 15, 2016, apparently because the August report was incomplete. This is a minor, “paperwork” violation.

The penalty assessment states that the violation is a hindrance because “without monitoring data/report, the Inspector would not be able to determine if the Grassy Trail Reservoir and embankment is being impacted by mining activity.” The assessment does not address the RB&G reports or state how UEI created difficulties for inspectors that may have resulted in a delay or obstruction. Further, the penalty determination disregards the fact that there is no mining activity at West Ridge. The penalty is not an “event” violation. Further, no environmental damage resulted from the minor infraction. To the extent that the Division

¹ Utah Admin. Code R645-401-321.100.

² R645-401-312.

³ R645-401-322.300

considers failure to submit data a “hindrance to enforcement,” the hindrance is a minor, unintentional paperwork violation. The Division should not assess more than 4 points.

C. UEI’s Alleged Violation Was Not Knowing, Intentional or Reckless and Does Not Warrant A 16 Point Penalty Aggravation for Negligence.

Pursuant to R645-401-323.130 between 16-30 aggravation points may be assessed for violations that are “knowing, intentional or reckless, wherein the permittee takes some action that knowingly causes or does not prevent violation.” Here, the Division determined that a 16 point aggravation was appropriate because UEI was not a “prudent operator and should be aware that monitoring helps protect him in the case of an event.” The Division does not allege, and cannot demonstrate, that UEI’s alleged violation was reckless, knowing or intentional.

Again, UEI does not agree that the facts alleged in the NOV warrant a violation. The mine is not operating, UEI has asked that monitoring cease, and UEI maintains that seismic monitoring while the mine is inactive is not required. Still, even if the Division was to construe the requirement as applying at this time, the alleged violation does not merit a 16 point aggravation reserved for “knowing, intentional or reckless violations.” UEI continued to require RB&G to prepare reports and the latest updates were provided by RB&G to DOGM on August 30, 2016. UEI did not knowingly withhold information and was not reckless in not providing the information to the Division. The omission by UEI’s contractor was inadvertent. In accordance with R645-401-323.110, the Division is not permitted to assess any points where noncompliance stems from inadvertence. The Division should not aggravate the penalty based on negligence.

D. The Division Did Not Consider UEI’s Good Faith in Rapidly Mitigating the Violation.

The Division is required to subtract points based on the degree of good faith of the permittee.⁴ In an easy abatement situation, one in which the operator has on-site resources necessary to achieve compliance, rapid compliance should be awarded between -1 to -10. Here, UEI immediately addressed the Division’s concerns. The NOV terminated on the same date it was issued, September 15, 2016. On October 26, 2016, RB&G submitted an updated report to DOGM, and submitted information demonstrating that UEI was coordinating with the Department of Natural Resources to ensure that any seismic activity, including non-mining related activity in the area does not pose a risk to the Grassy Trail Dam. UEI exercised good faith by mitigating the alleged violation and should be awarded credit for doing so of up to -10 points.

Although UEI is not contesting the fact of the violation, UEI maintains that given the limited scope of the violation, and the factors discussed above, the violation does not warrant any penalty. This violation was not a serious violation, and was one that stemmed from an

⁴ Utah Admin. Code R645-401-324.

Associate Director Dean

November 10, 2016

Page 4

inadvertent failure to submit periodic reports that were required during mining operations. Because mining operations have been temporarily halted at the mine, the paperwork violations caused no environmental harm. Nevertheless, UEI continues to monitor seismic activity regardless of the mine's operational status and is ready to mitigate impacts of any potential seismic activity that may be detected.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "David Hibbs". The signature is written in a cursive style with a large, stylized "D" and "H".

David Hibbs

DH/mkm