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

ACT/015/007
#2

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August 15, 1995

TO: Joe Helfrich, Permit Supervisor *JGH 8/17*
FROM: Wm. J. Malencik, Reclamation Specialist *WJM*
RE: Permit Transfer, Hidden Valley Mine, Hidden Valley Coal Company, ACT/015/007, Folder #2, Emery County, Utah

There has been considerable informal discussion on whether or not the proposed transfer can be approved in light of the current outstanding NOV and, moreover, the permittee not meeting all commitments and obligations in Hidden Valley's current permit/MRP.

The coal rules provide:

Item (1) R645-303-340

The above coal rule language, "may allow a permittee to transfer." This clearly points out that transfers are discretionary; approved under certain circumstances and not under other circumstances. Finding must be made to show permittee is eligible to receive a permit under R645-300-132 and R645-300-133. It is axiomatic that unfulfilled permit matters (MRP) and outstanding compliance matters concerning the transferor need to be resolved before a transfer can be approved. Such standards applied consistently to both transferor and transferee seem only reasonable and logical and couched in discretionary authority (See item 4 herein).

In view of the foregoing, items 2, 3, & 4 have equal application to both the transferor and transferee.

Item (2) R645-300-132 Review of Compliance

132.110 "proof current violation has been or is in the process of being corrected to satisfaction of the Division who has jurisdiction over the violation."



Item (3) R645-300-133 Written Findings

133.100 "applicant has complied with all the requirements of the state program."

Item (4) R645-303-343

"meet other requirements specified by the Division."

I believe the Division loses all leverage when the permit is transferred and would have to seek court action to effect the NOV abatement. Seeking court relief in light of court records does not appear advisable for obvious reasons.

After considering all available information, recommend the following:

- I. The transfer be approved when the permittee fulfills all MRP commitments and abates the current outstanding violation. This can be done by seeding the disturbed areas outlined in the outstanding violation by the transferor or transferee. The burden rests with Hidden Valley Coal Company to either seed the area themselves or do the necessary coordination to get a commitment from the transferee, in writing, that the transferee will perform the necessary work to meet the MRP commitment. This will provide a basis for reducing to writing necessary findings relative to processing the transfer.

- II. The Director sent a letter to Hidden Valley Coal Company with a copy to Consolidated Coal Company notifying the permittee of requirements needed to posture the transfer application for further adjudication by the Division. This is consistent with items 3 & 4. Our case records are silent on what is required to effect a transfer on the instant case; however, what has been verbalized maybe subject to interpretations and misinterpretations. Therefore, it is imperative that a letter spell out what will be required so this is not a matter of conjecture among all parties who have a stake in the outcome.

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In summary, in addition to the routine permit requirements, two fatal transfer impediments exist, unless resolved, each by themselves should result in disapproval of the permit transfer to-wit:

- (1) A significant permit/MRP permittee commitment remains outstanding, and
- (2) An outstanding violation is on record without any on the ground work taking place at this time. The abatement date is September 29, 1995.

sd
cc: Files
Jim Carter
Lowell Braxton
Daron Haddock
Pam Grubaugh-Littig