

Internal OK
2/18/2008

From: Mary Ann Wright
To: John Baza
Date: 1/18/2008 2:39 PM
Subject: Emery Deep request for extension

CC: Angela Nance; Jo Ogea; Pam Grubaugh-Littig
 John - Some points worth commenting upon in the Consol extension request letter.

1. *"which by the way, is purely an administrative issue. To date, no physical work has been either required or been requested to satisfy the NOV, indicating to us that there is no pending environmental harm."*

This is not purely an administrative issue. The NOV was written because a 37,000 CYD pile exists on the ground and does not meet engineering and hydrology criteria under the coal rules. The NOV abatement requires - specifically- that work be done on the ground - in EITHER option 1 or 2.

2. *"The NOV was issued by Karl Houskeeper on June 14, 2007. As you can imagine, this summer we had a very difficult time finding engineering firms to work on the amendment application because all mining-knowledgeable engineering firms in the UT coal regions were working at Crandall Canyon."*

As noted in their own text the NOV was written June 14, 2007. Crandall Canyon became an issue on August 6, 2007. That is a 7 week time span. Also, Consol's difficulty in finding an engineering firm to work on the NOV due to Crandall Canyon does not make sense. Earthfax Engineering does essentially all of Emery Deep's consulting work. They could likely have provided the surveying and technical expertise to handle this NOV.

3. *"Also important to note is that John Gefferth has previously requested extensions to this NOV as well as requested abatement of the NOV with conditions. But John was told no by Pam Grubaugh-Littig..."*

Extensions were granted. That is how we got to the end of 90 days. It should be clear from the way that the NOV was drafted that OGM is not here to tell operators how to conduct their business. However, their business does need to be conducted in accordance and compliance with the coal rules.

4. *"Consol has provided requested information to DOGM yet each time DOGM sent us new requests for additional data not previously requested."*

Consol has changed back and forth about how they wanted to address the issue. They also state that they "remain committed to upgrading the Emery permit to current standards," yet their response to the NOV did not update the waste disposal plan accordingly, and therein lies the problem. The Division worked diligently to specify how the plan was inadequate, which resulted in deficiencies "too numerous to mention."

Also, Consol makes the argument that the Division was essentially pulling "requests for additional data" out of thin air. The Division's deadline for review during this last go round was January 9th, 2008. Since there was only one day remaining to resolve the NOV, OGM e-mailed early reviews of each discipline as they were completed. In trying to assist an operator, it has been characterized as if OGM was being overbearing.

CC Emery Deep file - compliance

Mary Ann Wright

Associate Director, Mining
 Utah Division of Oil, Gas and Mining
 801-538-5306