0051

File Copy - UP&L
Co. Cottonwood Portal
Exploration

RECEIVED
FEB 19 1980
STATE OF UTAH
Division of Oil, Gas & Mining

Public Lands Institute

Incorporated

1740 High Street, Denver, Colorado 80218
Telephone 303-388-4171

OSM
Cc FEB 8 1980
Delivered in Pat. So
By Carolyn John
16 days is Mon.
25 Feb. 80

#6

CITIZEN REPORT OF VIOLATIONS

Mr. Donald Crane, Regional Director
Office of Surface Mining, Region V
1020-15th Street
Denver, Colorado 80202

February 8, 1980

Dear Mr. Crane:

We have gathered information on the activities of Utah Power and Light in Cottonwood Canyon which indicates that numerous and serious violations of 30 CFR 700 and the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87) have occurred. The operations are located at the company's proposed portal site in Emery County, Utah, in Cottonwood Canyon along the public gravel road about 4 to 5 miles from the oiled road at the mouth of the Canyon. As your office is aware, the site has not been approved for a portal and has been questioned by the Forest Service and the Cottonwood Creek Livestock Association.

By this letter the Public Lands Institute and Mr. Edward S. Crawford, a nearby landowner and PLI member, are requesting OSM to inspect the area according to 30 CFR 721.13. We request a complete inspection of the site due to the number and seriousness of the potential violations. Our allegations of these violations are attached.

Our information is based on a site visit and a review of the files on the company contained in the Office of Surface Mining. On his February 5 site visit, Mr. Crawford took photographs which are not developed yet.

We request to be notified of your decision of whether to conduct an inspection or your reasons if you decide no inspection is necessary (30 CFR 721.13(c)). If an inspection is conducted, please notify both Mr. Crawford and Ms. Johnson as to the date so we may choose whether to exercise our right to accompany the inspector according to 30 CFR 721.13(b)(1).

We wish to cooperate with you in any way we can, so please contact us for any additional information or clarification you may need.

Respectfully submitted,

Edward S. Crawford (CRJ)

Edward S. Crawford
1809 Yalecrest Avenue
Salt Lake City, Utah 84108
801/582-4092 (home)

(Early morning or after 5:30 p.m. on workdays or throughout weekends)

Carolyn Ruth Johnson

Carolyn Ruth Johnson
Mining Project Director
Public Lands Institute
1740 High Street
Denver, Colorado 80218
303/388-4171 (office)
303/777-0557 (home)

ALLEGATIONS

1. Utah Power and Light has excavated the face-up and constructed a bench at the proposed mine portal site prior to an OSM decision on the company's mining and reclamation permit application. Face-up and development of the portal site are activities described in the application. The company does not have a State mining permit as required by 30 CFR 710.11(a)(2).

   The Utah Division of Oil, Gas, and Mining approved the company's "Exploration Plan" on October 18, 1979. Utah Power and Light's activities at the site are mining activities -- not exploration. Among our reasons for this contention are these:

   - The existing conditions of the coal, overburden and associated features at the site are so well known to Utah Power and Light as to the extent, nature, and quality that a reasonable person would conclude that there is sufficient reliable information on which to develop and operate a mine. The company has decided to mine and, thus, made application for a mining permit to OSM on September 17, 1979. The application proposes a portal on this site. These existing conditions are described in detail in the multi-volume mine plan application now pending before the Office of Surface Mining. This information's reliability is attested to by the company's expenditure of millions of dollars to devise a mine plan for the Cottonwood portal of the Wilberg mine and to devise plans to construct and operate the Units 3 and 4 of the Emery power plant, which would use the coal.

   - Exploration of coal deposits, overburden and associated features does not require the amount and severity of disturbance that has occurred at this site; only preparation for mining does. Approximately 7.5 acres have been disturbed. Information on "rock slopes, soil conditions and slope stability" which the company purports to want to obtain (Section 2.0, Exploration Permit Application) over a year's time (Section 2., ibid) can be obtained by methods that are far less destructive, and probably at less expense and in shorter time, than blasting and shoving the side off a mountain, as the company has done. For example, drill pads for drill rigs are made on a leveled area of no more than 200 by 100 feet -- far less than 7.5 acres.

   - Plans for developing the portal match the activities which have taken place to date. For example, comparison of Exhibit 2 of the Exploration Permit Application with the layout diagram on p. 1-21, Final Environmental Statement, Emery Units 3 and 4 show that the extent and location of disturbance shown in the two illustrations matches.

   - The company's Exploration Permit Application does not present any evidence that any or only exploration activities would take place. The Application does not specify how the information will be collected, what equipment will be used to collect it, a schedule for collection nor any explanation of why the information is necessary.

-The type of disturbance fits the usual definitions of mining. Mining activities are defined as including "development of...a mineral deposit"(UCA 40-8-4(6)) in the Utah Statute governing exploration. The definition in the Surface Mining Control and Reclamation Act (Sec. 701(28)) includes such activities as "gaining access to the site, and excavations, entryways, and overburden piles." The work at the site will be used in mining, and the company states "the exploration portal will remain to facilitate the future mining operations under an approved mining permit." (Exploration Permit Application, Section 2.4.)

2. The company has disturbed land within 100 feet of the outside right-of-way of the Cottonwood Canyon Road, a public road. Sec. 522(e)(4) of P.L. 95-87 prohibits this disturbance unless certain requirements have been met. There is no evidence that the regulatory authority has given public notice and had a public hearing in the locality and issued a written finding that the interests of the public and the landowners affected are protected. (See also allegations 3, 6, and 8, as to the effects of the disturbance on the road. Mr. Crawford is a landowner in the locality and the road provides the only year-round access to his property.)

3. We believe that the company's activities have resulted in conditions which could reasonably be expected to cause substantial physical harm to persons, and that a rational, informed person would not expose himself to the condition (30 CFR 700.5). The activities have resulted in large boulders on the face of the outslope and boulders overhanging the road about 100 yards below the beginning of the outslope. The boulders in both locations could roll down on persons driving or walking on the public road immediately below the outslope. There is evidence that boulders have rolled and bounced into and across the road from the outslope and broken the limbs of trees and shrubs. We do not have the resources to present technical evidence on the danger and we ask that OSM examine the conditions.

4. We believe that the company's activities have resulted in significant imminent environmental harm to land and water resources. The activities have resulted in uncontrolled drainage leaving the affected area and entering the creek, over seven acres of seriously disturbed land and associated effects. This harm does not appear to be "immediately reparable" (30 CFR 700.5, definition, iii). We do not have the resources to present technical evidence on the harm and we ask that OSM examine the conditions.

5. No identification signs are displayed according to the requirements of 30 CFR 717.12(a) and (b).

6. The bench area is constructed on a steep slope of more than 20 degrees and material has been dumped on the downslope in violation of 717.14(c). From Exhibit 2 of the Exploration Permit Application we computed that the natural slope was 34.5 degrees and the slope of the outslope was 45 degrees. Approximate original contour has not been achieved according to 30 CFR 717.14(a). Large boulders and rocks have rolled down the bench slope onto the road and into the side of the road and others are on the slope, some resting against trees. As evidence, please see the sequence of photographs taken on December 7, 1979 by the Office of Surface Mining. A Xerox copy is enclosed.

7. Operations are not being conducted to minimize disturbance to the water (30 CFR 717.17).

8. All surface water drainage from the disturbed area, including the bench outslope, is not passing through a sedimentation pond (30 CFR 717.17(a)). There are no apparent ditches or diversion structures. On the date of Mr. Crawford's visit the water was draining from the outslope onto the public road, causing axle-deep mud and near-impassable conditions. From the road, the muddy water was running into Cottonwood Creek, a perennial stream and a fishery (FES, Emery Units 3 and 4, Table 2-3, p. 2-12).

9. There is no evidence that a surface-water monitoring program of all discharge from the disturbed area is taking place according to all the requirements of 717.17(b). Since there was no apparent attempt to direct or divert surface water and it was running over the road and into the creek at several locations, monitoring and reporting of the quality of all water drainage obviously is not occurring.

We request that the Region V Director immediately investigate the following allegation, which is not appropriate for site inspection.

10. <u>The requirements of the National Environmental Policy Act have not been met.</u> Our reasons for alleging this include, among others:

    -No environmental analysis has been or is being prepared on either the company's activities at the site or the mine permit application pending before OSM (40 CFR 1502.5(b)). The regulations require preparation to begin immediately.

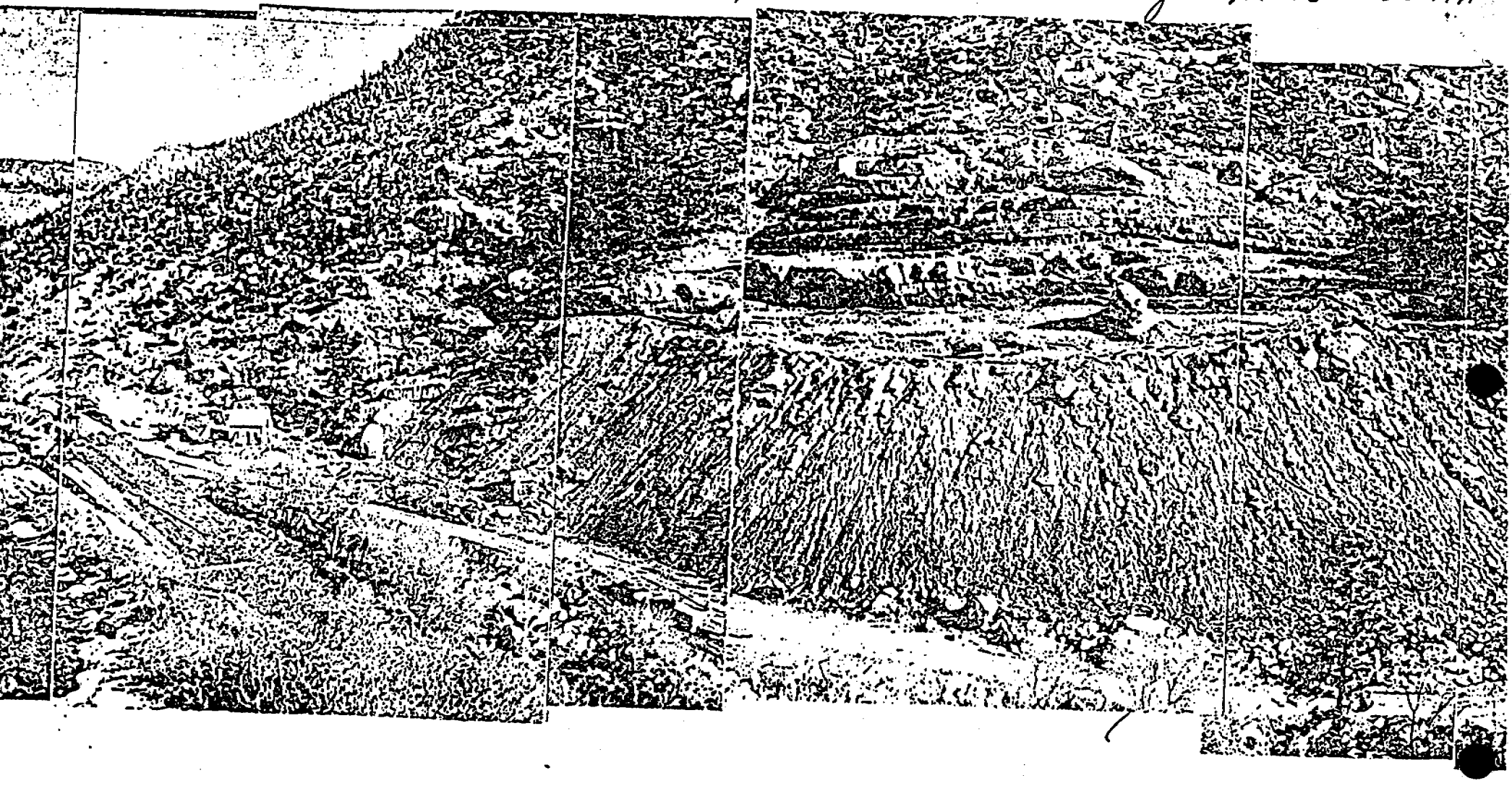
    -A Final Environmental Statement was completed on Emery Units 3 and 4 which also purported to cover the mine. It stated that mining plans had not been submitted to OSM and the U.S. Geological Survey for approval (p. 1-19) and, thus, the mine plan is not analyzed. It does not address the activities which have taken place to date. It states that both Federal and State authorizing actions are needed before activities take place at the portal (p. 1-63, 1-67) and makes a commitment that the company will obtain all necessary approvals and permits.

    -The Office of Surface Mining did not promptly notify Utah Power and Light that it would take action to insure that the objectives and procedures of NEPA are met when OSM became aware of the Exploration Permit Application and activities at the site. This is required under 40 CFR 1506.1. The activities at the site do have adverse environmental impacts and may limit the choice of reasonable alternatives, for example another portal site.

<u>Other Problems</u>

These problems may be violations and should be checked. We are unable to determine how they are regulated.

a. The disturbed area appears to be within 100 feet of Cottonwood Creek, a perennial stream.

b. Rocks from the bench appear to have rolled or have been pushed down the outslope, across the road and into the creek. We are not certain if the provisions of 30 CFR 717.17(d) apply but some regulation should prevent damage to streams.

Dec 7, 1979 Cottonwood Canyon Mine UTAH