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Outgoing
C/015/0025

State of Utah
DEPARTMENT OF NATURAL RESOURCES

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Executive Director

Division of Oil, Gas and Mining

JOHN R. BAZA
Division Director

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Governor

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Lieutenant Governor

December 24, 2008

Elliot Finley, Registered Agent
Hiawatha Coal Company
P.O. Box 1240
Huntington, Utah 84528

Subject: Bear Canyon Mine Permit Transfer, C/015/0025

Dear Mr. Finley:

The Division notified you, via email, on November 20, 2008 that you needed to provide specific information regarding your permit transfer application by December 1, 2008 or the Division may be required to issue a Cessation Order for the mine. You provided everything on December 1, except appropriate performance bond coverage in an amount sufficient to cover the proposed operations (see R645-303-323, R645-301-800). At the time you indicated the surety company was processing the paperwork and it might take an additional two weeks to complete. To date we have not received any assurance that Hiawatha Coal Company will be able to provide a bond for the Bear Canyon Mine.

To further complicate matters, Hiawatha Coal Company has apparently been operating the Bear Canyon Mine since June without waiting for approval of the permit transfer in violation of R645-303-310. Though you applied for a permit transfer in July, we have made you fully aware that we cannot process the transfer without be provided all of the required information and performance bond coverage. In addition, we were advised in July that our approval required approval of the bankruptcy court. We have since been advised by the bankruptcy trustee appointed by the court that they object to the transfer to Hiawatha and that the permit is still under the control of C.W. Mining. [1]

Hiawatha's continuation of mining operations without a surety and without approval is a continuing violation of R645-303-323 and R645-303-310. Hiawatha is subject to a Cessation Order under R645-400-310 and 312 and subject to penalties under R645-401-400 for each day of the violation.

Unless a complete performance bond as required by R645-303-342 and R645-301-800 has been submitted by the end of the day on January 8, 2008, Hiawatha will be served with a cessation order for all mining operations at the Bear Canyon Mine, in addition to the pending liability for penalties for continued operations in violation of the rules.

If you have any questions, please call me at (801) 538-5334 or Dana Dean at (801) 538-5320.

Sincerely,

John R. Baza

John R. Baza
Director

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[1] When it became apparent to the Division that, contrary to our prior understanding, mining operations were being conducted by Hiawatha without approval of the permit transfer and prior to transfer of the bond, you were advised that the extension of a brief amount of time to comply with the transfer rules was being granted but that this extension of additional time was given without waiver of the right and obligation of the Division to assess penalties for the violation. The urgency of the matter was made clear to you. The Division is *required* by R645-400-310 to "immediately issue" a Cessation Order if it finds any violation of the State program which can reasonably be expected to cause significant, imminent environmental harm to land, air, or water. R645-400-312 provides that coal mining operations conducted without a valid permit constitutes a condition or practice which can reasonably be expected to cause significant imminent environmental harm unless such operations are an integral uninterrupted extension of previously permitted operations and the person conducting such operations has filed a timely and complete application for a permit to conduct the operations. Hiawatha's mining without written approval of the permit transfer in violation of R645-303-310, and the failure to provide a complete application for transfer and transfer of the bond is a violation of R645-400-312 and as such requires issuance of a Cessation Order.

JRB/DD/SA/sas
cc: OGM Coal
Daron Haddock
Dana Dean
Steve Alder
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