

HIAWATHA COAL COMPANY

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Daron R. Haddock
Utah Division of Oil, Gas & Mining
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P.O. Box 145801
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March 11, 2009

Re: **Chapter 8 Update, Included- Bond estimate, Task ID#3216**

Dear Mr. Haddock:

Hiawatha Coal Company is requesting that the Division revisit our application concerning the Bond calculation. In your letter dated February 26, 2009, the Technical Memorandum states several items that are of a concern. These concerns are outlined below:

1. On page 2, paragraph 4; it states "The Division technical directive are none binding documents that are used as guidelines by the Division and coal operators." If this directive is non-binding, then why does the Division adhere to it in determining their calculation of bond estimates? If a resource is to be utilized as a standard then fine, but we should use it as it is meant to be used and not ignore portions of it because the Division wants to insure an operator is not under bonded. This is not the way it was intended to be used.
2. On page 2, paragraph 5, it states "Historically, the site construction regional factor for Utah cities is within 2% of the national average." This is only true for the materials costs listed. The weighted average which also includes labor is between 84.9% and 87.8% for the cities not including Price, which is 77.6%. These are not within the 2% of the national average as discussed in this paragraph.
3. On page 3, paragraph 2; it states "*If wage rates in your area vary from those used in this book, or if the rate increase are expected within a given year, labor costs should be adjusted accordingly.*" This is exactly our argument, as we do not agree that the *Labor Rates* are in line with our area. Our area being Carbon/Emery County Utah.
4. On page 4, paragraph 2; it states "The City Cost Indexes were based on to use a multiplier that weighted with electricians, plumbers carpenters.... Ect. to adjust the wages rates of equipment operators and truck drivers will not result in a number that the Division could use for estimating reclamation costs." Is this not what the Division is already using by using the numbers provided within the RSMeans book. All the numbers are calculated the same. The difference is that the site indexes were not used in adjusting the costs to reflect our area.
5. Last page, Findings, this is the same argument that is discussed in item #2 above. The indexes ARE not within 2% rather closer to 15-23% depending on which area you look at. If they are higher for 2009, I doubt they will vary too much from 2008. 2% on a

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million dollars is \$20,000, 18% on that same million is \$180,000. This is significant and should be addressed. If the Division found a difference of 18% would they not address it?

The bond estimate that was submitted with the Chapter 8 update, applied the site index for price. We believe this should be used or we apply the Davis-Bacon rates to the labor. If this becomes necessary then it would only complicate the estimate as we are agreeable to the labor rates that RSMean offers when utilizing the site indexes.

The methodology outlined in the OSM handbook for calculation of reclamation bond estimates, Page 8, states, "because all contracts awarded by OSM to reclaim lands for which it is the regulatory authority are direct Federal contracts, labor costs must reflect Davis-Bacon rates as established by the Department of Labor." In the event that any coal operator who defaults on reclamation, that reclamation project will be a federally funded or assisted project. Given that fact, the reclamation project will then fall under 29CFR 1.5 and 1.6(b). It is the responsibility of the federal agency that funds or financially assists Davis-Bacon covered construction projects to ensure that the proper Davis-Bacon wage determination(s) is/are applied to such construction contract(s).

Davis-Bacon gives rates for our area (Carbon County, Utah, Heavy, General Decision # UT20080069) which we believe can be used to justify that the national average labor rates currently being used by the Division do not reflect the rates that will be used in our area. By using the site index provided in RSMean for Price, these rates will more closely reflect what the current Davis-Bacon wage rates for Carbon County, Utah.

There were other problems with the Calculations that were addressed in our submitted estimate that did not apply to the cost index in RSMean. For example, in the Demo estimates, there were a couple of volume estimates that were left in cubic feet and charged at a cubic yard rate. This is an increase in costs for those areas of a factor of 27. We don't believe that the estimate was scrutinized to determine all the differences that were applied to Hiawatha's estimate versus the Division's estimate.

If you have any further questions concerning this submittal, please feel free to contact me at (435) 687-5777.

Sincerely,

A handwritten signature in black ink, appearing to read "Cliff Baker", with a long horizontal line extending to the right.

Cliff Baker
Environmental Coordinator