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Protecting Utah • Protecting You
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Chief Deputy

Denise A. Dragoo
Snell & Wilmer
Beneficial tower
15 West South Temple #1200
Salt Lake City, UT 84101

Re: Basis for requiring the type and amounts of chemicals and other details regarding the treatment of Crandall Canyon Mine discharge waters

Dear Denise:

The Division in its pre-hearing briefs has set forth in substantial detail the Division's argument based on the applicable statutes and rules that the operator is required to demonstrate that mining will not result in degradation or contamination of water quality, or adversely impact the hydrologic balance; and that when it appears that there is a likelihood that unanticipated gravity discharge of mine waters will require treatment to satisfy water quality standards after mining ceases; then bonding for the costs of the treatment is required. Assuming the Board agrees, it is obviously reasonable and necessary to require details of treatment system (equipment, chemicals, rates of use, and operational expenses) to verify costs used to estimate the amount of the bond.

Even if this information is not required to calculate a bond amount, it will nevertheless be needed to address other requirements of the rules. I will list a few of the most direct examples.

1. The Operator must provide as part of the approved Operation Plan, a hydrologic protection plan. Such a plan cannot ignore the treatment facilities and must consider the risks to water quality associated with any failure of the water treatment system, ("The plan will include the measures to be taken to: avoid acid or toxic drainage; prevent to the extent possible using the best technology currently available, additional contributions of suspended solids to stream flow; provide water treatment facilities when needed; and control drainage." R645-301-731). The Operator is required as part of the plan to provide any additional information as requested by the Division that is necessary to assure that material damage is prevented. (The Division may

require additional preventative, remedial or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented, R645-301-731).

2. Similarly the PHC (R645-301-728) requires the operator to evaluate the potential impacts from toxic materials (728.320), sediment yield (728.331), and total dissolved solids and other water quality parameters (728.332). The need to verify and evaluate these determinations justifies disclosure of the type and amount of treatment chemicals. The information is needed for these enumerated concerns, but it also may be required under the need to address other issues the Division identifies as necessary. (728.335)

3. The Surface Water Protection Plan also requires details that address the risks damage to surface water quality. (Surface-Water Protection. In order to protect the hydrologic balance, coal mining and reclamation operations will be conducted according to the plan approved under R645-301-731.120.) Review of the types and amount of chemicals, the rates of treatment and flow and the amount of solid and other wastes generated as part of a water treatment system is a reasonable part of surface water protections plan subject to the approval of the Division. (“If drainage control, restabilization and revegetation of disturbed areas, diversion of runoff, mulching or other reclamation and remedial practices are not adequate to meet the requirements of R645-301- 731.100 through R645-301-731.522, R645-301-731.800 and R645-301-751, the operator will use and maintain the necessary water treatment facilities or water quality controls.”)

4. The revised Water Monitoring Plan required for the permit (731.220), requires that the Division know what chemicals and amounts are being used as part of the treatment system. This information together with the PHC determination will be needed to determine if a proper monitoring plan is proposed that will consider any risk from treatment chemicals that may have a potential to adversely affect the surface water quality.

5. The water treatment facilities are also required to meet the design requirements of 742.232 for Other Treatment Facilities which requires that the treatment system be built in accordance with the requirements for sedimentation ponds at 742.220. These rules require information on the periodic rate of sediment removal (742.221.36); and the capacity of sediment storage, which depends on the details of the treatment process and rates of produced wastes.

Finally it should be noted that the Coal Act itself provides substantial discretion to the Division to set the requirements to meet the performance standards of the Act. Under the circumstances of an unanticipated polluttional discharge, the Division is well within its discretion to set requirements for information required for the treatment facility and the evaluation of the components of such process. (Utah code § 40-10-17(1)).

Your cooperation in providing the information would be helpful in making an accurate and thorough evaluation of the potential impacts from the mining operations needed to approve the permit modification.

Sincerely,

A handwritten signature in blue ink, appearing to read "Steve", is positioned above the printed name.

Steve F. Alder
Assistant Attorney General