

C/015/032 Incoming  
cc: Dana, Steve A.  
Steve C, Daran, PFO

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# United States Department of the Interior



OFFICE OF SURFACE MINING  
Reclamation and Enforcement  
Western Region Office  
1999 Broadway, Suite 3320  
Denver, CO 80202-3050

DEC 7 2012

RECEIVED  
DEC 10 2012  
DIV. OF OIL, GAS & MINING

Dana Dean  
Division of Oil, Gas and Mining  
1594 West North Temple  
Salt Lake City, UT 84116

Dear Ms. Dean,

Enclosed you will find Ten Day Notice (TDN) #X12-140-933-001. TDN's are the Office of Surface Mining Reclamation and Enforcement's (OSM) mechanism by which we bring potential violations to your attention. This TDN pertains to the inadequate performance bond held for the Crandall Canyon mine.

On November 9, 2009, we issued a similar TDN to you. TDN #09-142-182-002 identified a potential violation of R645-301-812.700: failure to maintain adequate bond at all times. You responded on November 23, 2009 by issuing Division Order 9A (DO-09A) which required Genwal Resources, Inc. (Genwal), permittee for the Crandall Canyon Mine, to post a bond sufficient to cover the costs of funding ongoing and continual treatment of pollutional mine discharge water. By letter dated December 3, 2009, we found that DO-09A constituted Appropriate Action in accordance with 30 CFR 842.11(b)(1)(ii)(B)(3) to cause the potential violation to be abated, and we terminated that TDN. DO-09A was subsequently revised and Genwal challenged the Division Order to the Board of Oil, Gas and Mining (the Board). By letter dated December 23, 2010, we revoked our termination of the TDN because adequate bond had not yet been posted. You continued to pursue adequate bond coverage through revised Division Orders and the Board process. By letter dated October 17, 2011, we terminated the TDN and developed Action Plan #UT-2012-001 to monitor the situation and assure successful resolution of the inadequate bond. The Action Plan mirrored the requirements and steps set forth in Division Order 10A (DO-10A) as revised on June 20, 2011.

The Board ruled on the Crandall Canyon Mine bond issue on March 6, 2012. The March 6<sup>th</sup> Board Order vacated and amended significant portions of DO-10A and required that only three years worth of operating expenses based on the permittee's costs (\$720,000) be posted to the bond. The Board Order did not comport with the criteria for resolution set forth in Action Plan #UT-2012-001 which was based on DOGM taking appropriate action to cause the violation to be corrected under the previous TDN. Accordingly, the Board Order was in error in that it failed to fully explore and recognize the programmatic requirement for a bond sufficient to cover the regulatory authority's costs to assure completion of all current liabilities associated with the permitted reclamation plan. This requirement is part of your approved Program under the Surface Mining Control and Reclamation Act at UCA 40-10-15(1) and UAC R645-301-830.200. Because it is not possible to determine with any scientific certainty that the duration of

pollutional discharge will be limited to three years, and water treatment must continue unless and until discharge ceases or water quality improves to within UPDES effluent limitations, liability for long-term water treatment must be addressed in the permitted reclamation plan for the Crandall Canyon Mine.

We recognize that the Board, rather than the Division, determined the increase in bond amount. However, the March 6<sup>th</sup> Board Order does not meet the criteria for good cause for failure to take action under 30 CFR 842.11(b)(1)(ii)(B)(4)(iv). That part provides that good cause exists for failure to correct a violation where the State regulatory authority is precluded by an order from an administrative body from acting on the possible violation where that order is based on the violation not existing. While the Board's Order precludes the Division from taking appropriate action on the violation, it does not do so on the basis that the violation does not exist. To the contrary, the Board found that a violation of R645-301-830.200 does exist. Therefore, the criterion of § 842.11(b)(1)(ii)(B)(4)(iv) for such "good cause" cannot be met. Because our original TDN has been terminated, we are not making a determination under 30 CFR 842.11(b)(1)(ii)(B)(1). Instead, we are issuing a new TDN which reflects the current situation. In accordance with 30 CFR 842.11(b)(1)(ii)(B)(1), please respond to the potential violation within 10 days. If you choose not to respond, such inaction will not prevent OSM from making a determination as described below and will constitute a waiver of your right to request review of our determination under 30 CFR 842.11(b)(1)(iii).

After receiving your response, we must determine in writing whether the standards for appropriate action or good cause for such failure have been met. An action or response that is not arbitrary, capricious, or an abuse of discretion under the state program shall be considered "appropriate action" if it causes a violation to be corrected or "good cause" if it shows valid reason for failure to take such action.

If you have any questions or require more than ten days to respond please contact me at (303) 293-5012 or [kwalker@OSMRE.gov](mailto:kwalker@OSMRE.gov), or Christine Belka of my staff at (303) 293-5020 or [cbelka@OSMRE.gov](mailto:cbelka@OSMRE.gov).

Thank you,



Kenneth Walker, Chief  
OSM, Denver Field Division

Attachment

Cc: David Hibbs, UtahAmerican Energy

UNITED STATES DEPARTMENT OF THE INTERIOR  
Office of Surface Mining  
Reclamation and Enforcement

**TEN-DAY NOTICE**

Number X12-140-933-001 TV 1

Originating Office: Denver Regional Office  
US DOI, Office of Surface Mining  
1999 Broadway, Suite 3320  
Denver, CO 80202

Telephone Number: (303) 293-5000

Ten-Day Notice to the State of **Utah**

You are notified that, as a result of File Review (e.g. a federal inspection, citizen information, etc.) the Secretary has reason to believe that the person described below is in violation of the Act or a permit condition required by the Act. If the State Regulatory Authority fails within ten days after receipt of this notice to take appropriate action to cause the violation(s) described herein to be corrected, or to show cause for such failure and transmit notice of your actino to the Secretary through the originating office designated above, then a Federal inspection of the surface coal mining operation at which the alleged violation(s) is occurring will be conducted and appropriate enforcement action as required by Section 521(a)(1) of the Act will be taken.

Permittee: GENWAL COAL CO., INC.

*(Or Operator if No Permit)*

County: EMERY

Mailing Address: P. O. BOX 910, , EAST CARBON, UT 84520

Permit Number: UT-015-032

Mine Name: CRANDALL CANYON # 1

- Surface  
 Underground  
 Other

**01 NATURE OF VIOLATION AND LOCATION:**

**Failure to secure bond sufficient to assure completion of the reclamation plan if the Division must perform the work in the event of forfeiture: long-term water (Fe) treatment liability, noth portal.**

Section of State Law, Regulation or Permit R645-301-830.200  
Condition believed to have been violated:

**NATURE OF VIOLATION AND LOCATION:**

Section of State Law, Regulation or Permit  
Condition believed to have been violated:

**NATURE OF VIOLATION AND LOCATION:**

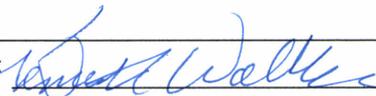
Section of State Law, Regulation or Permit  
Condition believed to have been violated:

**Remarks or Recommendations:**

**Please see the attached cover letter for an explanation of the issues regarding this TDN.**

Date of Notice: **12/07/2012**

Signature of Authorized Rep.:



Print Name and ID: **Ken Walker ID# 933**