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State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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June 15, 1994

Cy Eardley
2433 South Highway 10
Price, Utah 84501

Re: Concern, Convulsion Canyon Mine, Southern Utah Fuel Company,
ACT/041/002, Folder #2, Sevier County, Utah

Dear Mr. Eardley:

Pursuant to our telephone conversation today, I am enclosing the rules (R645-400-200 through R645-400-243) in the Utah Coal Regulatory Program relative to the the mechanism to raise a concern to the Division in regard to coal mining. I have also enclosed the rules about public participation in permit processing (R645-300-120 through R645-300-124.330).

If you have any questions, please call me.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Pamela Grubaugh-Littig'.

Pamela Grubaugh-Littig
Permit Supervisor

Enclosure

cc: Lowell Braxton
Joe Helfrich



bond so that they are conveniently available to residents of that area, except:

- 142.100. As otherwise provided by federal law; and
- 142.200. For information not required to be made available under R645-203, R645-300-124 or R645-400-144.
143. The Division will ensure compliance with R645-400-142 by either:
- 143.100. Making copies of all records, reports, inspection materials, and other subject information available for public inspection at a federal, Utah or local government office in the county where the mining is occurring or proposed to occur; or
- 143.200. At the Division's option and expense, providing copies of subject information promptly by mail at the request of any resident of the area where the mining is occurring or is proposed to occur. Provided, that the Division will maintain for public inspection, at a federal, Utah or local government office in the county where the mining is occurring or proposed to occur, a description of the information available for mailing and the procedure for obtaining such information.
144. In order to protect preparation for hearings and enforcement proceedings, the Director of the Office and the Division may enter into agreements regarding procedures for the special handling of investigative and enforcement reports and other such materials.
150. **Public Participation.** The State Program provides for public participation in the enforcement of the State Program in R645-400-200, R645-400-300, R645-401, and the Board's Procedural Rules.
160. **Compliance Conference.**
161. Compliance conferences between a permittee and an authorized representative of the Division are provided for and described in R645-400-162 through R645-400-165.
162. A permittee may request an on-site compliance conference with an authorized representative of the Division to review the compliance status of any condition or practice proposed at any coal exploration or coal mining and reclamation operation. Any such conference will not constitute an inspection within the meaning of UCA 40-10-22 and R645-400-130, or any applicable permit or exploration approval.
163. The Division may accept or refuse any request to conduct a compliance conference under R645-400-162.
164. The authorized representative at any compliance conference will review such proposed conditions and practices in order to advise whether any such condition or practice may become a violation of any requirement of the Act, the approved State Program or any applicable permit or exploration approval.
165. Neither the holding of a compliance conference under this section nor any opinion given by the authorized representative at such a conference will affect:
- 165.100. Any rights or obligations of the Division or of the permittee with respect to any inspection, notice of violation or cessation order, whether prior or subsequent to such compliance conference; or
- 165.200. The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.
- R645-400-200. Information Related to Inspections.**
210. **Requests for Inspections.**
211. A citizen may request a Division inspection under UCA 40-10-22 by furnishing to the Division a signed, written statement (or an oral report followed by a signed, written statement) giving the Division reason to believe that a violation of the State Program or any applicable permit or exploration approval has occurred, and including a phone number and address where the citizen can be contacted.
212. The identity of any person supplying information to the Division relating to a possible violation or imminent danger or harm will remain confidential with the Division if requested by that person, unless that person elects to accompany the inspector on the inspection, or unless disclosure is required under Utah or federal law.
213. If a Division inspection is conducted as a result of information provided to the Division by a citizen as described in R645-400-211, the citizen will be notified as far in advance as practicable when the inspection is to occur and will be allowed to accompany the authorized representative of the Division during the inspection. Such person has a right of entry to, upon, and through the coal exploration or coal mining and reclamation operation about which he or she provided information, but only if he or she is in the presence of and is under control, direction and supervision of the authorized representative while on the mine property. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant. All citizens so visiting mine sites are required to comply with applicable MSHA safety standards.
214. Within 10 days of the Division inspection or, if there is no inspection within 15 days of receipt of the citizen's written statement, the Division will send the citizen the following:
- 214.100. If an inspection was made, a description of the enforcement action taken, which may consist of copies of the Division inspection report and all notices of violation and cessation orders issued as a result of the inspection or an explanation of why no enforcement action was taken;
- 214.200. If no Division inspection was conducted, an explanation of the reason why; and
- 214.300. An explanation of the citizen's right, if any, to informal review of the action or inaction of the Division under R645-400-240.
215. The Division will give copies of all materials in R645-400-214 within the time limits specified in that Rule to the person alleged to be in violation, except that the name of the citizen will be removed unless disclosure of the citizen's identity is permitted under R645-400-212.
220. **Right of Entry.**
221. Each authorized representative of the Division conducting an inspection under R645-400 through R645-401:
- 221.100. Will have a right of entry to, upon, and through any coal exploration or coal mining and reclamation operation

- without advance notice or a search warrant, upon presentation of appropriate credentials;
- 221.200. May, at reasonable times and without delay, have access to and copy any records, and inspect any monitoring equipment or method of operation required under the State Program or any condition of an exploration approval or permit imposed under the State Program; and
- 221.300. Will have a right to gather physical and photographic evidence to document conditions, practices or violations at the site.
222. No search warrant will be required with respect to any activity under R645-400-221 except that a search warrant may be required for entry into a building.
230. **Review of Adequacy and Completeness of Inspection.** Any person who is or may be adversely affected by coal mining and reclamation operations or coal exploration operations may notify the Director in writing of any alleged failure on the part of the Division to make adequate and complete or periodic inspections as provided in R645-400-130 or R645-400-210. The notification will contain information to demonstrate the belief that the person is or may be adversely affected including the basis for his or her belief that the Division has failed to conduct the required inspections. The Director will within 15 days of receipt of the notification, determine whether there is sufficient information to create a reasonable belief that R645-400-130 or R645-400-210 are not being complied with, and if not, will immediately order an inspection to remedy the noncompliance. The Director will, also furnish the complainant with a written statement of the reasons for such determination and the actions, if any, taken to remedy the noncompliance.
240. **Review of Decision Not to Inspect or Enforce.**
241. Any person who is or may be adversely affected by coal exploration or coal mining and reclamation operations may ask the Director to review informally an authorized representative's decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in a request for State inspection under R645-400-210. The request for review will be in writing and include a statement of how the person is or may be adversely affected and why the decision merits review.
242. The Director will conduct the review and inform the person, in writing, of the results of the review within 30 days of his or her receipt of the request. The person alleged to be in violation will also be given a copy of the results of the review, except that the name of the citizen will not be disclosed unless confidentiality has been waived or disclosure is required under Utah or federal law.
243. Informal review under this section will not affect any right to formal review or to a citizen's suit under the State Program.
- R645-400-300. Provisions of State Enforcement.**
310. **Cessation Orders.**
311. The Division will immediately order a cessation of coal mining and reclamation operations or of the relevant portion thereof, if it finds, on the basis of any Division inspection, any violation of the State Program, or any condition of a permit or an exploration approval under the State Program, which:
- 311.100. Creates an imminent danger to the health or safety of the public; or
- 311.200. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.
312. Coal mining and reclamation operations conducted by any person without a valid coal mining permit constitute a condition or practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, 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 such operations.
313. If the cessation ordered under R645-400-311 will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the Division will impose affirmative obligations on the person to whom it is issued to abate the violation. The order will specify the time by which abatement will be accomplished.
314. When a notice of violation has been issued under R645-400-320 and the permittee fails to abate the violation within the abatement period fixed or subsequently extended by the Division then the Division will immediately order a cessation of coal exploration or coal mining and reclamation operations or of the portion relevant to the violation. A cessation order issued under R645-400-314 will require the permittee to take all steps the Division deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.
315. A cessation order issued under R645-400-311 or R645-400-314 will be in writing, signed by the authorized representative of the Division who issued it, and will set forth with reasonable specificity:
- 315.100. The nature of the violation;
- 315.200. The remedial action or affirmative obligation required, if any, including interim steps, if appropriate;
- 315.300. The time established for abatement, if appropriate, including the time for meeting any interim steps;
- 315.400. A reasonable description of the portion of the coal exploration or coal mining and reclamation operations to which it applies; and
- 315.500. The order will remain in effect until the violation has been abated or until vacated, modified or terminated in writing by the Division.
316. Reclamation operations and other activities intended to protect public health and safety and the environment will continue during the period of any order unless otherwise provided in the order.
317. The Division may modify, terminate or vacate a cessation order for good cause, and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the permittee.
318. The Division will terminate a cessation order by written notice to the permittee, when it is determined that all conditions, practices or violations listed in the order have been abated. Termination will not affect the right of the Board to assess civil penalties for those violations under R645-401.

R645. Natural Resources; Oil, Gas and Mining; Coal.

R645-300. Coal Mine Permitting: Administrative Procedures.

R645-300-100. Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions

R645-300-200. Administrative and Judicial Review of Decisions on Permits

R645-300. Coal Mine Permitting: Administrative Procedures.

R645-300-100. Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions.

The rules in R645-300-100 present the procedures to carry out the entitled activities.

110. Introduction.

111. Objectives. The objectives of R645-300-100 are to:

111.100. Provide for broad and effective public participation in the review of applications and the issuance or denial of permits;

111.200. Ensure prompt and effective review of each permit application by the Division; and

111.300. Provide the requirements for the terms and conditions of permits issued and the criteria for approval or denial of a permit.

112. Responsibilities.

112.100. The Division has the responsibility to approve or disapprove permits under the approved State Program.

112.200. The Division and persons applying for permits under the State Program will involve the public throughout the permit process of the State Program.

112.300. The Division will assure implementation of the requirements of R645-300 under the State Program.

112.400. All persons who engage in and carry out any coal mining and reclamation operations will first obtain a permit from the Division. The applicant will provide all information in an administratively complete application for review by the Division in accordance with R645-300 and the State Program.

112.500. Any permittee seeking to renew a permit for coal mining and reclamation operations solely for the purpose of reclamation and not for the further extraction, processing, or handling of the coal resource will follow the procedures set forth in R645-303-232-500.

113. Coordination with requirements under other laws. The Division will provide for the coordination of review and issuance of permits for coal mining and reclamation operations with applicable requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.); the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661 et seq.); the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703 et seq.); The National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.); the Bald Eagle Protection Act, as amended (16 U.S.C. 668a); and where federal and Indian lands covered by that Act are involved, the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 et seq.); and

the Archeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.).

120. Public Participation in Permit Processing.

121. Filing and Public Notice.

121.100. Upon submission of an administratively complete application, an applicant for a permit, significant revision of a permit under R645-303-220 or renewal of a permit under R645-303-230 will place an advertisement in a local newspaper of general circulation in the locality of the proposed coal mining and reclamation operation at least once a week for four consecutive weeks. A copy of the advertisement as it will appear in the newspaper will be submitted to the Division. The advertisement will contain, at a minimum, the following:

121.110. The name and business address of the applicant;

121.120. A map or description which clearly shows or describes the precise location and boundaries of the proposed permit area and is sufficient to enable local residents to readily identify the proposed permit area. It may include towns, bodies of water, local landmarks, and any other information which would identify the location. If a map is used, it will indicate the north direction;

121.130. The location where a copy of the application is available for public inspection;

121.140. The name and address of the Division, where written comments, objections, or requests for informal conferences on the application may be submitted under R645-300-122 and R645-300-123;

121.150. If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road, except where public notice and hearing have previously been provided for this particular part of the road in accordance with R645-103-234; a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing; and

121.160. If the application includes a request for an experimental practice under R645-302-210, a statement indicating that an experimental practice is requested and identifying the regulatory provisions for which a variance is requested.

121.200. The applicant will make an application for a permit, significant revision under R645-303-220, or renewal of a permit under R645-303-230 available for the public to inspect and copy by filing a full copy of the application with the recorder at the courthouse of the county where the coal mining and reclamation operation is proposed to occur, or an accessible public office approved by the Division. This copy of the application need not include confidential information exempt from disclosure under R645-300-124. The application required by R645-300-121 will be filed by the first date of newspaper advertisement of the application. The applicant will file any changes to the application with the public office at the same time the change is submitted to the Division.

121.300. Upon receipt of an administratively complete application for a permit, a significant revision to a permit under R645-303-220, or a renewal of a permit under R645-303-230, the Division will issue written notification indicating the

applicant's intention to conduct coal mining and reclamation operations within the described tract of land, the application number or other identifier, the location where the copy of the application may be inspected, and the location where comments on the application may be submitted. The notification will be sent to:

- 121.310. Local governmental agencies with jurisdiction over or an interest in the area of the proposed coal mining and reclamation operation, including but not limited to planning agencies, sewage and water treatment authorities, water companies; and
- 121.320. All federal or state governmental agencies with authority to issue permits and licenses applicable to the proposed coal mining and reclamation operation and which are part of the permit coordinating process developed in accordance with the State Program, Section 503(a)(6) or Section 504(h) of P.L. 95-87, or 30 CFR 733.12; or those agencies with an interest in the proposed coal mining and reclamation operation, including the U.S. Department of Agriculture Soil Conservation Service district office, the local U.S. Army Corps of Engineers district engineer, the National Park Service, state and federal fish and wildlife agencies, and Utah State Historic Preservation Officer.

122. Comments and Objections on Permit Application.

- 122.100. Within 30 days of the last newspaper publication, written comments or objections to an application for a permit, significant revision to a permit under R645-303-220, or renewal of a permit under R645-303-230 may be submitted to the Division by public entities notified under R645-300-121.300 with respect to the effects of the proposed coal mining and reclamation operation on the environment within their areas of responsibility.
- 122.200. Written objections to an application for a permit, significant revision to a permit under R645-303-220, or renewal of a permit under R645-303-230 may be submitted to the Division by any person having an interest which is or may be adversely affected by the decision on the application, or by an officer or head of any federal, state, or local government agency or authority, within 30 days after the last publication of the newspaper notice required by R645-300-121.
- 122.300. The Division will upon receipt of such written comments or objections:
- 122.310. Transmit a copy of the comments or objections to the applicants; and
- 122.320. File a copy for public inspection at the Division.

123. Informal Conferences.

- 123.100. Any person having an interest which is or may be adversely affected by the decision on the application, or an officer or a head of a federal, state, or local government agency, may request in writing that the Division hold an informal conference on the application for a permit, significant revision to a permit under R645-303-220, or renewal of a permit under R645-303-230. The request will:
- 123.110. Briefly summarize the issues to be raised by the requestor at the conference;

- 123.120. State whether the requestor desires to have the conference conducted in the locality of the proposed coal mining and reclamation operation; and
- 123.130. Be filed with the Division no later than 30 days after the last publication of the newspaper advertisement required under R645-300-121.
- 123.200. Except as provided in R645-300-123.300, if an informal conference is requested in accordance with R645-300-123.100, the Division will hold an informal conference within 30 days following the receipt of the request. The informal conference will be conducted as follows:
- 123.210. If requested under R645-300-123.120, it will be held in the locality of the proposed coal mining and reclamation operation.
- 123.220. The date, time, and location of the informal conference will be sent to the applicant and other parties to the conference and advertised by the Division in a newspaper of general circulation in the locality of the proposed coal mining and reclamation operation at least two weeks before the scheduled conference.
- 123.230. If requested in writing by a conference requestor at a reasonable time before the conference, the Division may arrange with the applicant to grant parties to the conference access to the proposed permit area and, to the extent that the applicant has the right to grant access to it, to the adjacent area prior to the established date of the conference for the purpose of gathering information relevant to the conference.
- 123.240. The requirements of the Procedural Rules of the Board of Oil, Gas and Mining (R641 Rules) will apply to the conduct of the informal conference. The conference will be conducted by a representative of the Division, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record will be made of the conference, unless waived by all the parties. The record will be maintained and will be accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to R645-301-800.
- 123.300. If all parties requesting the informal conference withdrew their request before the conference is held, the informal conference may be canceled.
- 123.400. An informal conference held in accordance with R645-300-123 may be used by the Division as the public hearing required under R645-103-234 on proposed relocation or closing of public roads.

124. Public Availability of Permit Applications.

- 124.100. General Availability. Except as provided in R645-300-124.200 and R645-300-124.300, all applications for permits; permit changes; permit renewals; and transfers, assignments or sales of permit rights on file with the Division will be made available, at reasonable times, for public inspection and copying.
- 124.200. Limited Availability. Except as provided in R645-300-124.310, information pertaining to coal seams, test borings, core samplings, or soil samples in an application will be made available to any person with an interest which is or

- may be adversely affected. Information subject to R645-300-124 will be made available to the public when such information is required to be on public file pursuant to Utah law.
- 124.300. Confidentiality. The Division will provide procedures, including notice and opportunity to be heard for persons both seeking and opposing disclosure, to ensure confidentiality of qualified confidential information, which will be clearly identified by the applicant and submitted separately from the remainder of the application. Confidential information is limited to:
- 124.310. Information that pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of such coal which are potentially toxic in the environment.
- 124.320. Information required under section 40-10-10 of the Act that is authorized by that section to be held confidential and is not on public file pursuant to Utah law and that the applicant has requested in writing to be held confidential; and
- 124.330. Information on the nature and location of archeological resources on public land and Indian land as required under the Archeological Resources Protection Act of 1979 (P. L. 96-95, 93 Stat. 721, 16 U.S.C. 470).
130. Review of Permit Application.
131. General.
- 131.100. The Division will review the application for a permit, permit change, or permit renewal; written comments and objections submitted; and records of any informal conference or hearing held on the application and issue a written decision, within a reasonable time set by the Division, either granting, requiring modification of, or denying the application. If an informal conference is held under R645-300-123 the decision will be made within 60 days of the close of the conference, unless a later time is necessary to provide an opportunity for a hearing under R645-300-210.
- 131.110. Application review will not exceed the following time periods:
- 131.111. Permit change applications.
- 131.111.1. Significant revision - 120 days.
- 131.111.2. Amendments - 60 days.
- 131.112. Permit renewal - 120 days.
- 131.113. New underground mine applications - One year.
- 131.114. New surface mine applications - One year.
- 131.120. Time will be counted as cumulative days of Division review and will not include operator response time or time delays attributed to informal or formal conferences or Board hearings.
- 131.200. The applicant for a permit or permit change will have the burden of establishing that their application is in compliance with all the requirements of the State Program.
132. Review of Compliance.
- 132.100. The Division will review available information on state and federal failure-to-abate cessation orders, unabated federal and state imminent harm cessation orders, delinquent civil penalties issued under section 518 of the federal Act, SMCRA-derived laws of other states, and section 40-10-20 of the Act, bond forfeitures where violations on which the forfeitures are based have not been corrected, delinquent abandoned mine reclamation fees, and unabated violations of the Act, derivative laws of other states and federal air and water protection laws, rules and regulations incurred at any coal mining and reclamation operations connected with the applicant. The Division will then make a finding that neither the applicant, nor any person who owns or controls the applicant, nor any person owned or controlled by the applicant is currently in violation of any law, rule, or regulation referred to in R645-300-132. If such a finding cannot be made, the Division will require the applicant, before issuance of the permit, to either:
- 132.110. Submit to the Division proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or
- 132.120. Establish for the Division that the applicant or any person owned or controlled by the applicant or any person who owns or controls the applicant has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review authority under R645-300-220 either denies a stay applied for in the appeal or affirms the violation, then the applicant will within 30 days submit the proof required under R645-300-132.110.
- 132.200. Any permit that is issued on the basis of proof submitted under R645-300-132.110 or pending the outcome of an appeal described in R645-300-132.120 will be issued conditionally.
- 132.300. If the Division makes a finding that the applicant, or anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled coal mining and reclamation operations with a demonstrated pattern of willful violations of the Act of such nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Act, the application will not be granted. Before such a finding becomes final, the applicant or operator will be afforded an opportunity for an adjudicatory hearing on the determination as provided for in R645-300-210.
133. Written Findings for Permit Application Approval. No permit application or application for a permit change will be approved unless the application affirmatively demonstrates and the Division finds, in writing, on the basis of information set forth in the application or from information otherwise available that is documented in the approval, the following:
- 133.100. The application is complete and accurate and the applicant has complied with all the requirements of the State Program;
- 133.200. The proposed permit area is:
- 133.210. Not within an area under study or administrative proceedings under a petition, filed pursuant to R645-103-400 or 30 CFR 769, to have an area designated as