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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 944

#### Utah Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Notice of informal conference.

**SUMMARY:** On January 21, 1981, the Secretary of the Interior conditionally approved Utah's program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) (see 46 FR 5899). On February 7, 1995, OSM notified the Director of the Utah Division of Oil, Gas and Mining (DOGM) that it had reason to believe that violations of the Utah surface coal mining regulatory program approved under SMCRA were resulting from the failure of the State to enforce all or any part of the program effectively with respect to the State's regulation of mine access and haul roads (see "Supplementary Information" below).

Under the provisions of OSM's regulations at 30 CFR 733.12(c), OSM will hold an informal conference to discuss the facts surrounding such a notification if an informal conference is requested by the State. By letter dated February 22, 1995, DOGM requested an informal conference. Accordingly, OSM hereby notifies Utah and the public that it will hold an informal conference. All interested persons may attend the informal conference.

**DATES:** OSM has scheduled an informal conference on Tuesday, March 14, 1995, beginning at 10:00 a.m. m.s.t.

**ADDRESSES:** The conference will be held in the Red Butte Room on the second floor of the Double Tree Hotel, 215 West South Temple, Salt Lake City, Utah 84180.

Copies of the Administrative Record documents referenced in this notice are available for public inspection and copying during normal business hours at: Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 505 Marquette Avenue NW., Suite 1200, Albuquerque, New Mexico 87102.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Thomas E. Ehmett, Acting Assistant Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue NW., Suite 1200, Albuquerque, New Mexico 87102. Telephone: (505) 766-1486.

**SUPPLEMENTARY INFORMATION:** On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program (46 FR 5899).

On February 7, 1995, OSM notified the Director of the Utah Division of Oil, Gas and Mining (DOGM) that it had reason to believe that violations of the Utah surface coal mining regulatory program approved under SMCRA were resulting from the failure of the State to enforce all or any part of the program effectively with respect to the State's regulation of mine access and haul roads (administrative record No. UT-1023).

Since the approval of Utah's program, and in keeping with its policy of working closely with the State, OSM has had numerous discussions with DOGM officials about the State's performance. Recent discussions and investigations have centered on inadequacies of DOGM's implementation of the approved program in areas set forth below.

1. *Mine Access and Haul Roads:* Failure to regulate mine access and haul roads included within the Utah program definition of "coal mining and reclamation operations" at Utah Administrative Rule (Utah Admin. R.) 645-100-200 and the virtually identical Federal definition of "surface coal mining and reclamation operations" at 30 CFR 700.5.

2. *Exclusion of Public Roads From Regulation:* Both the State and Federal definitions include all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of mining-related activities and for haulage or excavation purposes. Contrary to the manner in which Utah is implementing its

program, the corresponding Federal definition of "surface coal mining operations" in section 701(28) of SMCRA does not exclude, as asserted by Utah, all roads designated as public roads or open to public use except when deemed by mine operators to public entities to avoid compliance with SMCRA.

In the February 7, 1995, notification, OSM specified a date for DOGM to present a plan to correct the deficiencies in the implementation of its program. On February 22, 1995, DOGM responded that its position with regard to OSM's wish to have the Division reconsider its permitting decisions is set forth in the complaint filed in *Utah v. Lujan*, 92-C-063-G (D. Utah). DOGM also responded that the facts and legal argument set forth in the complaint were being incorporated as its response to OSM's February 7, 1995, letter. Lastly, DOGM requested that OSM hold an informal conference to discuss the facts supporting the assertions of the February 7, 1995, letter (administrative record No. UT-1024).

Section 733.12(c) of 30 CFR requires OSM to provide the State regulatory authority an opportunity for an informal conference.

The informal conference may pertain to the facts of the deficiencies or the time period for accomplishing remedial actions.

#### Conference Rules

The informal conference is an opportunity for OSM to discuss the status of the implementation of Utah's program with Utah officials.

No testimony from the public will be taken but a verbatim transcript of the meeting will be kept.

Dated: March 2, 1995.

**Peter A. Rutledge,**

*Acting Assistant Director, Western Support Center.*

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