



December 18, 2007

Scott M. Matheson
Chairman
Utah Mine Safety Commission
1594 West North Temple
Suite 1210
P.O. Box 145801
Salt Lake City, UT 84114

Dear Chairman Matheson:

Set forth below and in the attachments to this letter, please find enclosed the comments of Arch Western Bituminous Group, LLC ("Arch") and Interwest Mining Company ("Interwest") regarding the role of the State of Utah in the area of mine safety under consideration by the Utah Mine Safety Commission, pursuant to Governor Jon Huntsman's Executive Order 2007-0010. To begin, we want you and the other commissioners to know that we have been paying close attention to the Commission's activities and believe that it has played a useful and timely role to date. We provide these comments to you at this time because we understand that Governor Huntsman has requested that the Commission provide him, by the middle of this month, its views of the budgetary implications to the State should Governor Huntsman wish to propose to the Utah Legislature recommendations regarding reestablishment of a state mine safety program.

Arch's subsidiary, Canyon Fuel Company, LLC, operates the Sufco, Dugout, and Skyline underground coal mines in Utah. Interwest provides safety and health and other management support services to Energy West Mining Company's Deer Creek underground coal mine in Utah. As we explain below, Arch and Interwest think such action is unnecessary and premature. However, there is much good work the State can do for the safety and health of Utah's miners by way of strong support and funding for vocational and college level training and education of Utahans in the highly skilled but currently scarce mining, engineering, and other technical callings essential to the safety and health of miners in our industry. We turn to this area first.

Enhancement of State-Supported Education and Training Programs For Mining Engineers and other Skilled Mining Jobs Will Lead to Improved Miner Safety and Health in Utah

As we state above, we strongly believe that reestablishment of a Utah state mine safety program is unnecessary and premature. We also believe, however, that strong support and funding by the State of Utah for the education and training of the State's workforce for the skilled and highly-compensated jobs that a vibrant Utah mining industry can provide would be beneficial. The existing pool of human resources for these jobs is very limited, although the infrastructure exists within the University of Utah and the Western Energy Training Center, for example, to improve the situation. Strong funding and an enhanced commitment on the part of the State to strengthen the Utah mining industry's workforce would be money well spent.

More specifically, in recent years, both the undergraduate and graduate mining engineering student body and faculty have declined dramatically at the University of Utah. Thus, only six mining engineers graduated from the University's Mining Engineering Department during the autumn semester of 2006 and the spring and summer semesters of 2007. Three more should graduate (and possibly two more may graduate) between completion of this autumn's semester and the spring and summer semesters of 2008. No graduate students completed their studies during the semesters from the autumn of 2006 through the summer of 2007. Six graduate students could complete their work either by the end of next spring or summer.

We can and must do better to meet the resurgent demand for these much sought-after professions. In particular, post-graduate research in connection with the unique characteristics of mining in Utah presents many challenging and useful areas for enhanced post-graduate enrollment. The State of Utah, in partnership with the industry, should support a program aimed at increasing the enrollment of undergraduate and graduate mining engineering students along with additional faculty.

In addition, the Western Energy Training Center and its partners, such as the College of Eastern Utah and the Southeast Applied Technology College, provide a solid foundation for increased education and training in the skilled mining and technical support jobs vital to both the safety and health of our workforce and a

strong Utah mining industry. Much can be done to build a foundation through increased State support and funding.

The safety culture of Utah's coal mining industry is strong. Arch and Interwest urge the Commission to recommend to the State a leveraging of that culture through enhanced support in the State's vocational, community college, and university settings.

Reestablishment of a Utah State Mine Safety Program is Unnecessary

Reestablishment of a Utah state mine safety program is unnecessary for the following reasons:

- The safety and health of miners is protected both nationwide and in the State of Utah by a nationwide program administered by the United States Department of Labor's Mine Safety and Health Administration ("MSHA") pursuant to the highly technical and complex Federal Mine Safety and Health Act of 1977, amended as recently as last year by the Mine Improvement and New Emergency Response Act of 2006 or the "MINER Act";¹
- MSHA has an active presence in Utah. Thus, for example, Energy West's Deer Creek Mine experienced 141 inspection days from January through November 2007. At Arch's Utah mines, MSHA carried out 590 inspection days during that same time frame.

¹ 30 U.S.C. §§ 801 *et seq.*, hereinafter the "Mine Act" or the "MINER Act." The Mine Act establishes a vigorous system of mine inspections, the purpose of which is to assure compliance by mine operators with thousands of mandatory safety and health standards. MSHA inspectors are in our mines frequently. Furthermore, the standards they enforce, along with MSHA's policies and procedures regarding their interpretation and implementation, the body of administrative law developed by the independent Federal Mine Safety and Health Review Commission (the "FMSHRC"), and the myriad judicial decisions of the federal courts in connection with the Mine Act consist of hundreds of thousands, if not millions of pages. Thus, the "learning curve" for any new Utah State mine safety agency would be daunting indeed.

- MSHA is also substantially increasing its inspectorate. In recent months, we understand the Agency has hired approximately 170 new mine inspectors, nationwide, who are at various stages of their training. In the Price, Utah field office alone, inspector staffing has increased significantly from 11 to 17 individuals (including four trainees) assigned to inspect the eight active underground coal mines in the State.²
- Any mine safety program established by the State of Utah, even one limited in nature, would be duplicative in nature of the strong federal regulatory regime currently in place;
- Even a limited Utah mine safety program (for example, one that would authorize a role, even if narrowly circumscribed, for State review of federally required safety-related mine plans) would adversely affect the availability, both to MSHA and the private sector, of the currently small number of mine safety and health professionals and other skilled engineering and technical personnel; and
- Most importantly, because mining is a dynamic ever-changing process and because of the complexity of existing federal regulations, not only would a state program unnecessarily duplicate federal regulation, but we are also concerned that even a modest state program would impede the efficiency and effectiveness of already complex and time-consuming federal processes regarding review of the numerous mine plan regulations required by the Mine Act.
- Some eastern states, such as West Virginia which had a program that predated the original Mine Safety Act and has many more underground coal mines than does Utah, have adopted federal mine safety-related mine plan provisions virtually verbatim from the federal law. We question whether establishing a mine safety program now would be a prudent use of the State's revenues, especially in light of the education and training activities described

² We would also strongly recommend and support the reestablishment of an MSHA Western Technical Support Center. That center, consolidated into an MSHA facility in Pittsburgh during the Clinton Administration, resulted in the loss of important MSHA expertise in the unique conditions of Utah coal mining.

above which, dollar for dollar, would be more beneficial to miners' safety and health within our State.

Reestablishment of a Utah State Mine Safety Program is Premature

We want to address with you in more detail the issues of concern to us regarding review and approval of federally mandated mine plans and we shall do so below. We also want to let the Commission know, however, that we believe it is premature for budget and legislative proposals to be developed for reestablishment of any Utah state mine safety program, pending completion of the multiple congressional and federal agency investigations underway, especially that being conducted by MSHA, of the events that occurred at the Crandall Canyon Mine this past August. Those investigations, when complete, are apt to determine: (1) whether or not any weaknesses in current federal mine safety law or its implementation by MSHA directly or indirectly contributed to the events at the Crandall Canyon Mine; and (2) whether or not any such weaknesses are more appropriately addressed by the strengthening of federal requirements or establishment of some sort of state mine safety program.

For that matter, as we are certain you and commissioners well know, the Congress of the United States is actively considering, in part as a result of the events at the Crandall Canyon Mine, whether additional legislation is necessary to further strengthen federal mine safety and health requirements. Arch and Interwest oppose H.R. 2768, the S-MINER Act, approved by the U.S. House of Representatives Education and Labor Committee on October 30, 2007. Nevertheless, it behooves the Commission to be mindful of that bill and others that may be considered by the current Congress. Additional Congressional oversight is also likely to occur in the months ahead, and valuable insight about mine safety in Utah may be gleaned from those activities.

Specific Concerns Regarding Review and Approval of Federally Mandated Safety-Related Mine Plans

The Mine Act requires operators of underground coal mines, like our companies, to develop and submit to MSHA for approval a number of specific types of safety-related mine plans. Among the most important of these are:

- A roof control plan mandated by Mine Act § 302(a) and the implementing regulations in 30 C.F.R. §§ 75.220-75.223 (see Attachment A);

- A mine ventilation system and methane and dust control plan as required by Mine Act § 303(o), and the implementing regulations in 30 C.F.R. §§ 75.370-75.371 (see Attachment B);
- Most recently, MINER Act § 2 mandated requirements for an emergency response plan for each underground coal mine and the MINER Act's § 2 requirements have been further implemented by a complex series of written MSHA policy memoranda and instructions (see Attachment C).³

Not only are the specific substantive requirements for each of these safety-related mine plans complex and highly technical in nature but the approval and adoption process consists of an iterative bilateral dialogue between the mine operator and MSHA which, through consultation, discussion, and negotiation, is intended to result in a mutual agreement in connection with the particular plan suitable to the specific conditions at particular mines.⁴ The plan approval process is intended to be flexible, contemplating negotiation toward agreement, and is aimed at compliance with mine safety and health requirements. Under the approval and adoption process, the operator submits a plan to MSHA and the Agency may approve it or suggest changes. Mine operators and MSHA are obligated to negotiate in good faith over disputes as to the provisions of plans. If the parties are at an impasse or otherwise at odds, the Mine Act provides for resolution of disputes in

³ Additional required safety-related mine plans include: (1) an MSHA-approved plan containing programs for training new miners, experienced miners, new task training, annual refresher training, and hazard training (30 C.F.R. § 48.3 and *see generally* Subpart A of Part 48); (2) an MSHA-approved instruction plan for all miners in the MSHA-approved mine emergency evacuation and firefighting program (30 C.F.R. §§ 75.1502, 75.1502(c)); (3) a self-contained, self-rescuer storage location plan (30 C.F.R. § 75.1714-2(g)(2)); (4) a plan for training and retraining of persons whose work assignments require that they be "certified" or "qualified" (30 C.F.R. § 75.161; and (5) a plan for the erection, maintenance, and revisions of rescue chambers and the training of miners in their proper use (30 C.F.R. § 75.1500).

⁴ *Zeigler v. Kleppe*, 536 F.2d 398, 406-407 (DC Cir. 1976); *Carbon County Coal Company*, 6 FMSHRC 1123 (May 1984).

enforcement proceedings before the independent FMSHRC.⁵ The ultimate goal of the approval and adoption process is a mine-specific plan with provisions that are easily understood by both MSHA and the operator, and with which they are in full accord. Once such a plan is approved and adopted, these provisions are enforceable at the mine as mandatory safety standards.⁶

It is also important for the Commission to understand that while the mine plan approval process can be smooth and harmonious, it can also involve substantial and legitimate differences of opinion. Also, in addition to the normal sequence of mine plan review, MSHA can, and often does, insist on more frequent changes. Moreover, MSHA regularly reviews each plan and often requests the mine operator to make changes. This then launches a renewed negotiation process as in the initial development of the plan. These kinds of changes are extraordinarily time sensitive and must be resolved quickly to ensure timely and effective implementation. We are concerned that the overlay of redundant state review and approval of mine plans would impede the need for prompt and expeditious resolution of mine plan issues.

We also wish to note to the Commission, not only are the federal requirements for safety-related mine plans complex and technical in nature, but they also embrace a substantial body of MSHA, FMSHRC, and federal judicial interpretations propounded over the decades.⁷

To conclude, we very much appreciate the opportunity to provide the Commission with these comments. As we said at the outset, the Commissioner's activities have been salutary, and our comments are offered to that shared end. From our point of view, we welcome a hard look by this Commission at both MSHA's activities in Utah and the safety and health programs and culture of Utah's underground coal mining industry. At the end of the day, we hope you will agree with us that the best outcome for Utah's coal miners will be for the Federal Government to fix MSHA where necessary and for the State of Utah to devote

⁵ *Carbon County Coal Company*, 7 FMSHRC 1367, 1370-71 (September 1985); *Penn Allegh Coal Company*, 3 FMSHRC 2767, 2771 (December 1981).

⁶ *Zeigler*, *supra* at 409; *Carbon County*, *supra* at 1370.

⁷ The Mine Act's predecessor (the Federal Coal Mine Safety and Health Act of 1969) adds a multitude of additional volumes to this body of knowledge.

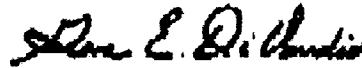
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additional State resources (accompanied by an enhanced commitment in partnership with the Utah mining industry) to mine safety and health and other mine-related education and training. We would be happy to answer any questions you may have.

Sincerely yours,



Neil L. Getzelman
President
Interwest Mining Company



Gene E. DiClaudio
President
Arch Western Bituminous Group, LLC

Attachments

cc: The Honorable E. J. "Jake" Garn, Commissioner
The Honorable David A. Litvin, Commissioner
The Honorable Mike Dmitrich, Commissioner
The Honorable Dennis Bryan O'Dell, Commissioner
The Honorable Joe Piccolo, Commissioner
The Honorable Hilary Gordon, Commissioner
The Honorable Kay McIff, Commissioner
The Honorable John Baza, Executive Secretary

Attachment A

**Mine Act Statutory and Regulatory
Provisions re Roof Control Plans**