

**PERMIT TO CONDUCT SURFACE COAL MINING
ACTIVITIES**

Decision
And
Findings of Compliance

November 27, 2006

Usibelli Coal Mine, Inc.

**Wishbone Hill Mine
Renewal**

Surface Coal Mining Permit Application

01-89-796

02-89-796

FINDINGS OF COMPLIANCE

With regard to a permit renewal request for the Wishbone Hill Mine, Permit Numbers 01-89-796 and 02-89-796, submitted by Usibelli Coal Mine, Inc., PO Box 1000, Healy, AK 99743, the undersigned has reviewed the request, all written comments, and other relevant information received regarding the renewal and makes the following Findings of Fact and Decision in accordance with AS 27.21 and 11 AAC 90.

1. A request to renew Surface Coal Mining Permits 01-89-796 and 02-89-796 was filed with the Division of Mining, Land and Water on April 14, 2006. Renewal of the permits has been requested in accordance with AS 27.21.080(d) and 11 AAC 90.129(b).
2. The renewal request contains all the information required by 11 AAC 90, and is sufficient for this office to make a decision.
3. This renewal request is for an additional five-year term and includes the permit areas previously approved in the existing permits. No additional mining areas or revisions to the existing boundaries are proposed. Parts of the permit application have been revised to provide current information as required by 11 AAC 90.021 through 11 AAC 90.065. No changes or modifications to the operation or reclamation plan are being proposed.

The second application (02-89-796) is for a portion of the access road that lies within the Alaska Coastal Zone. This activity was found consistent with the Matanuska-Susitna Borough Coastal Management Plan during a single agency review conducted by this office on August 2, 1991. No changes to the project have been proposed and no additional review is required.

The originally approved permits meet the requirements of AS 27.21 and 11 AAC 90 subject to the stipulations of the original permits, which are revised to ensure that the surface coal mining and reclamation operations will comply with these requirements.

4. Public notice of this permit renewal application was given in accordance with 11 AAC 90.907 to parties known or likely to be affected by the action for the period starting on June 27, 2006, and ending on July 27, 2006. Legal ads were placed in the Anchorage Daily News on June 27, 2006 and in the Frontiersman on June 27, 2006. Also, on June 27, 2006, notice was mailed directly to the Division's mailing list of 240 affected persons and agencies. Numerous individuals and agencies commented during the public notice period. An Informal Conference was requested and was held on August 25, 2006 in Palmer, Alaska. The following is a summary of the comments received, and the Division's response where necessary:

Public Notice:

Comment:

Five (5) comments were received requesting that UCM notify, in writing, all of the local residents adjacent to the mine, the Borough, and the local Community Councils at least 6 months before the start up of any activity pertaining to the

Exploration and Mining Permits; Public Notice 6 months before any activity at site/road; Public Notice before operations begin; Public Notice of Mat-Su residents before road building and operations; Public Notice of Community Councils and residents well in advance of any activity; Public Notice (letter) to all residents 6 months before any activity begins; Two comments were received that expressed concern that area residents were not informed about the permit renewal and proposed mining activity and request that a series of public meetings be conducted in the area before the permit is issued;

Response:

“At the time of an application for a permit, renewal of a permit, or major revision of a permit is determined to be complete, the Commissioner will make the application available in accordance with 11 AAC 90.907(b) and provide notice as provided in 11 AAC 90.907(d), including a newspaper advertisement at least once a week for four consecutive weeks”. The public has 30 days with which to respond. If comments are received from the public, the Department has 60 days to respond to the comments after the close of the public comment period, and finally to issue a decision.

Public Participation:

Comment:

Want to have Community Councils involved with post mining plan and land use and work with MSB and local recreational groups to create recreational use after mining operations; Usibelli / Chickaloon Village Traditional Council minimize impact downstream of mine, on Moose Creek, and improve fish passage at mine site

Maintain Moose Creek Health; Usibelli complete a MSB Conditional Use Permit;

Response:

Post mining land use is specified in the Permit and UCM is required to return the land to its designated use after mining operations have ended. 11 AAC 90.087(a) dictates that “Each plan must contain a detailed description of the proposed use, following reclamation, of the land to be affected by surface operations or facilities, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of the proposed use to existing land use policies and plans.” The Mine Permit requires UCM to “reclaim the land so as to produce wildlife habitat”.

UCM is not authorized to conduct any operations within the Moose Creek flood plain. The improvement of fish passage is beyond the scope of mining operations and is not a part of the mining permit. Any proposals to conduct work within the Moose Creek flood plain or major modifications to the permit must be reviewed and approved prior to any activity taking place.

UCM is responsible for all other applicable permits required by local, State or Federal agencies (11 AAC 90.009).

Transportation:

Comment:

Three individuals oppose the use of Buffalo Mine Road for the transporting of coal; Comments are opposed to the existing haul road from the mine to the Glenn Highway; Limit exploration impacts / traffic on Buffalo Mine Road; No use of Buffalo Mine Road for Mining or Exploration activity; Road built for Mine access should be removed after mining is completed; No use of Buffalo Mine Road for operations prior to mine access road being built;

Response:

The existing surface mine permit provides for a specific access route and construction of a haul road for hauling coal, and any changes to this route would require a major revision to the permit, and need to go through another round of public participation. The proposed road is approximately 2 miles long and be used to haul coal from the mine to the existing highway.

Comment:

One commenter was opposed to the impacts that large trucks would have on traffic on the Glenn Highway;

Response:

DNR-DMLW has the authority to regulate how coal is handled from the mine site to a public road or highway. When the coal reaches a public road or highway, the regulatory responsibility transfers to other agencies, i.e., the Departments of Transportation and Public Safety, and local governments. If there may be significant impacts to the local community from the transportation of the coal, the DNR-DMLW can use the permit process to help address these concerns (i.e., stipulate alternate access to the site). At this time there is no existing haul road from the proposed mine site. There is a permit to construct an access road from the mine site to the Glenn Highway (Permit # 02-89-796).

Water Quality:

Comment:

Two individuals expressed concerns about the potential negative impacts to Moose Creek an anadromous stream.

Response:

All Subsurface and surface water in a disturbed area must be handled in accordance to 11 AAC 90.323 (Water Quality Standards) and 11 AAC 90.325 (Diversion and Conveyance of Flow). Drainage and sediment control measures are required to be used to prevent any sediment from leaving the disturbance site. DNR- DMLW is required by law to conduct monthly inspections of each active operation. Sediment and erosion control measures are one of the key issues looked at during each inspection to ensure they are working properly.

Comment:

Water testing throughout mining operations (every 2 weeks).

Response:

Surface and groundwater monitoring shall be conducted under 11 AAC 90.345. Testing of Surface and Subsurface water is done on a quarterly basis during the

life of the operation and all results are submitted to the DNR-DMLW upon completion.

Air Quality:

Comment:

Three comments were received that expressed concern about the potential impacts from fugitive dust.

Response:

If air quality problems are encountered, either by residents or by DNR-DMLW staff during our regular inspections, ADEC will be notified and appropriate measures will be taken to mitigate the impacts. An air pollution control plan is required for the mining permit and must comply with all Federal and State air quality standards and regulations (11 AAC 90.079).

Comment:

Environmental concerns about mining in general. Two commenters opposed coal mining in the area because of negative impacts to the environment and that coal mining is not compatible with the residential nature of the area.

Response:

DNR-DMLW has carefully reviewed the proposed plan of operation and has determined that the impacts to the environment from the proposed activity is within the scope allowed by 11 AAC 90.301 - 501.

Light Pollution:

Comment:

Lights at mine have covers to hide them; Limit light impact; Limit lights out of business hours; Minimize light during dark hours (worried about Northern Lights);

Response:

30 CFR 77.207 states that "Illumination sufficient to provide safe working conditions shall be provided in and on all surface structures, paths, walkways, stairways, switch panels, loading and dumping sites, and working areas". The illumination of the site is regulated by MSHA.

'View Shed':

Comment:

View sheds from mine operation; Mining done out of view of all homes and roads;

Response:

ASCMCRA contains no regulations concerning the disruption of "view shed" and is beyond the scope of this Permit Renewal.

Noise levels:

Comment:

Limit noise impact of operation; Limit noise during sleeping hours; Limit noise out of business hours; Use proximity alarms instead of back-up alarms;

Response:

30 CFR 77.410 regulates all mobile equipment at the mine site and requires automatic warning devices “Give an audible alarm when equipment is put in reverse; or uses infrared light, ultrasonic waves, radar or other effective devices to detect objects or persons at the rear of the equipment, and sounds an audible alarm when a person or object is detected”. Alarms must audible above the surrounding noise levels. MSHA regulates the use of automatic alarms for mine sites.

Buffer Zones:

Comment:

Moose Creek Buffer zone increased to 500’; Larger buffers around water bodies; Increase buffer zones around streams and creeks to 500’; Buffer zones around trails and roads be extended to 150’; A 150’ tree buffer created on both sides of trails and roads;

Response:

11 AAC 90.353 dictates that “No land within 100 feet of a perennial or intermittent stream May be disturbed by surface activity, unless the Commissioner specifically authorizes a mining activity closer to or through a stream upon finding that (1) any temporary or permanent stream channel will comply with 11 AAC 90.327; (2) the mining activity will not adversely affect the water quality of the stream under applicable State and Federal water quality laws and regulations; and (3) any adverse effect on fish, wildlife, or other environmental resources of the stream will be minimized”. The WBH Mine Permit complies with these regulations.

Baseline Studies:

Comment:

Update salmon data on Moose Creek

Response:

The Alaska Department of Fish and Game has reviewed the permit renewal request, and has no objection to the proposal as no changes to the previous authorized activities have been requested.

Blasting:

Comment:

Limit blasting to working hours during the workweek.

Response:

Blasting will be conducted in accordance with 11 AAC 90.379, which contains standards to mitigate the effects of airblast, fly-rock, and ground vibrations. In accordance with 11 AAC 90.377, all precautions will be taken to prevent wildlife and unauthorized personnel from access the blasting area. In addition a sign warning of the blast will be placed at the entrance to the site from Buffalo Mine Road. Finally a record of blasting will be completed as required under 11 AAC 90.383

Comment:

Pre-mining survey on all homes in area

Response:

“A resident or owner of a structure that is located within one half mile of any part of the permit area may request a pre-blasting survey. This request must be in writing and may be either to the Commissioner, who will promptly notify the operator, or to the operator. The operator shall promptly conduct a pre-blasting survey of the dwelling or structure and submit a signed, written report to the Commissioner and to the person requesting the survey. The operator shall perform an updated survey of any additions or modifications by the resident or owner”. (11 AAC 90.373).

Post Mining Land Use:

Comment:

All trails and roads in mining area be preserved and improved after mining operations end;

Response:

Post mining land use is specified in the Permit and Permittee will be required to return the land to its designated use after mining operations have ended. 11 AAC 90.087(a) dictates that “Each plan must contain a detailed description of the proposed use, following reclamation, of the land to be affected by surface operations or facilities, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of the proposed use to existing land use policies and plans.” Further, AS 27.21.260 (d) (3 & 4) states that (3) “no mining activity will take place within 100 feet of the outside right-of-way line of any public road”, and (4) “within 300 feet from any occupied dwelling, public building, school church, community, or institutional building, public park, or within 100 feet of a cemetery”. 11 AAC 90.093 outlines the regulations for “relocation of a public road, or mining activity within 100 feet of the right-of-way line of any public road, except where the mine access or haul road join the right-of-way”.

Other Comments:

Comment:

One comment was received that supports the renewal of the mining permits for increased local jobs.

Comment:

There are numerous new houses within the area and I did not see some of the structures identified. A more thorough identification of homes needs to be completed.

Response:

The structures within 1000 feet of the permit boundary were identified using the Matanuska-Susitna Tax Maps. An update to this may be requested by DNR-DMLW at any time during the Permit Term.

Comment:

One comment opposed the mining permit until all pertinent air and water quality permits have undergone public scrutiny.

Response:

Approval of the ASCMCRA permits does not relieve the applicant of the responsibility of securing and complying with other laws and regulations required by any Federal, State, or Local government agencies (11 AAC 90.031).

Comment:

Two commenters have heard that Usibelli is reviewing the current mining plan and suggest a delay in granting the permit renewal, until a revised mining plan is submitted.

Response:

At this time, UCM has not submitted any revisions to the operation or reclamation plans. If changes are proposed and the modification constitutes a significant departure from the original permit, it must be approved and is subject to the public review process.

Comment:

Limit hours of operation to 8:00am – 5:00pm

Response:

ASCMCRA has no provision that allow restrictions to operational hours. The application that was received by DNR-DMLW was for a renewal of the permit with no changes proposed (11 AAC 90.129 and 11 AAC 90.131).

5. Pursuant to 11 AAC 90.205(d) the Division has determined that reclamation bond in the amount of \$10,000.00 is sufficient to guarantee the present obligations under the surface mining permits, and a reclamation bond in the amount of \$6,100,000.00 is sufficient to guarantee obligation for the first year of activity, once operations commence. The bond is conditioned upon the completion of the required reclamation and compliance with all terms, stipulations, and conditions of the original permits and this renewal.
6. This renewal does not change the scope or the environmental impacts of the project. The activities proposed in the renewal do not differ from the originally approved permits and meet the requirements of AS 27.21 and 11 AAC 90 subject to the stipulations of the original permits, which ensure that the surface coal mining reclamation and operation plan comply with these requirements.
7. The permit areas have not changed and are not within an area designated unsuitable for mining under AS 27.21.260.
8. The proposed surface coal mining reclamation and operation plan will not affect known threatened or endangered species or their critical habitat.
9. The applicant meets the criteria of AS 27.21.180 and the renewal of the surface coal mining permits 01-89-796 and 02-89-796 can be approved. The conditions and stipulations of this renewal include those for the original permit

10. Copies of the permits are available for review at the Alaska Department of Natural Resources, Division of Mining, Land and Water, 550 W. 7th Ave., Suite 900D, Anchorage, AK 99501-3577. Comments should be sent to Bruce Buzby, at the Anchorage address listed above, by fax to (907) 269-8930, or by e-mail to bruce_buzby@dnr.state.ak.us.