



THE STATE
of ALASKA

GOVERNOR MICHAEL J. DUNLEAVY

Department of Natural Resources

DIVISION OF MINING, LAND & WATER
Mining Section

550 West 7th Avenue, Suite 900B
Anchorage, Alaska 99501-3577
Minerals Property Management Main: 907.269.8642
Fax: 907.269.8949
Coal Regulatory/Abandoned Mine Lands Main: 907.269.8631
Fax: 907.269.8930
TDD: 907.269.8411

January 18, 2019

David Berry, Regional Director
Office of Surface Mining, Reclamation, and Enforcement
Western Region
1999 Broadway, Suite 3320
Denver, CO 80202-3050

RE: "Citizen Complaint regarding the surface coal mining operations of Usibelli Coal Mining, Inc. at Wishbone Hill, dated January 11, 2019"

Dear Mr. Berry,

On January 11, 2019, Trustees for Alaska, on behalf of Castle Mountain Coalition (CMC) submitted a letter to the Office of Surface Mining, Reclamation, and Enforcement (OSMRE). This letter was copied by email to the Commissioner of the Alaska Department of Natural Resources (AKDNR) and myself.

CMC styles the letter as a "Citizen Complaint" and states in the letter that "[s]hould DNR fail to take appropriate action within 10 days, CMC requests that OSM issue a notice of violation to UCM."¹ But CMC cites to no authority providing that a federal authority is required to issue a notice of violation, where there is a state primacy program, based only on correspondence from a citizen. Instead, the only legal authority cited as the basis for CMC's letter is 30 C.F.R. § 842.12(c). Section 842.12 provides the administrative process for persons to request a federal inspection. AKDNR therefore construes this letter as a request for federal inspection, and requests that OSMRE notify AKDNR immediately if it disagrees.

Further, while CMC states that it is providing notice of its complaint to DNR through electronically copying AKDNR on its letter to OSMRE, the letter is addressed only to OSMRE, and CMC requests action only from OSMRE. Thus, CMC fails to utilize the state administrative process for citizen requests for inspections found at 11 AAC 90.607. Alerting a state regulator of an alleged violation of a state program by simply copying the state regulator on a request for a federal inspection does not meet the requirement in 30 C.F.R. § 842.12(a) that the requestor represent that the State regulatory authority "*has been notified*" in writing of the existence of the alleged violation forming the basis for the request for federal inspection. Simultaneous notification to State regulators of a request for a federal inspection provides the State no opportunity to respond first to the requestor or to otherwise address any alleged violations. Merely copying the State on a Section 842.12(a) request to OSMRE renders the requirement that

¹ January 11, 2019 Letter to OSMRE, Page 2.

the State has been notified meaninglessly. Acceptance of such notice as adequate would not conform to the principles of state primacy and comity between the federal oversight agency and state regulators.²

Finally, the State reiterates that no activities are currently occurring on the Wishbone Hill mine site.³ As noted in the November 29, 2018 AKDNR decision cited in CMC's letter, Usibelli must complete all monitoring included in permit stipulations at least 6 months prior to the development of the wash plant pond and related facilities or development of the Phase 1 or II mining areas. This stipulation effectively prevents mining-related activities until at least 6 months after monitoring commences.⁴ At the time of this letter, the Pioneer Trail is in a stable condition and all required reclamation within the project area has been completed. Areas within the Pioneer Trail corridor that were initially cleared of trees in 2010 have undergone extensive recolonization by woody species and are stable. Usibelli has been in temporary cessation pursuant to 11 AAC 90.471(a) since 2013, when construction of the Pioneer Trail was completed.

If you have any further questions, please do not hesitate to contact me.

Sincerely,



Russell Kirkham
Manager, Coal Regulatory Program

cc: Katie Strong, Trustees for Alaska
Lorali Simon, Usibelli Coal Mine

² AKDNR believes that there are other procedural and substantive issues with the request for inspection which it does not address in this letter but ADNR reserves the right to further address these issues with OSMRE as may be necessary.

³ Recent AKDNR inspections confirm this. Attached are reports from AKDNR's January 3, 2019 and January 16, 2019 inspections.

⁴ Required monitoring wells have been installed but required monitoring has not yet commenced.