

From: "Denning, William G - MSHA" <Denning.William@DOL.GOV>
To: "daronhaddock@utah.gov" <daronhaddock@utah.gov>
Date: 8/28/03 12:49PM
Subject: Whiskey Creek Mine

Daron, Thanks for calling and providing a briefing on DOGM's activities regarding reclamation at the Whiskey Creek Mine.

LEGAL CONSIDERATIONS: The District has relied for legal guidance in this area on a letter issued in 1983 by Cynthia L. Atwood, Associate Solicitor for Mine Safety and Health, to a State of New Mexico official regarding the State's "Abandoned Mine Reclamation Program." Atwood stated that MSHA has exercised authority over "certain reclamation activities, such as surface work performed by the mine operator immediately following mining to restore mined land to its original contour and replace topsoil." Regarding previously mined land, Atwood stated, "However, we have also taken the position that other activities occurring on previously mined land would not be subject to the Mine Act. The factors considered in determining MSHA's authority in such cases include (1) the nature of the activities, particularly in relation to activities normally associated with mining; (2) the relationship in time and the geographic proximity of the activities in question to active mining operations; (3) the nature of the land at the time of the activities; and (4) the operational relationship of the activities to active mining operations, including the control and direction of the workforce and the degree to which equipment or facilities are shared with active mining operations." Regarding the New Mexico program, Atwood concluded that MSHA would not exercise jurisdiction due to the nature of the activities and the amount of time elapsed since mining took place on the land. She also stated, "An additional basis of our determination is the fact that the work will be carried out by contractors of the State retained for the specific purpose of reclamation, rather than by mine operators as an activity incidental to mining."

Our position has been that if the State takes over and contracts the reclamation work, then we do not exercise authority but defer to the State. If Frontier would hire a contractor, then that might be different and we might assert jurisdiction over that contractor. I think it's a State's rights sort of thing. When do you think that you or Frontier will start work at the site? Do you anticipate completing it before winter? If you have any legal documents, such as you citations and cessation orders, agreements with Frontier, etc., which could help us make our jurisdictional determination, I'd appreciate if you could fax them to me at 303-231-5553. Thanks.

Bill

Staff Assistant to the District Manager

303-231-5560

CC: "Davis, Allyn C - MSHA" <Davis.Allyn@DOL.GOV>, "Cornett, Bob E - MSHA" <Cornett.Bob@DOL.GOV>, "Knepp, William P - MSHA" <Knepp.William@DOL.GOV>, "Geldmeyer, Diane F - MSHA" <Geldmeyer.Diane@DOL.GOV>