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United States Department of the Interior

OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
SUITE 310

625 SILVER AVENUE, S.W.
ALBUQUERQUE, NEW MEXICO 87102



December 22, 1989

In Reply Refer To:
cc to [unclear] [unclear] J. Helfrich

CERTIFIED MAIL--RETURN RECEIPT REQUESTED
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DIVISION OF
OIL, GAS & MINING

Dr. Dianne R. Nielson, Director
Division of Oil, Gas and Mining
Department of Natural Resources
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, UT 84180-1203

Re: Ten-Day Notice 89-02-107-11(1-4)

Dear Dr. Nielson:

The following is a written finding, in accordance with 30 CFR 842.11, regarding the Division of Oil, Gas and Mining's (DOGM) response to the above-referenced Ten-Day Notice (TDN).

On November 15-17, 1989, the Albuquerque Field Office (AFO) conducted a random sample inspection of the Castle Gate Coal Company Price River Complex. The inspection resulted in the issuance of the TDN referenced above for alleged violations of the Utah regulations. DOGM received the TDN via certified mail on November 30, 1989, therefore setting the response due date at December 8, 1989. The written response was received in AFO on December 11, 1989.

Part 1 of the TDN was issued for failure to obtain a permit before engaging in or carrying out underground coal mining activities in accordance with UMC 771.11. The TDN describes the road to the Crandall Shaft Facility and the road to Hardscrabble Canyon.

DOGM's response indicates the Division has notified the operator as part of the renewal technical deficiency review of December 4, 1989, that the road to the Crandall Shaft Facility and associated roads must be incorporated into the mining and reclamation plan (MRP) and that a schedule for resubmittal has yet to be determined. DOGM's response to the Hardscrabble Canyon road indicates that the structure is appropriately permitted according to the Division's current methodology and that it should be relegated to OSM's current programmatic review of the road issue.

DOGM's response confirms that the Division agrees that the Crandall Shaft Facility road should be permitted. Relegating the issue to the technical deficiency review is not consistent with the Utah regulations at UMC 771.11 nor with the Division's written policy regarding "reasonable time" to correct identified permit deficiencies. AFO agrees that the road to Hardscrabble Canyon can be relegated to OSM's current programmatic review of the road issue. However, AFO cannot accept DOGM's response to the unpermitted road at the Crandall Shaft Facility, thereby making the Division's response to Part 1 of the TDN inappropriate.

Part 2 of the TDN was issued for failure to mark the perimeter of all areas affected by surface operations or facilities in accordance with UMC 817.11(d). The TDN references locations that include the diversions at Hardscrabble Canyon #4 Mine, Sowbelly Canyon diversions and water tank road, and the Crandall Shaft Facility substation cut slope.

DOGM's response indicates that the operator has agreed to move the markers in question to the tops of the cut slopes and bottoms of fill slopes prior to the end of the ten-day response period and that the markers will be placed in accordance with Division policy.

DOGM's response confirms that the Division agrees that the affected area boundary markers should be relocated and that the operator has agreed to same. DOGM's response, however, failed to indicate that the Division reinspected the site within the ten-day response period to confirm that the markers were properly relocated. On December 19, 1989, Rade Orell of AFO contacted Harold Sandbeck of DOGM to determine if the Division had reinspected the site during the ten-day response period. Mr. Sandbeck confirmed that the site was reinspected on December 7, 1989, and that the operator had relocated the affected area markers. AFO finds DOGM's response to Part 2 of the TDN to be appropriate.

Part 3 of the TDN addresses failure to divert surface drainage from the crest and face of the coal processing waste in accordance with MC 817.72(d). The TDN describes the location as the School House Canyon Coal Processing Waste Pile.

DOGM's response indicates that the operator has verbally committed to install new diversions as required by the Division and that submittal of the designs will be done in conjunction with the schedule for permit renewal submittals.

DOGM's response confirms that the Division agrees that new diversions need to be designed and installed. AFO considers the lack of designed and maintained diversions at the site of the coal waste pile to be a performance standard violation. Because the approved MRP is deficient in design and maintenance information for the diversions, it is possible that the deficiency could be construed to be a permit defect. However,

during the telephone conversation referenced above, Mr. Orell was advised that the schedule for permit renewal submittals indicates the hydrology information, which includes diversion ditch designs at the coal waste pile, will be submitted to DOGM in May 1990. Design and installation of the diversions pursuant to this schedule is not in accordance with DOGM's February 14, 1989, Reasonable Time Policy. Therefore, AFO finds DOGM's response to part 3 of the TDN to be inappropriate.

Part 4 of the TDN addresses failure to pass drainage from the disturbed area through a sedimentation pond before leaving the permit area in accordance with UMC 817.42. The TDN references the middle topsoil stockpile on the Crandall Shaft Facility road and the substation near "Goose Island" at the Hardscrabble Canyon Facilities.

DOGM's response indicates all proposed small area exemptions and alternative sediment control areas in the MRP have been included in the December 4 technical deficiency review and that a schedule for submittal will be determined.

AFO considers failure to pass disturbed area drainage from the middle topsoil stockpile and the substation through a sedimentation pond before it leaves the permit area to be performance standard violation. AFO finds DOGM's response to Part 4 of the TDN to inappropriate.

Therefore, in consideration of the above, OSM finds that DOGM has failed to take appropriate action to cause the violation cited in Parts 1, 3, and 4 of the TDN to be corrected or to show good cause for such failure. Violations of Utah's program exist. DOGM is aware of the violations through an inspection carried out during the enforcement of Utah's approved program. DOGM's deferring the correction of the violations to a schedule for permit renewal deficiencies (May 1990-Dec 1990) is arbitrary and capricious in that the State has acted inconsistently with UMC 843.12(a)(1).

If you disagree with this finding you may request an informal review in accordance with 30 CFR 842.11(b)(1)(iii)(A). The request may be filed at this office or with the Deputy Director, OSM, 1951 Constitution Ave., N.W. Washington, D.C., 20240. Your request must be received within five days of receipt of this letter. A Federal inspection may be conducted after the five-day appeal time has elapsed, unless an informal review is requested.

AFO is also concerned that DOGM is delaying actions associated with permitting of the Castle Gate Coal Company Price River Complex. DOGM approved a Permit Transfer for the Price River Complex in May 1986. In December 1986, DOGM advised Castle Gate Coal Company of the need for a stand-alone permit and the requirement to update the permit pursuant to the mid-term review. In November 1988, DOGM terminated the mid-term review and advised Castle Gate Coal Company that the remaining deficiencies would have to be resolved prior to the permit renewal initiation date. In October 1989, DOGM advised Castle Gate Coal Company that the renewal application is not adequate to allow renewal of the permit which expires on December 24, 1989. DOGM has now established a schedule to resolve technical permit deficiencies.

Dr. Dianne R. Nielson

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The submittal dates for the required information begin at least 5 months after the permit renewal. The administrative actions associated with the renewal will be reviewed as part of the 1990 oversight.

If you wish to discuss these matters further, please contact me or Steve Rathbun at (505) 766-1486.

Sincerely,

A handwritten signature in black ink, appearing to read "R. H. Hagen", with a long horizontal flourish extending to the right.

Robert H. Hagen, Director
Albuquerque Field Office

Acting