

*48 orig mine file
cc. L. Brandon
Helfrich*



**CASTLE
GATE
COAL COMPANY**

A Subsidiary of
AMAX Coal Industries, Inc.

CERTIFIED NO. P 078 522 133

March 31, 1989

Dr. Dianne Nielson, Director
Division of Oil, Gas and Mining
Three Triad Center, Suite 350
Salt Lake City, UT 84180-1203

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DIVISION OF
OIL, GAS & MINING

Dear Dr. Nielson:

On March 30, 1989, Castle Gate Coal Company was issued Notice of Violation #87-13-1-1. This violation was written by Mr. Michael DeWeese for: 1) Failure to clean Sediment Pond 12B; and 2) Failure to operate in accordance with the approved plan. In my opinion, this violation is an error on both counts and should be vacated administratively. The following facts are submitted for your consideration.

Count No. 1; Failure to clean Sediment Pond #12B.

- 1) Pond 12B was cleaned in October of 1988. This was done at the request of the Division Inspector, Mr. Harold Sandbeck. Mr. Sandbeck noted the recent cleaning in his inspection report dated 11/29 and 12/1/88 (Exhibit #1).
- 2) Mr. DeWeese lacks material fact to support his contention that the volume of sediment has accumulated to 60% of the design sediment storage. When Mr. DeWeese was asked on what facts he based his 60% accumulation of sediment, he said by his observation. Mr. DeWeese took no measurements of the depth of water or the difference in elevation between the discharge spillway and water elevation, therefore he does not know how much sediment storage is below the existing surface water elevation. Table 3.4-4 of the MRP shows that the required capacity for the pond including minimum required sediment storage is 18,801 FT³. The existing capacity of the pond is 23,427 FT³ which leaves an excess of over 5,000 FT³ for sediment storage. The 5000 FT³ is over 50% more than is required for design sediment storage.

rha/0331

Dr. Dianne Nielson
March 31, 1989
Page 2

- 3) UMC 817.46(h) is shown in the current regulations as being remanded. If the regulation is still remanded by a court order, then the regulation cited is unenforceable.

Count No. 2; Failure to operate in accordance with approved plan (UMC 771.19).

- 1) On January 20, 1989, Mr. Sandbeck noted in his inspection report (Exhibit #2) that the thickener overflow pond may require cleaning. Castle Gate Coal Co. evaluated the situation and decided to clean the pond. A contract was issued in February for \$40,000 to clean the overflow pond. In order to clean this pond, the berm shown on Exhibit 3.4-4 in the MRP had to be removed. Mr. DeWeese contends that this berm should have been replaced immediately after the cleaning operation was completed. The contractor completed the pond cleaning operation on March 23rd, which is less than a week before the violation was issued. Castle Gate was not in earnest to replace the berm because of other environmental priorities listed on Mr. Sandbeck's February Inspection Report. However, Castle Gate Coal fully intended to replace the berm as shown on the Exhibit. In fact, the berm was in place less than 3 hours after Mr. DeWeese's inspection (7 pm).

Castle Gate Coal Co. does not agree that the absence of this berm constituted a failure to operate in accordance with the approved plan. The berm in question is part of a pond which is not part of the protection of hydrologic balance, which would require review under Section 817.46 of the regulations. The pond is an integral part of the preparation plant coal processing infrastructure. The berm in question around this pond has two functions: 1) Is required by MSHA to prevent equipment from falling into pond; and, (2) Prevent water running along the road ditch from entering the pond.

- 2) Writing a violation for failure to operate in accordance with approved plan lacks reasonable specificity as required under UMC 843.12(b). Castle Gate Coal Co. is in compliance with the terms and conditions of the mining permit issued by the Division according to UMC 771.19. To use this regulation to issue a violation is vary capricious.

Dr. Dianne Nielson
March 31, 1989
Page 3

In summary, Castle Gate Coal Company in both cases had done, what was requested by the Division, above the standards necessary for compliance with the regulations. Therefore, I am respectfully requesting that NOV 89-31-1-2 be administratively vacated.

Sincerely,


Richard H. Allison, Jr., P.E.
Project Supervisor

RHA:dbw

cc: Steve Youngbauer
Bob Evans
Tom McKenna
John McCurdy
DOGM File
Chrono

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INSPECTION REPORT
(continuation sheet)

Page 2 of 4

PERMIT NUMBER: ACT/007/004DATE OF INSPECTION 11/29 & 12/1/88(Comments are Numbered to Correspond with Topics Listed Above)

General Comments. Richard Allison accompanied the undersigned inspector on this partial inspection. The inspection commenced on November 29, 1988 and the closeout was held on December 1, 1988. John McCurdy (Preparation Plant Manager) attended the closeout for the Castle Gate Preparation Plant site inspection.

4. Hydrologic Balance.b. Diversions.

Hardscrabble Canyon

The operator was informed to remove debris (3 fiberglass pipes) from the diversion located east of portals number 3 and 4. At this time a violation is not warranted.

Adit Number 1

The operator had removed the debris as noted in the October 27, 1988 inspection report.

c. Sediment Ponds and Impoundments. During the Mid-Term review, the operator was informed to clarify the as-built status of ponds 7, 8 and 11.

Castle Gate Preparation Plant

The upper thickener overflow pond and pond 12B had been cleaned out.

As mentioned in the October 27, 1988 report, Pond 11 required preventive maintenance. During the inspection, the operator was informed that the maintenance concerns were nearing an out of compliance level. The operator corrected the maintenance issues before the inspection was terminated.

Mid-Term Determination Of Completeness Review.

The Division completed a detailed Mid-Term Review of the information submitted by Castle Gate Coal Company (CGCC) on April 28, 1988. The operator must respond to the deficiencies as explained in the Division's Mid-Term completeness review document dated November 28, 1988.

INSPECTION REPORT
(continuation sheet)

Page 2 of 3

PERMIT NUMBER: ACT/007/004DATE OF INSPECTION 01/19 and 20/89(Comments are Numbered to Correspond with Topics Listed Above)General Comments:

Richard Allison accompanied the undersigned inspector on this complete inspection. A records review was conducted on the first day followed by a field inspection on the second day. No significant environmental problems were noted. Routine ditch maintenance was actively being conducted during the inspection. Maintenance items mentioned in this report have not reached an out of compliance level.

4. Hydrologic Balance:b. Diversions.

A culvert west of the lower thickener overflow pond on the west side of the Class I haul road requires preventive maintenance. At this time a violation is not warranted.

c. Sediment Ponds and Impoundments.

Castle Gate Preparation Plant

The upper thickener overflow pond was recently cleaned, but it appears that this pond may again require cleaning in the near future. The operator will determine if cleaning is needed.

At pond 11, the operator intends to upgrade the northwest corner inlet. The additional improvements will include the installation of a filter blanket with riprap. This maintenance will be implemented as weather permits.

The upper and lower thickener overflow ponds will be checked for technical adequacy in the upcoming five year renewal.

NPDES Discharge Reports

The 1988 4th quarter report indicated no discharge. No other problems were noted.

Pond Inspection Reports

The 1988 4th quarter reports (quarterly and weekly) were checked which included the raw water impoundment. No other problems were noted.

Lowell:

The following comments are made in response to Castlegate's request for administrative vacation of NOV 89-31-1-2, not the NOV referenced in Rich's letter.

I. Failure to clean sediment pond 12B.

1. I realize this pond was cleaned last summer but this only demonstrates that the pond is not adequately sized for its current function. In addition to storm runoff this pond acts as a retention basin for discharge from the mine water treatment pond and the thickener overflow pond, which are not included in the approved design.
2. I noted in my report the approximate water level relative to the spillway crest and the surface area of sediment deposition at the time of the inspection. I took no specific measurements because we lack the detailed information in the current MRP to accurately determine the pond capacity. The 60% design sediment volume 5,449 cubic feet, which is only about one fifth of the total pond capacity. Based on my observations in the field, I felt the sediment volume was over this amount.
3. It is my understanding that UMC 817.46 (h) is currently a valid regulation.

II. Failure to operate in accordance with approved plan.

1. As I noted in my inspection report, Rich stated that the pond was cleaned about 3 weeks prior to my inspection. The fact remains that the berm was not replaced after the pond was cleaned. I strongly disagree with Rich's contention that this structure is necessary for protection of the hydrologic balance. In fact, that is the reason for my initial concern. I am reasonably sure that the overflow pond does not presently contain the approved design capacity even though it was just cleaned.
2. No comment.