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United States Department of the Interior

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OFFICE OF SURFACE MINING
Reclamation and Enforcement
WASHINGTON, D.C. 20240

orig mine file



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*cc L Beaton
SKW*

*D. Haddock
J. Halfenich
P.F.O.*

DIVISION OF
OIL, GAS & MINING

MAR 6 1990

Dr. *Dianne* W. Nielson
Director
Division of Oil, Gas and Mining
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180-1203

Dear Dr. *Dianne* Nielson:

This is in response to your January 2, 1990, request for informal review of the Albuquerque Field Office Director's determination that your agency has not taken appropriate action with respect to three violations alleged in ten-day notice number 89-02-107-011. The ten-day notice alleges that Castle Gate Coal Company (permit number ACT/007/004) has failed to include certain roads in the permitted area, properly divert drainage from a coal waste pile, and pass drainage from two small areas through a sediment pond.

In your request for informal review, you maintain that all three alleged violations are permit defects which were present when the Office of Surface Mining Reclamation and Enforcement originally approved the permit application and for which your agency is now addressing in accordance with its reasonable time policy for revising permits. You add that agreement has been reached with the company on a schedule for submission of information necessary to correct a variety of permit deficiencies, including those identified in the ten-day notice, and that your agency currently remains within the timeframe established under your agency's policy for revising permits. Accordingly, you appeal that the permit revision process now in progress be allowed to run to completion.

Based on my review of the record and absent any evidence to the contrary, I find that the permittee is conducting surface coal mining operations in accordance with the permit as it was approved and that the failure to permit the road, to require designs for the waste pile diversion ditches and to require drainage control on two small areas was the result of an oversight committed during the permit review and approval process. In cases like this, where the permittee is performing in accordance with the approved permit, but the permit contains inadvertent omissions or other defects, appropriate State action to a ten-day notice may (in lieu of an enforcement action) consist of notifying the permittee in writing that a permit revision is required within a reasonable and specific timeframe in order to cure the defect(s).

The record shows that on December 4, 1989, your agency notified the permittee of the need for a permit revision to address the defects identified in the ten-day notice and instructed the permittee to consolidate these revisions with the schedule established for the submission, review and approval of other revisions required of the permittee for the upcoming permit renewal. That schedule provides for submission and review of permit revision information in stages extending over a six month period commencing May 1, 1990, and culminating in issuance of the revised permit on December 15, 1990.

Dr. Dianne R. Nielson

2

Based on the foregoing, I find that the actions taken by your agency to correct the permit defects are appropriate and, therefore, a Federal inspection is not required. However, I share the Albuquerque Field Office Director's concern that your agency has not adhered to its reasonable time policy which requires permit revisions involving permit defects to be approved within 90 days from the date the permittee is notified of the need for the revision.

Sincerely,



Deputy Director
Operations and Technical Services

cc: Castle Gate Coal Company
P.O. Box 449
Helper, Utah 84526

Robert H. Hagen
Director, Albuquerque Field Office

Raymond Lowrie
Assistant Director, Western Field Operations

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