



United States Department of the Interior  
OFFICE OF SURFACE MINING  
Reclamation and Enforcement  
WASHINGTON, D.C. 20240

TAKE PRIDE IN AMERICA

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JUN 21 1991

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DIVISION OF OIL GAS & MINING

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

Dear Dr. Nielson: *Dianne*

This is in response to your May 13, 1991, request for informal review of the Albuquerque Field Office (AFO) Director's determination that your agency has not taken appropriate action or shown good cause for not taking appropriate action with respect to ten-day letter (TDL) number 91-02-246-003 (Blackhawk Coal Company's Willow Creek Mine). The TDL alleges that the permittee failed to provide justification for a long-term, practical, achievement of an industrial/commercial land use as defined by the Utah regulations at R614-100-200, and required at R614-301-413.310 and R614-301-413.331.

In your request for informal review, you assert that there is no basis under the Utah regulations supporting the AFO's main concern that the five year lease between the coal company and the lessee, Environmental Industrial Supply, is inadequate to justify the long term probability of achieving the industrial postmining land use on this 4.2 acre permit area. You maintain that by consummation of a commercial lease between the parties which was approved by the appropriate land use agency, the operator has demonstrated the potential for the postmining land use and that no other supporting materials beyond those provided in the approved postmining land use change are required.

The Utah regulations at R614-301-413.310 and 413.330 through 413.333, authorize a change in postmining land use to industrial/commercial, if, among other things, the new use has a reasonable likelihood for achievement, it is not impractical or unreasonable and it will not involve unreasonable delay in implementation. A five year lease, which may be terminated by either party prior to expiration of its term, does not, in and of itself, constitute a defect in the approval of an alternate postmining land use. However, the absence of the use for which the lease was intended could form a basis for revisiting whether the criteria which must be met for approval of an alternative postmining land use remain satisfied.

Indeed, in this case, the record indicates that circumstances at the site have changed. Although the lease was executed almost two years ago and the alternative industrial/commercial postmining land use approved one year ago, there has been little or no storage of materials or equipment on the site in connection with the lessee's reclamation contracting business. Also, there has been little or no use of the existing building, and the electrical substation, which was to provide power in connection with the industrial/commercial land use, has been disconnected by the power company and thus, currently has no practical use to the lessee. These facts would seem to indicate that the initial determination that the entire 4.2 acres was necessary for the industrial/commercial land use may no longer be appropriate.

Based on the foregoing, I find that the postmining land use plan in the permit is no longer adequate to demonstrate that there is a reasonable likelihood for achievement of the industrial/commercial postmining land use, nor is it adequate to demonstrate the need for retention of the existing structures and use of the entire 4.2 acres for storage. Accordingly, I affirm the determination of the AFO and hereby order a Federal inspection to require appropriate revisions to the permit consistent with this decision.

Sincerely,



W. Hord Tipton  
Deputy Director  
Operations and Technical Services

cc: Blackhawk Coal Co.  
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Lancaster, Ohio 43130

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