



United States Department of the Interior

OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
SUITE 310
625 SILVER AVENUE, S.W.
ALBUQUERQUE, NEW MEXICO 87102



In Reply Refer To:

May 2, 1991

RECEIVED

MAY 06 1991

DIVISION OF
OIL GAS & MINING

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
P 965 799 184

Mr. Lowell P. Braxton
Associate Director, Mining
Division of Oil, Gas and Mining
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, UT 84180-1203

Re: Ten-Day Letter (TDL) 91-02-246-3, Willow Creek

Dear Mr. Braxton:

In accordance with 30 CFR 842.11, the following is a written finding regarding the Division of Oil, Gas and Mining's (DOGM) response to the above-noted TDL.

The Albuquerque Field Office (AFO) received DOGM's response to the TDL on April 9, 1991. The response was due on April 10, 1991. Therefore, the response was timely.

The TDL contains one permit defect as follows:

"Failure to provide justification for a long term, practical, achievement of an Industrial/Commercial land use as defined by The Utah Coal Mining Rules."

Your response states:

"The Division believes with respect to this permit, Blackhawk Coal Company is in compliance with the above-cited regulations. Blackhawk Coal Company has provided for the likely achievement of a light industrial use by obtaining a standard industrial contract with Environmental Industrial Supply. The Carbon County Planning and Zoning Commission has also approved this site for the storage of industrial equipment. The use of this site as stated is certainly not impractical or unreasonable. This site is clearly capable of supporting a light industrial use, and that use is contemplated in the above definition of R614-100-200."

The standard industrial contract with Environmental Industrial Supply is for 5 years and can be terminated by either party at any time. This is a contract to store equipment on 4.2 acres (the size of the permit area) that presently has a fenced building and a large electrical substation. No justification has been provided in the "standard industrial contract" to show that the electrical substation, the fenced building, or 4.2 acres are needed or will be used by Environmental Industrial Supply. More importantly, if the lease is terminated, the demand for "storage areas" as a postmining land use does not exist where the Willow Creek site is located.

While the Carbon County Planning and Zoning Commission's approval of the land use change to industrial storage authorizes such use, it provides no guarantee that the postmining land use will be achieved.

A contractual arrangement for on-site storage that can be terminated at any time is not considered reasonable justification for a light industrial land use classification, retention of mining-related structures, reduction in the amount of bond, and relief from the reclamation obligations of the previously approved permit.

The change in the land use changed many other aspects of the Mining and Reclamation Plan (MRP) that are not addressed by this TDL. For example, a plan for redistributing a topsoil substitute and revegetating the disturbed area was dropped when the land use was changed. The failure to revegetate industrial sites is in violation of R614-301-356.240 which states that ground cover for industrial/commercial sites will not be less than needed to control erosion. The MRP should have been reviewed for other changes that would follow the revised postmining land use.

The information in the reclamation plan does not provide the justification for the land-use change and the resulting release of the permittee from reclamation obligations under the previously approved permit and the approved State program. Therefore, your response has been deemed inappropriate in accordance with 30 CFR 842.11. If you disagree with these findings, you may request an informal review in accordance with 30 CFR 842.11(b)(1)(iii)(a).

Sincerely,

Bernard Freeman Acting
Robert H. Hagen, Director
Albuquerque Field Office