



United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
Western Region Office
1999 Broadway, Suite 3320
Denver, CO 80202-3050



July 1, 2016

John R. Baza, Director
Utah Division of Oil, Gas and Mining
PO Box 145801
Salt Lake City, UT 84114

RE: Utah Division of Oil, Gas and Mining's Response to Ten-Day Notice X16-140-562-001

Dear Mr. Baza,

The Office of Surface Mining Reclamation and Enforcement (OSMRE) Denver Field Division (DFD) received your letter (the Response) dated June 23, 2016, in answer to the Ten-Day Notice (TDN) issued to your office on June 6, 2016 regarding vegetation reference area monitoring practices at the Skyline Mine. The basis for the TDN was OSMRE's perception that the Division had failed to enforce all conditions and commitments in the Skyline Mining and Reclamation Permit (MRP); specifically, the provision that "The reference areas will be surveyed by the S.C.S. at five year intervals to determine their condition class." MRP at chapter 4, page 47. In the response letter the Division suggested "the MRP is ambiguous at best" (Response at 13) and the best way to deal with this obscure language "is to remove the ambiguity in the MRP, not to issue an NOV." Response at 31. As a result, at the Division's prompting, Skyline has proposed a permit amendment to remove the language in question. OSMRE understands the Division is currently at work reviewing the technical merits of this proposal (Task ID 5186).

Pursuant to OSMRE's INE-35 and applicable regulation, the Field Office shall consider the regulatory authority's (RA) response to a TDN as constituting appropriate action to cause a violation to be corrected or good cause for failure to do so, unless the Field Office makes a written determination in accordance with 30 CFR 842.11(b)(1)(ii)(B)(I) that the response is arbitrary, capricious, or an abuse of discretion under the approved regulatory program. Under the arbitrary, capricious, or abuse of discretion standard, OSMRE will not substitute its judgment for that of the RA, unless the RA's response is arbitrary, capricious, or an abuse of discretion.

Appropriate action includes enforcement or other action authorized under the State program to cause the violation to be abated. Good cause for not taking action includes that the possible

violation does not exist, the State regulatory authority requires a reasonable and specified amount of additional time to determine whether a violation exists, or the State lacks jurisdiction over the possible violation or operation.

Arbitrary, capricious, or an abuse of discretion generally means, with respect to an RA response to a TDN, that the RA has acted—

- (1) Irrationally in that the RA's interpretation of its program is inconsistent with the terms of the approved program or any prior RA interpretation recognized by the Secretary of the Interior;
- (2) Without adhering to correct procedures;
- (3) Inconsistent with applicable law; or
- (4) Without a rational basis after proper evaluation of relevant criteria.

FINDING and CONCLUSION

Your response states "The Division has determined that it should improve its efforts to document the instances when reference areas are monitored... Thus, the Division will implement a policy to have its inspectors and/or biologists visit reference areas during the mid-term permit review process." Response at 25. This monitoring and documentation addresses the spirit of OSMRE's concerns which were the basis for the TDN and is appreciated by DFD. Your response also correctly states that the Division's approved program does not contain any provision specifically requiring vegetation reference area monitoring at five year intervals; therefore no violation of the rules may exist.

OSMRE has determined, pursuant to 30 CFR 842.11(b)(1)(ii)(B)(4), that you have shown good cause for not taking enforcement or other action within ten days to cause the identified potential violations to be corrected because the alleged violations do not exist under your approved regulatory program. This determination applies to TDN: #X16-140-562-001. No further action is required under this TDN.

If you have any questions regarding this matter, please contact me at (307) 261-6545.

Sincerely,



Alan Boehms, Denver Field Branch Manager
Denver Field Division