



United States Department of the Interior

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

29 MAR 1989

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DIVISION OF
OIL, GAS & MINING

*Rick - we've got to
best track this. Let's
discuss
4/3/89*

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

Dear Dr. Nielson:

This is in response to your February 23, 1989 request for informal review of ten-day notice No. X-88-02-107-9 concerning Cyprus-Plateau Mining Company, Starpoint Mine, Permit No. ACT/007/006. The ten-day notice alleges that diversion channel designs for a coal waste pile approved in the Mining and Reclamation Plan (MRP) have not been designed to safely pass runoff from a 100-year, 6-hour precipitation event as required under the Utah program.

Your agency's initial response concurred that the correct storm event was not used in the approved channel designs but that the event used was of greater magnitude and therefore in excess of program requirements. The Albuquerque Field Office postponed rendering a decision at that time until your agency could consider additional technical information furnished by the Albuquerque Field Office to clarify and support their allegation.

Your agency's subsequent response was predicated on the assumption that the Albuquerque Field Office analysis of the channel designs used a different methodology from that used by the permittee. Consequently, your agency concluded that since the Utah program does not specify which design models must be used in designing channels, the model used by the permittee was acceptable to your technical staff, no permit defect existed. Based on your agency's understanding of the Albuquerque Field Office analysis at that time, this response constituted a showing of good cause.

In your request for informal review, you now acknowledge the Albuquerque Field Office's contention that their analysis used the same methodology as the permittee in calculating the appropriate designs and you propose that within thirty days of this notification your agency will reevaluate the design

Dr. Dianne R. Nielson

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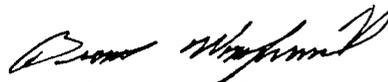
calculations in the approved plan and require a permit revision, if the appropriate design event is not met. Therefore, I find that your response to the ten-day notice constitutes good cause under 30 CFR 842.11(b)(1)(ii)(B)(4)(ii) and hereby reverse the written determination of the Albuquerque Field Office Director.

Please inform the Albuquerque Field Office of the results of your reevaluation of the designed calculations upon completion of your review within the thirty day period stated in your request for informal review.

You also state in your request for informal review that the ten-day notice concerns a design issue and not a performance standard issue. However, the record in this case indicates that soon after refuting the existence of the channel design defect, your agency directed the permittee by letter (following an on-site visit) to initiate grading and other remedial work necessary to assure the existing channels at the minesite are maintained to safely pass the required 100-year, 6-hour storm design. Although a letter to the permittee would be an appropriate action under 30 CFR 842.11(b)(1)(ii)(B)(4)(ii) where your agency finds that an approved design needs to be revised to comply with the approved program, a letter cannot be used as a substitute for an enforcement action to direct a permittee to undertake remedial action to bring an operation into compliance with the approved MRP.

In this regard, your agency's action provides reason to believe that the existing channels are not installed in accordance with the designs approved in the MRP. Accordingly, by this letter I am directing the Albuquerque Field Office to issue a ten-day notice to your agency addressing this alleged problem.

Sincerely,


Assistant Director
Program Policy

cc: Robert H. Hagen
Director, Albuquerque Field Office

Raymond Lowrie
Assistant Director, Western Field Operations

Plateau Mining Company
P.O. Drawer PMC
Price, Utah 84501