



# United States Department of the Interior

OFFICE OF SURFACE MINING

Reclamation and Enforcement

WASHINGTON, D.C. 20240



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Dianne R. Nielson, Ph.D.  
 Director, Division of Oil, Gas  
 and Mining  
 3 Triad Center, Suite 300  
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 Salt Lake City, Utah 84180-1203

DIVISION OF  
 OIL GAS & MINING

Dear Dr. Nielson: *Dianne*

This is in response to your May 3, 1991, request for informal review of the Albuquerque Field Office (AFO) Director's determination that your agency has not taken appropriate action with respect to ten-day notice (TDN) 91-02-244-5 (TV-2). The ten-day notice alleges that Cyprus-Plateau Mining Company (permit number ACT/007/006; Star Point Mine) failed to comply with the terms and conditions of the permit by the unauthorized stockpiling of coal from an abandoned mine land project on an approved coal refuse pile and failed to divert surface drainage away from the outslope of the refuse pile.

In your request for informal review, you explain that a memorandum of understanding (MOU) executed November 20, 1987, between the Cyprus-Plateau Mining Company and the Division of Oil, Gas and Mining substantiates your agency's approval of the placement of coal materials at the Star Point refuse pile, and that this MOU was part of the mine record and available at the time the Office of Surface Mining Reclamation and Enforcement conducted its inspection in March of 1991.

The record shows that under an approved abandoned mine lands contract, your agency entered into a MOU with Cyprus-Plateau whereby a coal stockpile that was obstructing the AML project at the Price River refuse pile was to be transported to the Cyprus-Plateau permitted refuse pile and processed for sale, with any waste to be disposed of in that permitted waste pile. While the AFO in citing Utah Coal Mining Rule 614-300-143 alleges that the stockpiling of coal material on the permitted refuse pile is contrary to the terms and conditions of Cyprus-Plateau approved permit, I find nothing in the record demonstrating that either the approved permit or the Utah regulations explicitly prohibit such an activity. In the absence of a specific provision requiring prior approval of this incidental activity, and considering that the activity is sanctioned and governed by the MOU for the approved abandoned mine lands project, I find that

Dianne R. Neilson, Ph.D.

2

your response to the TDN does not constitute an abuse of discretion under the Utah program. Accordingly, I reverse the determination of the Field Office Director.

With respect to the second alleged violation, I find that the determination of the AFO was proper based on the information you made available to that office in your ten-day notice response. However, since in your request for review you commit to ordering the permittee to submit appropriate diversion ditch designs within 30 days of notification and to construct the diversion within 30 days after the approval of those designs, I will consider your action in this matter appropriate and a Federal inspection will not be necessary. This finding is contingent upon demonstrating to the AFO within 15 days after receipt of this letter that the permittee has been notified of the need for a permit revision.

Sincerely,



W. Hord Tipton  
Deputy Director  
Operations and Technical Services

cc: Cyprus-Plateau Mining  
P.O. Drawer PMC  
Price, Utah 84501

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