

*not for file*  
*cc L. Buxton*  
*J. Helfrich*



# United States Department of the Interior

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



*SEP*  
In Reply Refer To:

April 18, 1991

CERTIFIED MAIL-RETURN RECEIPT REQUESTED  
P 965 799 376

RECEIVED

APR 22 1991

DIVISION OF  
OIL GAS & MINING

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

Re: Ten-Day Notice (TDN) No. 91-02-244-5 (TV-2) Cyprus-Plateau Mining  
Company, Star Point Mine

Dear Dr. Nielson:

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

On March 7 and 8, 1991, the Albuquerque Field Office (AFO) conducted a  
random sample inspection of the Star Point Mine. The AFO inspector was  
accompanied by a DOGM inspector. The inspection resulted in the  
issuance of the TDN referenced above for the two alleged violations of  
the Utah Regulations. The TDN was sent certified mail to DOGM on March  
15, 1991, and was received in your office on March 18, 1991, thereby  
setting the response due date at March 28, 1991. The written response,  
dated March 27, 1991, was received in AFO on March 27, 1991, via tele-  
fax. AFO will, therefore, consider this a timely response.

The first violation, one of two, of the TDN cites Utah Coal Mining  
Rule R614-300-143 as the regulation believed to have been violated. The  
TDN states that the operator failed to comply with the terms and  
conditions of the permit by stockpiling coal in a non-permitted area.  
The pile of coal referenced in the violation is known as the Castle Gate  
Coal pile.

DOGM's response is that the location and placement of the coal was: (1) Approved with the concurrence of the Office of Surface Mining Reclamation and Enforcement (OSM) under the auspices of an abandoned mine land (AML) contract; and (2) in the mining permit. In addition, OSM has completed oversight inspections on the area prior to this one and did not cite it previously as a violation.

AFO has reviewed the AML grant amendment mentioned in DOGM's response for data as to the location of the waste coal disposal area. The storage location proposed in that document is an area identified as "Wattis No. 2." In addition, there was a comment about a proposed location on an active mining operation, but it was never identified as the Star Point Mine. There was no further discussion after the completion of the grant as to the exact location of the final disposal. Regardless, the approvals granted in a Title IV grant do not obviate the need to obtain regulatory authority approval to store and/or dispose of offsite material within a Title V permanent program permit area.

As to DOGM's comment about coal storage being approved in the mine permit, AFO would point out that the approval specifically is for stoker coal and emergency placement of coal from the minesite which is to be "plowed" off of the beltline. There is no approval in the mine plan that applies to the storage of the "Castle Gate Coal pile." There is no approval, within the current permit, for offsite material storage on the mine. The permittee is not operating in accordance with his approved mining and reclamation plan. AFO finds DOGM's failure to address the violation in accordance with the requirements of Utah's program to be arbitrary and capricious and not in accordance with the recently signed Memorandum of Understanding. Therefore, OSM finds DOGM's response to be inappropriate.

In violation two of two, the TDN cites Utah's Coal Mining Regulation R614-301-746.212 as the regulation believed to have been violated. The TDN states that the operator has diverted surface drainage over the outslope of the refuse pile on the outslope of the southern end of the coarse refuse pile below the two working faces.

DOGM indicates that the pile configuration is constructed as approved because it has been certified as-built by a registered professional engineer. In addition, geotechnical studies verify that there is no accumulation of water in the pile.

AFO agrees that construction is occurring in accordance with DOGM approval. A violation of a specific performance standard, however, still exists. Utah's approved program at R614-301-746.212 prohibits uncontrolled surface drainage from being directed over the outslope of the refuse pile. The current construction practices of the permittee, as approved by DOGM, are allowing this to occur. Waste material is being placed in a manner that directs surface flows toward and over the face of the fill. In addition, field observations clearly revealed that the face of the fill was highly saturated.

Dr. Dianne R. Nielson

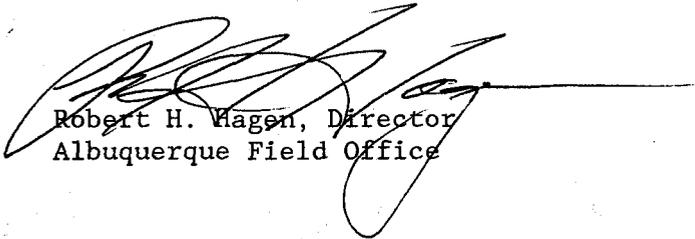
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Uncontrolled surface drainage is being directed over the outslope of the pile. DOGM's failure to address the violation in accordance with the requirements of Utah's program constitutes an arbitrary and capricious response. Therefore, OSM finds DOGM's response to violation two of two of the TDN to be inappropriate.

If you disagree with any of these findings, you may request an informal review in accordance with 30 CFR 842.11(b)(1)(iii)(A). Your request must be received within 5 days of receipt of this letter.

If you wish to discuss the matter further, please contact Steve Rathbun or me at (505) 766-1486.

Sincerely,



Robert H. Wagen, Director  
Albuquerque Field Office