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May 15, 1992

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RECEIVED
 MAY 18 1992
 DIVISION OF
 OIL GAS & MINING

*file folder #5
 ACT/007/006*

Dear Mr. Helfrich,

Re: NOV N92-26-2-1 - Information Pertaining to the Violation

This letter is to present information pertinent to the violation that should be considered in the assessment of the penalty.

The following should be considered in assessing the penalty for this violation:

- 1- The provision of the act, regulation or permit violated is listed as R645-301-746.212. This regulation states:
 Uncontrolled surface drainage may not be diverted over the outslope of the refuse pile. Runoff from areas above the refuse pile and runoff from the surface of the refuse pile will be diverted into stabilized diversion channels designed to meet the requirements of R645-301-742.300 to safely pass the runoff from a 100-year, 6-hour precipitation event. Runoff diverted from undisturbed areas need not be commingled with runoff from the surface of the refuse pile.

The nature of the violation states,
 Failure to divert runoff from the surface of the refuse pile into stabilized diversion channels designed to meet the requirements of R645-301-742.300 to safely pass runoff from a 100-year, 6-hour precipitation event.

- A. Runoff from the surface of the refuse pile has always been diverted in a controlled manner into channels and culverts and then into sediment ponds, all of which meet the design requirements of the regulations as shown in our Mining and Reclamation Permit which has been approved by the Division.

A Division order (D091A, not to be confused with another order issued on September 23, 1992 with the same number) was issued on May 6, 1991 to address drainage from the

Ben Grimes
Page 2
May 15, 1992

top and sides of the refuse pile. This order was resolved with our misgivings as enumerated in my letter to Lowell Braxton dated June 5, 1991. We had very sound engineering and environmental reasons for our misgivings. To resolve the order, we constructed a berm around the top edges of the pile and installed a culvert to divert runoff from the top to sediment pond 5.

This violation has been issued in error, regulation R645-301-746.212 does not apply because:

- 1- We are not now or never have diverted runoff from the top of the pile in an uncontrolled manner, the water is controlled by the berms, culvert and perimeter ditches around the pile. Before the berms were constructed, runoff was not diverted in an uncontrolled manner over the edges of the pile. This runoff was diverted into sediment ponds 5, 6 and 9 where sediment was trapped and returned to the refuse pile when the ponds were cleaned; no sediment from the refuse pile ever left the permit area.
- 2- Runoff from areas above the pile is and always has been diverted around the pile by diversion ditches designed properly according to the regulations.

The violation should be vacated because regulation R645-301-746.212 does not apply to the controlled runoff system we now have in place.

- B. The second sentence of the nature of the violation addresses potential ponding on top of the pile created by the berms. This very issue has been a concern of ours throughout resolution of the original order, please refer to my letter to Lowell Braxton dated January 7, 1992, wherein I addressed the ponding potential because of the dynamics of the pile construction.

The Division order created the ponding problem. The only feasible solution to the order for several reasons, was to construct the berms and culvert, any other solution we considered had far greater implications for continued construction and overall maintenance of the pile. The entire history of construction of the pile needs to be considered when reviewing this violation.

The potential for environmental damage and the potential for safety implications were created by the original Division order and subsequent berm construction. All of the issues revolving around this situation need to be reviewed and considered before an assessment is made. The original drainage system worked well with no environmental damage created.

Ben Grimes
Page 3
May 15, 1992

We ask you to carefully research the original Division order, the resolution documentation, the refuse pile drainage system and the information presented in this letter before making an assessment.

If I can clarify anything regarding this violation or the history of the refuse pile please give me a call.

Respectfully,



Ben Grimes
Sr. Environmental Engineer

File: 2-5-2-5
Chrono: BG920510