



United States Department of the Interior

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

mine file
ACT/007/007
TAKE PRIDE IN AMERICA
ca mra
In Reply Refer To: *L. Blumstein*

May 1, 1991

RECEIVED

MAY 06 1991

DIVISION OF
OIL GAS & MINING

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
P 965 799 181

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) 91-02-244-3 (TV-6) Sunnyside Mine, Sunnyside Coal Company, Utah

Dear Dr. Nielson:

The following is a second written finding in accordance with 30 CFR 842.11 regarding the Division of Oil, Gas and Mining's (DOGM) April 19, 1991, letter. The letter was received by the Albuquerque Field Office (AFO) on April 22, 1991, and addresses AFO's initial finding dated April 8, 1991.

Part 1 of the TDN addresses failure to place coal mine waste in a controlled manner to prevent combustion in the coarse refuse pile. The TDN references the area between the second and third lift.

DOGM's initial response reported that a Division inspector reinspected the site on March 1, 1991. At that time, it was noted that the violation had been abated.

In the letter dated April 8, 1991, AFO found DOGM's response to be good cause for not taking appropriate action because the violation no longer existed.

Part 2 of the TDN addresses failure of the permittee to comply with the terms and conditions of the permit. The TDN references the drop inlet discharge structures for slurry cells one and two. DOGM's initial response was to order the operator to submit complete and adequate as-built drawings of the two slurry ponds, as well as the clearwater pond outfall device within 30 days.

AFO's April 8, 1991, letter found DOGM's response for part 2 of the TDN to be arbitrary and capricious and, therefore, inappropriate. The TDN addressed the failure of the operator to comply with the permit. The preamble to the "Ten-Day Rule" 30 CFR Parts 842 and 843, OSMRE Directive INE-35, and the Memorandum of Understanding (MOU) between OSM and DOGM all define an appropriate action for noncompliance with a permit to be issuance of an enforcement action. The MOU goes on to say "The possibility that DOGM may at some time in the future, approve a revision of the permit to allow an unauthorized practice does not negate the requirement for an enforcement action."

In the interim between the TDN response review and DOGM's reply to the review, the operator submitted as-built drawings. However, there is nothing in DOGM's March 14, 1991, response that would change AFO's earlier finding of an inappropriate action in response to part 2 of the TDN. In order to complete our files, please submit the drawings and supporting information within 15 days of the receipt of this letter.

Part 3 of the TDN addresses failure to remove topsoil as a separate layer from the area to be disturbed. The TDN references topsoil on the fourth lift of the refuse pile.

DOGM's initial response was that the material in question is, in fact, capping spread earlier by the previous permittee during one of the construction phases of the outslope of the west slurry cell. AFO was unable to make a finding for this part of the TDN because of insufficient documentation. A request to DOGM was made for documentation regarding the violation to be submitted within 15 days of the receipt of the review.

DOGM has submitted excerpts from the permitting documents, and AFO has reviewed those documents. AFO finds that DOGM's response that the area in question is composed entirely of coal refuse is supported by the documentation provided; therefore, AFO withdraws violation 3 of 6. AFO's minesite inspection report also pointed out that organic material was being buried in the waste. A State Notice of Violation or a Ten-Day Notice was not issued because Utah regulations do not require that organic material be removed. A 30 CFR Part 732 letter will be initiated to require that Utah regulations be amended to ensure "as effective as" language for that standard.

Part 4 of the TDN addresses failure to submit certified quarterly reports by a registered professional engineer for all quarters in 1990.

DOGM's initial response stated that the operator submitted copies of those reports between the time of the inspection and your response. AFO found that DOGM may have had good cause for not taking action but requested that copies of those reports be submitted for review within 10 days.

DOGM's April 19, 1991, letter to AFO included copies of those reports as required. AFO has reviewed the registered professional engineer certifications for the refuse pile for all quarters of 1990 and has found them to be adequate. AFO finds that DOGM has good cause for not taking an enforcement action because the violation no longer existed at the time of the State response to the TDN.

Part 5 of the TDN addresses failure to inspect the refuse pile during all quarters in 1990 for 90 percent compaction, as specified in documentation of DOGM's analysis of the permit application.

DOGM's initial response pointed out that the operator was not required to attain this standard of compaction for the refuse pile because the currently approved permit or rewritten State rules do not require 90 percent compaction. AFO found this to be good cause for not taking action. OSMRE Directive INE-35 (3.f(2)(i) describes "good cause" as the regulatory authority providing facts which demonstrate that the condition addressed in the TDN is not a violation under the approved State program.

Part 6 of the TDN addresses failure to submit registered professional engineer certifications for the slurry impoundments on an annual basis. The TDN references the annual certifications for 1989 and 1990.

DOGM's initial response indicated that the annual reports were submitted to the Division on March 6, 1991, 2 days after the inspection.

In the April 8, 1991, letter, AFO's review of that response indicated that good cause may be found for DOGM not taking enforcement action for this part of the TDN because the violation no longer existed at the time of the DOGM response. Copies of the certifications received by the Division were to be sent to AFO within 10 days of the receipt of AFO's review of DOGM's response.

On April 19, 1991, DOGM mailed the annual certifications. AFO notes that the letter submitting the certified annual slurry impoundment reports to DOGM is dated March 28, 1991, instead of the March 6 date as reported in the Division's initial response. Therefore, AFO will withhold a final decision on the appropriateness of DOGM's response pending receipt of documentation verifying that the annual reports were submitted on March 6, 1991. Please provide documentation within 10 days.

DOGM also states that findings of "good cause" should be an appropriate final action. I have attempted to provide more information regarding the AFO findings of "good cause" in this letter. The Surface Mining Control and Reclamation Act (Section 521) and 30 CFR 842.11 both

Dr. Dianne R. Neilson

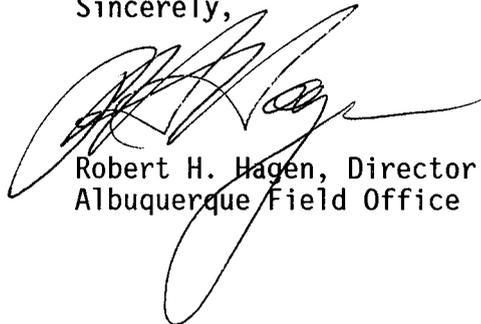
4

describe "good cause" as a showing of good cause for failure to take an appropriate action. In some cases, the finding of good cause may require additional time to determine if a violation exists, and in others, OSM may ask for verification to support a finding of good cause. Therefore, DOGM's position as stated in the April 19, 1991, letter that a finding of "good cause" is an appropriate action and the conclusion of the TDN process is not a correct interpretation of "good cause."

As noted in the AFO letter of April 8, 1991, replying to DOGM's initial response to the TDN, if you disagree with any of these findings, you may request an informal review in accordance with 30 CFR 842.11(b)(11)(iii)(A). The request may be filed with AFO or with the Deputy Director, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW, Washington, DC, 20240. Your request must be received within 5 days of the receipt of this letter.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Hagen', with a large, sweeping flourish extending to the right.

Robert H. Hagen, Director
Albuquerque Field Office