



that reinspection will be reviewed for information regarding the abatement. In addition, the site may be revisited by an OSM inspector at a later date to evaluate the operator's action.

The TDN cites DOGM's Coal Mining Regulation R614-300-143 as the regulation believed to have been violated for violation two of six. The TDN states that the permittee failed to comply with the terms and conditions of the permit for the outlet structures on slurry cells one and two.

DOGM's response indicates that the operator has been ordered to submit complete and adequate certified as-built drawings of the number one and number two slurry ponds and Clear Water Pond (Outfall 004) within 30 days. AFO finds this contrary to the intent of the regulation. The operator is bypassing the design discharge structures for the slurry ponds. The certified as-builts for these structures do not show the bypass, as was found during the oversight inspection. The order by DOGM to the operator to modify the permit is also contrary to the Memorandum of Understanding of February 26, 1991, between OSM and DOGM relating to permit defects. The breaching of those spillway systems is not a permit defect. Whenever a permittee is not conducting surface coal mining and reclamation operations in accordance with the terms of the permit or approved mining and reclamation plan, an enforcement action (Notice of Violation, Cessation Order) is required. 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 six for the bypassed spillways to be inappropriate.

In violation three of six, the TDN cites Utah's Coal Mining Regulation R614-301-232 as the regulation believed to have been violated. The TDN states that the operator has failed to remove topsoil as a separate layer from the area to be disturbed on the fourth lift of the coarse refuse pile. Your response indicates that the "topsoil material" in question is instead capping material used by the applicant to prevent combustion on the west dike of the west slurry cell. AFO has researched the Mining and Reclamation Plan (MRP) files for Sunnyside in this office but is unable to locate documentation regarding the issue. The Plate III-37 and Dike Stability Report by Rollins, Brown, and Gunnel, Inc. on file in AFO concentrate on findings noted in a geotechnical study of the eastern slurry cell with little or no comment regarding the western slurry cell. DOGM must submit documentation from the MRP to AFO addressing capping material and the placement thereof on the embankment of the western cell. Please submit the data to AFO within 10 days of the receipt of this letter. After receipt of that material and review of the documentation, AFO will render a decision regarding violation three of six.

In violation four of six, the TDN cites Utah Coal Mining Regulation R614-301-514.230 as being the regulation believed to have been violated. The TDN states that the operator failed to submit a certified quarterly report by a qualified registered professional engineer for the refuse pile to the Division for all quarters in 1990. Your response indicates that the operator submitted copies of those reports to the Division on March 6, 1991. In addition, the comment was made that DOGM is ordering the operator to update the reporting requirement in the MRP within 30 days. AFO may consider DOGM's response to be good cause for not taking action but would request that copies of those reports be submitted to AFO within 10 days of the receipt of this letter. Final judgement in this matter will be reserved until those reports are submitted for AFO review.

In violation five of six, the TDN cites Utah Coal Mining Regulation R614-301-514.230 as the regulation believed to have been violated. The TDN states that the operator failed to inspect the refuse pile during all quarters in 1990 for 90 percent compaction. Your response indicates that the approved permit does not require 90 percent compaction; in addition, the rewritten rules do not require the 90 percent figure either. AFO concurs with DOGM's response. AFO's records refer to the 90 percent compaction requirement in a technical deficiency response regarding the mine plan review, but further review of the matter has brought to light that it was not incorporated as part of the permit. In addition, stability studies conducted during the initial permitting phase of the mine referred to testing for stability of the coarse refuse, but there are no further details regarding the matter. AFO considers DOGM's response to be good cause for not taking action. AFO would, however, comment that the MRP should be updated to identify a compaction requirement to ensure stability. The matter will be brought up during future programmatic reviews.

In violation six of six, the TDN cites Utah Coal Mining Regulation R614-301-514.312 as the regulation believed to have been violated. The TDN states that the operator failed to submit an annual report certified by a registered professional engineer on the slurry impoundments. Your response indicates that the operator submitted those reports to your office on March 6, 1991. AFO may consider DOGM's response to be good cause for not taking action; however, final judgement in this matter will be reserved until copies of those certifications are sent to this office. Submittal of that data should be made within 10 days of receipt of this letter.

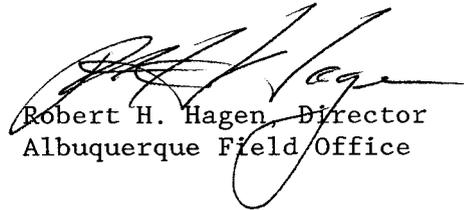
If you disagree with any of these findings, you may request an informal review in accordance with 30 CFR 842.11(b)(1)(iii)(A). The request may be filed with AFO or with the Deputy Director, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW, Washington, DC 20240. Your request must be received within 5 days of receipt of this letter.

Dr. Dianne R. Nielson

4

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

Sincerely,



Robert H. Hagen, Director  
Albuquerque Field Office