



United States Department of the Interior

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

April 30, 1992



In Reply Refer To:

CERTIFIED RETURN MAIL RECEIPT NO: P 965 799 257

RECEIVED

MAY 04 1992

DIVISION OF
OIL GAS & MINING

Mr. Lowell P. Braxton
Associate Director, Mining
Division of Oil, Gas and Mining
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180-1203

Re: DOGM Response to Ten-Day-Notice (TDN) 92-02-370-001 TV 2,
Sunnyside Mine, ACT/007/007

Dear Mr. Braxton:

The Albuquerque Field Office (AFO) received the Division of Oil, Gas and Mining's (DOGM) response to the above referenced TDN on April 6, 1992. AFO has reviewed the response and has determined that DOGM has taken the same course of action, issuance of a Division Order to modify the permit, for both of the violations cited in the TDN.

TDN 92-02-370-001, part 1 of 2 was written for contemporaneous reclamation and part 2 of 2 was written for not incorporating certain required features on impoundments. Part 1 of 2, covers the face of the Coarse Refuse Pile (CRP). The permit has required contemporaneous reclamation since approval in January 1986. The CRP expansion approved in the Spring of 1987, has also required contemporaneous reclamation. The permit states, "Contemporaneous reclamation as practiced for this area (CRP) includes reclaiming each bench and slope combination as grading for the bench immediately above the slope is completed." The CRP consists of five completed bench and slope combinations and one under construction. The only bench and slope combinations that have had revegetation attempted are the lower two, and these were done during the pre-law period. There has not been any reclamation other than grading of the refuse material during the post-law period. Fires in the CRP have historically been a problem.

You note discussions you had with me regarding payment of AML fees for use of material from coal waste piles. That is correct; however, our discussions were in general terms. The specific mine was not identified, moreover, at the time of the inspection, the operator had not submitted an application to remine the coal waste pile.

Part 2 of 2 is essentially the same condition as in Part 1. The designs and features required by the regulations have not been incorporated into the permit and/or the structure itself since the post-law period. The field conditions have been essentially stagnant except for expansion to facilitate mining. The impounding structure has not been upgraded in the years that this has been required. Sunnyside presented the inspector with a geotechnical analysis and stability analysis as designs for the impoundment. DOGM issued a Division Order to address the spillways and other requirements in September 1991, and a revision has not yet been approved for the mine. Sunnyside resubmitted a volume to address deficiencies in the initial submittal during the second week of the inspection.

Part 1 involves violation of the permit as well as violation of a performance standard. Directive INE-35 requires that non-compliance with the permit be handled in the following manner:

.... "In those instances in which an operator has violated... the terms of a permit or approved mining and reclamation plan, the appropriate response would be an enforcement action. The possibility that the regulatory authority may, at some point in the future, allow a revision of the permit to allow the practice does not negate the requirement for an enforcement action. Such enforcement action should require the permittee to cease the unauthorized practice and may provide a reasonable time for the permittee to either perform any remedial actions necessary to conform with the approved permit or to diligently submit and obtain approval of a permit revision which, if approved, would authorize the practice."

While DOGM has taken steps to require the operator to remedy the conditions that constitute the violation of Part 1, an NOV was not issued as is required. DOGM issued a Division Order in response to Part 1 of 2 of the TDN requiring the operator to modify the permit to accommodate present plans to use the material in the coal waste pile. The correct method of notifying an operator that they are not in compliance with the permit is through the required enforcement action, not a Division Order. Therefore, AFO must find the DOGM response to be inappropriate for Part 1 of 2 of TDN 92-02-370-001.

The AFO Field Office letter as follows:

Lowell P. Braxton

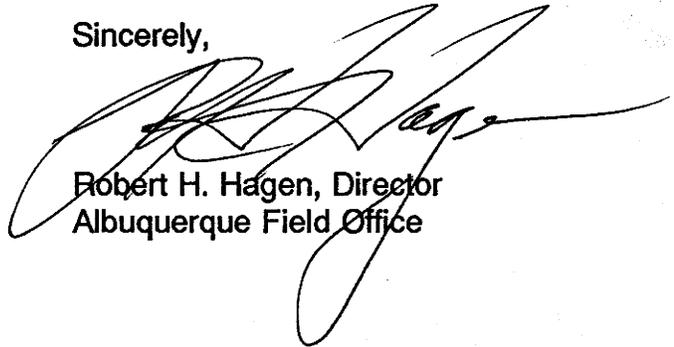
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OSM Directive INE-35 defines permit defect to include: "approval of designs or mining and reclamation practices which are inconsistent with the approved program." Accordingly, AFO finds DOGM's ordering of a permit revision in response to Part 2 of 2 of TDN 92-02-370-001 to be an appropriate action.

You request that Part 2 be withdrawn because the State had identified the problem and was working towards a resolution. Withdrawal of Part 2 would be inconsistent with the understanding reached by the Directors of DOGM and OSM in executing the Memorandum of Understanding wherein it was agreed that "Determination of compliance at the time of inspection shall not rely on applications for permit revisions requested by the permittee or DOGM which have not yet been approved."

If you disagree with these findings, you may request an informal review in accordance with 30 CFR 842.11(b)(1)(iii)(A). The request may be filed at this office or with the Deputy Director, OSM, 1951 Constitution Avenue, N.W., Washington, D.C., 20240. Your request must be received within 5 days of receipt of this letter. A Federal inspection may be conducted after the 5 day appeal time has elapsed unless an informal review is requested.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Hagen', is written over the typed name and title.

Robert H. Hagen, Director
Albuquerque Field Office