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Norman H. Bangertter
Governor
Dee C. Hansen
Executive Director
Dianne R. Nielson, Ph.D.
Division Director

State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340

file - TDN v.B.

May 13, 1992

CERTIFIED RETURN RECEIPT REQUESTED
No. P 540 713 894

W. Hord Tipton, Deputy Director
Office of Surface Mining
Department of the Interior
1951 Constitution Avenue N.W.
Washington, D.C. 20240

Dear Mr. Tipton:

Re: Ten-Day Notice X92-02-370-002 TV1, Sunnyside Mine, Sunnyside Coal Company, ACT/007/007, Carbon County, Utah

I am responding directly to you in the case of the above-referenced TDN, because I feel circumstances direct a primary review of the issue at the Washington level.

This TDN was issued for "Failure to properly design and construct sedimentation ponds. Regarding principal and emergency spillways. Ponds: Twin shaft, Main shaft 2A, 2B, Lower #2 Canyon and upper #2 Canyon". Regulations cited: R645-301-742 223 and 743.130. The TDN was issued as a function of a complete inspection conducted on April 16, 1992. This inspection was conducted as a joint state federal inspection. Two field days were spent in the execution of this inspection, a review of the Division's records did not precede the inspection.

In March of 1992, the AFO conducted a federal oversight of the Sunnyside Mine. Three days were spent in the field conducting a joint oversight inspection of this facility, but the federal inspector was unable to complete his inspection. As a consequence of this March joint inspection, TDN X92-02-370-001 TV 2 was issued. Alleged violation number 2 of 2 reads: "Failure to properly design and construct impounding structures constructed of coal mine waste. East and West Slurry Cells." Regulations violated: R645-301-746.311, 743.100, 746.312 and 746.340.

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Resolution of number 2 of 2 of the March TDN was reached because in September, 1991 the Division had ordered a permit change incorporating the issues raised in this portion of the TDN. I felt that because the issue was raised by the state in advance of the federal inspection, number 2 of 2 of the March Sunnyside TDN should have been vacated. I still feel that way. By correspondence dated April 30, 1992, the AFO found the Division's response appropriate but did not consider the fact of the Division's order predating the first joint inspection as cause for vacation. I ask that you consider the propriety of this at this time.

Utah's Division Order of September, 1991, attached, also required the operator to change the Sunnyside MRP to deal with the regulations and ponds cited in the TDN that is the subject of this letter. When the AFO inspector discussed the potential of issuing a second TDN following the April joint inspection with, a Division Permit Supervisor the inspector was reminded that these structures and regulations were subject of the same Division Order. The inspector's response was that both his supervisor and the AFO Director were out of the office, and he was going to proceed with issuance of the TDN.

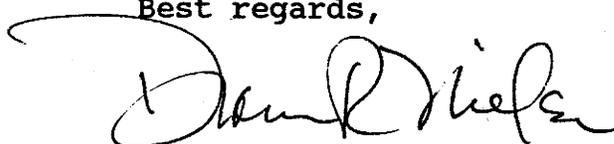
My appeal to you is for vacation of TDN X92-02-370-002-1, and X92-02-370-001, 2 of 2. Utah has in the past two months spent five days in the field conducting joint inspections with the AFO. An adequate review of the Division's records at either time could have noted that the TDN issues that are discussed in this letter had been raised by the state and were being resolved prior to either inspection. The allegation of a violation by a regulatory authority under SMCRA must be based on reason to believe that an unaddressed violation exists. An adequate office review of the files would have negated the reason to believe at the March inspection. By April, the inspector had been provided with a copy of Utah's Division Order for rectification of the issues. To write a TDN under these circumstances is truly an arbitrary and capricious action on the AFO's part.

Given the direction provided by the White House in reviewing burdensome regulations, this may be a good time to visit the subject of duplicative regulation and redundant Oversight. As I have stated on numerous occasions, I support states and OSM conducting joint oversight inspections. These are valuable opportunities for state and federal regulatory programs to work on mutual problem solving and to refine our common mission. As state and federal budgets become tighter, it is vital that we not waste our resources on unnecessary actions. I believe the TDN's discussed above are examples of redundancy that OSM and Utah

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can ill afford in this budget cycle and in the years to come. I ask that you provide this direction to the AFO, and consider my appeal for vacation of the above-referenced TDN's.

Best regards,



Dianne R. Nielson
Director

vb
Attachment
cc: R. Hagen, AFO, OSM
L. Braxton
P. Grubaugh-Littig
J. Helfrich
tdnsun3



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DEPARTMENT OF NATURAL RESOURCES
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355 West North Temple
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Salt Lake City, Utah 84180-1203
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September 9, 1991

Joe Fielder
Sunnyside Coal Company
P.O. Box 99
Sunnyside, Utah 84539

Dear Mr. Fielder:

Re: Division Order, Sunnyside Coal Company, Sunnyside Mine, ACT/007/007-DO-91B, Folder #3, Emery County, Utah

Enclosed please find a Division Order and Finding of Permit Deficiency for the Sunnyside Mine. If in your review of this Order you have any questions, please call me or Pamela Grubaugh-Littig.

Sincerely,

Lowell P. Braxton
Associate Director, Mining

jbe

Enclosure

cc: Pamela Grubaugh-Littig
Joe Helfrich
Tom Munson
Bill Malencik
Henry Sauer

AT007007.91B

CERTIFIED RETURN RECEIPT
P 074 979 125

STATE OF UTAH
DIVISION OF OIL, GAS AND MINING

PERMITTEE

Joe Fielder
Sunnyside Coal Company
Sunnyside Mine
P.O. Box 99
Sunnyside, Utah 84539

ORDER & FINDINGS
of
PERMIT DEFICIENCY

PERMIT NUMBER ACT/007/007
DIVISION ORDER # DO-91B

PURSUANT to R614-303-212, the DIVISION ORDERS the PERMITTEE, Sunnyside Coal Company, to make the permit changes enumerated in the findings of permit deficiency in order to be in compliance with the State Coal Program. These findings of permit deficiency are to be remedied in accordance with R614-303-220.

Findings of Permit Deficiency

Regulation Citation

Sediment Ponds

742.223. Sedimentation ponds not meeting the size or other qualifying criteria of the MSHA, 30 CFR 77.216(a) will provide a combination of principal and emergency spillways that will safely discharge a 25-year, 6-hour precipitation event. Such ponds may use a single spillway if the spillway is:

742.223.1. An open channel of nonerodible construction and capable of maintaining sustained flows; and

742.223.2. Not earth- or grass-lined.

Impoundments

743.110. Impoundments meeting the criteria of the MSHA, 30 CFR 77.216(a) will comply with the requirements of 77.216 and R614-301-512.240, R614-301-514.300, R614-301-515.200, R614-301-533.100 through R614-301-533.600,

R614-301-733.220 through R614-301-733.224, and R614-301-743. The plan required to be submitted to the District Manager of MSHA under 30 CFR 77.216 will also be submitted to the Division as part of the permit application.

- 743.120. The design of impoundments will be prepared and certified as described under R614-301-512. Impoundments will have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume.
- 743.130. Impoundments will include a combination of principal and emergency spillways which will be designed and constructed to safely pass the design precipitation event specified in R614-301-743.200 or R614-301-743.300.
- 743.200. The design precipitation event for the spillways for a permanent impoundment will be a 50-year, 6-hour precipitation event, or such larger event as the Division may require.
- 743.300. The design precipitation event for the spillways for a temporary impoundment is a 25-year, 6-hour precipitation event, or such larger event as demonstrated to be needed by the Division.

Permit Deficiency

The following ponds or impoundments have been noted as having only one standpipe emergency spillway and a decant or no spillways, not meeting the requirements of the new rules for sediment ponds or impoundments.

Twinshafts (001)	#3 Hoist House (013)
Old Whitmore (002A)	Slurry Cell #1
New Whitmore (002B)	Slurry Cell #2
Clear Water Pond (004)	East Slurry Cell
Manshaft (006)	West Slurry Cell
Railcut (007)	
Old Coarse Refuse Road (008)	
Pasture	
Lower #2 Canyon (010)	
Upper #2 Canyon (011)	

Information required to be submitted

The operator must submit plans to rebuild those sediment ponds and impoundments to meet the requirements of the rules.

Order

Sunnyside Coal Company is ordered to make the requisite permit changes in accordance with R614-303.220, and to submit a complete application for permit change to address the findings of permit deficiency within 30 days of receipt of this order. Approval by the Division must be obtained within 60 days of receipt of this order. All approvals not obtained within 60 days may result in a hindrance violation unless a request for extension has been obtained by the Director.

Ordered this 9th day of September, 1991, by the Division of Oil, Gas and Mining.



Dianne R. Nielson, Director
Division of Oil, Gas and Mining

jbe
cc: Tom Mitchell
Joe Helfrich
DIVISORD.FIN