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United States Department of the Interior

*Mine file
Pam
Tam Mitchell*

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IN REPLY REFER TO:

OFFICE OF SURFACE MINING

Reclamation and Enforcement

Suite 1200

505 Marquette Avenue N.W.

Albuquerque, New Mexico 87102

March 11, 1993

RECEIVED

MAR 15 1993

DIVISION OF
OIL, GAS & MINING

CERTIFIED RETURN RECEIPT NO.: P 079 749 534

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

Re: Division of Oil, Gas and Mining (DOGM) Response to Ten-Day Notice (TDN)
93-02-250-001 (TV 1), Sunnyside Mine

Dear Mr. Braxton:

DOGM received TDN 93-02-250-001 (TV 1), on March 1, 1993, and the Albuquerque Field Office (AFO) received DOGM's response on March 10, 1993, thereby constituting a timely response.

TDN 93-02-250-001, violation 1 of 1, was issued for failure to provide that adequate bond coverage be in effect at all times for Permit ACT/007/007 (Sunnyside Mine).

DOGM's response verifies that the Sunnyside Mine Federal lands permit is basically without bond coverage. DOGM, however, has decided to address the bond deficiency by sending the permittee a letter, dated February 18, 1993, requiring a replacement bond by April 18, 1993. DOGM further explains that the action taken is allowed under Utah Rule R 645-301-840.520.

Utah Rule R 645-301-812-700 states:

"Except as provided in R645-301-840.520, operating without a bond is a violation of a condition upon which the permit is issued."

Mr. Lowell P. Braxton

2

R645-301-840.520 allows DOGM to notify a permittee, in writing, of the bond inadequacy giving the permittee no more than 90 days to replace the bond if that inadequacy is based

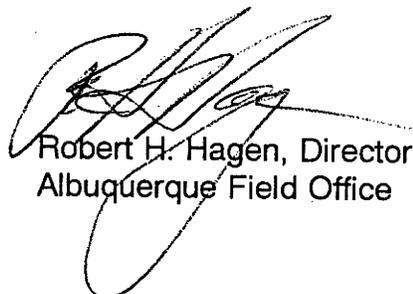
"* * * upon the incapacity of a bank or surety company by reason of bankruptcy, insolvency, or suspension or revocation of a charter or license * * *."

None of the circumstances addressed in R645-301-840.520 apply to the Sunnyside permit. As DOGM clearly indicates in its response, the bond currently being held is a collateral bond consisting of real property and water rights. Therefore, the bond inadequacy at the Sunnyside Mine must be considered a violation of a permit condition. A violation of a permit condition requires the issuance of an enforcement action.

DOGM's failure to take the action required by its program is arbitrary, capricious, and an abuse of discretion. Therefore, AFO finds DOGM's response to TDN 93-02-250-001 to be inappropriate.

If you disagree with this finding, 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,



Robert H. Hagen, Director
Albuquerque Field Office