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# United States Department of the Interior

## OFFICE OF SURFACE MINING

Reclamation and Enforcement

Suite 1200

505 Marquette Avenue N.W.  
Albuquerque, New Mexico 87102

cc: JWC  
5/26/93  
TLD  
v.p.  
TAKE PRIDE IN AMERICA  
IN REPLY REFER TO:

May 21, 1993

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MAY 24 1993

DIVISION OF  
OIL GAS & MINING

CERTIFIED RETURN RECEIPT NO: P 079 749 488

Mr. James W. Carter, Director  
Division of Oil, Gas and Mining  
3 Triad Center, Suite 350  
355 West North Temple  
Salt Lake City, Utah 84180-1203

Re: Response to Ten-Day Notice (TDN) 93-02-352-005 TV7, Sunnyside Mine,  
Permit ACT/007/007

Dear Mr. Carter:

The following is a written finding, in accordance with 30 CFR 842.11, regarding the Division of Oil, Gas and Mining's (DOGM) response to the above-referenced TDN.

During April 19 through 28, 1993, the Albuquerque Field Office (AFO) accompanied DOGM on a complete, random sample inspection of the Sunnyside Mine. The inspection resulted in the issuance of the TDN referenced above, for seven violations of the Utah Regulatory Program. The TDN was dated April 28, 1993, and was received by DOGM on April 30, 1993. DOGM's response to the TDN was received at AFO on May 10, 1993.

Violation number 1 was issued for failure to identify all owners and/or controllers of Sunnyside Coal Company under permit ACT/007/007.

DOGM's response to violation number 1 is that discrepancies in ownership and control information are to be handled through the Applicant Violator System Memorandum of Understanding (AVS/MOU). DOGM's position is that a discrepancy in the ownership and control information has not been proven, nor has information been provided that indicates a problem. Also, if a discrepancy does exist, the permittee will be given 30 days to update the information. Based on the above, DOGM contends violation number 1 should be withdrawn.

DOGM has failed to respond to the violation alleged in the TDN. R645-301-112 requires that the identity of all owners and controllers of the applicant be identified in the permit application. Sunnyside Mines, Inc., is listed in the approved permit as the parent company of Sunnyside Coal Company. However, the officers and/or directors of this company are not shown. The deficiencies in the ownership and control information in the approved permit were apparent to both the OSM and the DOGM inspectors when this information was reviewed during the inspection. Because DOGM has failed to take the action required by the AVS/MOU and the approved Utah program, AFO finds DOGM's response to violation number 1 to be arbitrary and capricious and therefore inappropriate. ✓

Violation number 2 was issued for failure to post and/or maintain stream buffer markers along the buffer zone on Grassy Trail Creek.

DOGM's response to violation number 2 is that all areas which were disturbed pre-SMCRA are not depicted on Plate III-26 of the mine plan. DOGM states that this plate must be revised to denote all disturbed areas infringing upon the 100-foot buffer zone and then posted accordingly. DOGM believes this violation should be withdrawn.

The mine plan contains a map indicating the location where stream buffer zones will be posted. However, the map does not indicate stream buffer zone signs along all areas which have been disturbed within 100 feet of Grassy Trail Creek. In the field, the signs are not posted in all locations where there is disturbance.

DOGM has issued a Division Order requiring the operator to revise the maps to reflect the disturbance within 100 feet of the creek. The operator must submit the maps within 30 days of the date of the Order. Because DOGM has notified the operator of the permit deficiency in writing and required a response within 30 days, AFO has found this response to be within the guidelines of OSM Directive INE-35 and is, therefore, an appropriate response.

Violation number 3 was issued for failure to identify, in the plan, measures to control runoff from a disturbed area. The areas in violation are the Twin Shaft mine water pond topsoil pile, the substation identified as Central Metering, and the area on the south side of Fan Canyon.

DOGM's response is that the permittee met on the ground compliance to control runoff. However, the areas were not identified in the mine plan. A Division Order will be issued to identify these best technology currently available (BTCA) areas. The Division contends that violation number 3 should be withdrawn.

AFO believes that DOGM has prematurely determined that the ground conditions are in compliance. DOGM has determined that appropriate measures already exist at the locations to control runoff even though the operator has never submitted any information on these areas, nor does the approved permit address sediment control for these areas. While the inspection revealed that erosion was not a problem at this time, the degree of success that the measures in place would provide against erosion cannot be determined without the required plans and designs. Inspectors were also unable to determine whether or not the areas would be in compliance with the sediment control measure regulations without the required plan. The regulation referencing the term BTCA that DOGM uses, R645-301-731.121, also requires DOGM to determine runoff has been handled to minimize the formation of acidic or toxic drainage, to prevent to the extent possible using BTCA additional contributions of suspended solids to stream flow outside the permit area, and to otherwise prevent water pollution. Without a plan or design submitted for these areas, DOGM would be unable to make that determination. This violation is a permit omission not a defect. Therefore, a Division Order is not the required action. INE-35 specifically requires the Regulatory Authority to take enforcement action in cases of this nature. DOGM has not taken the measures required by INE-35 to cause the violation to be corrected, therefore, the response to violation number 3 is arbitrary and capricious and is therefore inappropriate.

Violation number 4 was issued for storing coal in areas not approved in the plan. The areas are - No. 2 Canyon, north of the archway over the No. 2 Canyon, the south end of the unit train loadout tunnel, and the tipple area.

DOGM's response is that a similar violation written by one of their inspectors was vacated. According to DOGM, this was done because the surface facilities map allegedly allows coal storage anywhere within the disturbed area. However, a Division Order was issued requiring the permit and accompanying maps be amended to depict coal storage areas within the disturbed area. The due date for the information to be submitted is May 12, 1993. DOGM contends that since this order predated the TDN, it is an arbitrary action on the part of OSM and should be withdrawn.

The OSM inspector knew that a Notice of Violation (NOV) for unapproved coal storage was issued on a previous inspection and then vacated by the Associate Director. He also knew of the Division Order. AFO, however, believes that the Associate Director's logic in vacating the NOV is flawed. R645-301-521-164 requires that each coal storage, cleaning and loading area be shown on a map which is certified according to R645-301-512. Because the map showing the location of coal storage must be submitted and approved as part of the permit application, allowing the permittee to store coal anywhere within the disturbed area would be in conflict with the approved Utah program. As such, a violation of the Utah program exists. Therefore, DOGM is required by Rule R645-400-321 to take

an enforcement action. Because DOGM has failed to take the required action, AFO finds DOGM's response to be an abuse of discretion and is therefore inappropriate.

Violation number 5 was issued for failure to include power lines within the disturbed area boundary. This violation addresses all power lines running onto and providing electricity to the mine. These lines were originally installed by the coal company.

DOGM's response does not really address the fact of the violation. DOGM's only defense seems to be that the power lines are controlled by the utility and as such, violation number 5 of the TDN should be withdrawn. DOGM does state, however, that the power lines were included in the reclamation cost estimate.

The power lines came to the attention of the OSM inspector because they were excluded from the disturbed area by the disturbed area markers. The first assumption was that Sunnyside was excluding the lines because they belonged to a utility and Sunnyside did not want responsibility for the surface area associated with the lines. The OSM inspector verified, through mine personnel during the inspection, that the power lines were installed by the coal company, are owned by the coal company, and are controlled by the coal company. DOGM is incorrect in stating the power lines are controlled by the utility. The power lines are the conduit provided by the coal company to receive the product provided by the utility. The power lines are a facility which support the operations at the mine. R645 -301-526.220 states:

"The support facilities description must state that support facilities will be operated in accordance with a permit issued for the mine or coal preparation plant to which it is incident or from which its operation results. Plans and drawings for each support facility to be constructed, used, or maintained within the proposed permit area will include a map, appropriate cross sections, design drawings, and specifications sufficient to demonstrate how each facility will comply with applicable performance standards \* \* \*."

The disturbed area map indicates one power line corridor, running north and south which is approximately 1400 feet long and located east of borrow area No. 3. This is an isolated section within the permit area that does not show a connection or a continuation of the line. Some sections of the power lines are located within the disturbed area boundary, although there are other areas which are outside of the current disturbed area boundary and not identified on the mine maps. Support facilities which are resulting from or are incident to coal mining and reclamation operations are part of the affected area and must be permitted. The areas

associated with the facilities must be shown on the mine maps. DOGM has not taken action to cause the violation to be corrected. The response to violation number 5 of the TDN is arbitrary and capricious and therefore inappropriate.

Violation number 6 was issued for failure to identify all disturbed areas on mine maps. The cited areas are: Fan Canyon, south of the creek; the refuse area at Water Canyon; and the Twin Shaft mine water discharge line.

As a note, the areas at Fan and Water Canyons are identified on the ground as disturbed areas; where the Twin Shaft water line crosses Grassy Trail Creek is not shown within the disturbed area on mine maps.

DOGM's response to violation 6 is that NOV 92-32-2-5 has been modified to require the permittee to aerielly survey the area and obtain new base maps. These base maps will be use to identify all disturbed areas. DOGM requests that violation number 6 of the TDN be withdrawn.

Apparently, DOGM, in its response to violations 6 and 7, misnumbered the NOV. NOV 93-32-2-5 was issued during the oversight inspection and has subsequently been modified to incorporate the areas of concern identified in violations 6 and 7 of the TDN. AFO finds DOGM's action regarding violations 6 and 7 to be appropriate at this time. AFO will continue to monitor the final disposition of NOV 93-32-2-5 through the normal oversight process.

Violation number 7 was issued for failure to provide accurate maps. Numerous mine maps were found to be inaccurate when compared to on-ground conditions.

DOGM's response is that the above mentioned NOV, 93-32-2-5, will address this concern. The new maps, which the NOV will require, will accurately reflect on-ground conditions. On this basis, DOGM finds that violation number 7 is redundant and should be withdrawn.

AFO's finding for this response is the same as for violation 6 above.

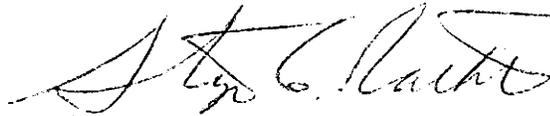
Even though DOGM has submitted information that supports appropriate responses to violations 2, 6 and 7 of the TDN, the appropriate actions were not taken until a request was made by OSM for the supporting documentation. DOGM's Associate Director is well aware that any action taken to address a TDN must be completed within the 10-day response period. On any future responses to TDN's, all supporting documents will be expected to be included with the response.

James W. Carter

6

If you disagree with the above 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, Office of Surface Mining Reclamation and Enforcement, 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 cursive script, appearing to read "R. H. Hagen".

*Recd* Robert H. Hagen, Director  
Albuquerque Field Office