

0046



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Michael O. Leavitt
Governor
Ted Stewart
Executive Director
James W. Carter
Division Director

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Salt Lake City, Utah 84180-1203
801-538-5340
801-359-3940 (Fax)
801-538-5319 (TDD)

May 28, 1993

CERTIFIED RETURN RECEIPT REQUESTED
No. P 074 975 386

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: Appeal of Ten-Day Notice (TDN) X93-02-352-005 TV 007,
Sunnyside Coal Company (SCC), Sunnyside Mine, ACT/007/007,
Folder #5, Carbon County, Utah

The above-referenced TDN was issued to Utah following an oversight inspection that was conducted from April 19 through 28, 1993. You should be aware that Utah issued 13 notices of violation and 1 FTA CO as a function of this lengthy oversight inspection.

I am appealing the AFO's finding of an inappropriate response for numbers 1, 3, 4 and 5 of the TDN. Please refer to the Division's May 10, 1993 response letter which is attached.

Number 1 of 7, ownership and control

The Division believes that the approved permit application contained the requisite ownership and control information, such that the permit was not improvidently issued. I believe that review of ownership and control information of this mine, and other mines in Utah, is being conducted according to the OSM/Utah AVS-MOU.

When provided (at the time of the inspection) with information alleging a discrepancy in ownership and control information, Utah committed to investigate the alleged discrepancy and, if the discrepancy is established, to have



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appropriate changes made to the permit. I believe the AVS-MOU also requires the state to update ownership and control issues on a quarterly basis, and this will be done once the nature of any change has been established. To expand the use of the AVS-MOU beyond the terms enumerated in the signed version requires, at a minimum, a modification of the MOU. Meantime, should a review of any changed ownership and control information at any mine in Utah result in an AVS "permit deny" recommendation, Utah will not allow the permitting action subject to the AVS check to go forward until the discrepancy is rectified.

Numbers 3 and 4 of 7

In the case of numbers 3 and 4, the Division had taken action addressing the concern raised in the TDN prior to issuance of the TDN. In each case, what is required is a clean-up of paperwork in the plan to solve the problem. There are no allegations of disturbance outside the area permitted for disturbance. Failure to comply with the respective Division Orders for issues raised in numbers 3 and 4 will result in an enforcement action by the Division. I hope your review will allow resolution of the issues to go forward as proposed. Please refer to the May 10 letter for additional detail.

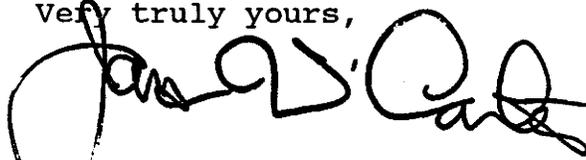
Number 5, of 7, failure to include power lines within the disturbed area boundary

Per the May 10 letter, the Division identified the subject power lines in the reclamation bond for the Sunnyside mine. Subsequent to that writing, the Division investigated power lines crossing the permit area and has more specifically defined those lines for which reclamation will be required. I agree with OSM's position that this responsibility is not clearly established in the permit, except for the bond calculation portion. On this basis, Utah has issued a Division Order requiring the operator to clearly depict all power lines crossing the permit area, and to update maps and texts to better delineate those power lines that

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will be reclaimed. Failure to comply with the terms of this order will result in enforcement action.

Very truly yours,

A handwritten signature in black ink, appearing to read "James W. Carter". The signature is stylized with large, sweeping loops and a prominent initial "J".

James W. Carter
Director

vb
Attachment
cc: P. Grubaugh-Littig
J. Helfrich
J. Fielder, Sunnyside

suntdnapl



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May 10, 1993

CERTIFIED RETURN RECEIPT REQUESTED
P 074 978 340

Mr. Robert Hagen, Director
Office of Surface Mining
Reclamation and Enforcement
505 Marquette N.W., Suite 1200
Albuquerque, New Mexico 87102

Dear Mr. Hagen:

Re: Response to Ten-Day Notice (TDN) X93-02-352-005 TV 007, Sunnyside Coal Company (SCC), Sunnyside Mine, ACT/007/007, Folder #5, Carbon County, Utah

This letter responds to the above-referenced Ten-Day Notice (TDN), the certified copy of which was received at the Division on April 30, 1993.

Number 1 of 7 Reads:

"Failure to identify all owners and/or controllers of Sunnyside Coal Company under Permit ACT/007/007." Location: N/A. Regulation cited: R645-301-112.

Division Response: Discrepancies in ownership and/or controller information under Utah's Coal Program are handled through the AVS Memorandum of Understanding (AVS-MOU). First, information that an agency has reason to believe is different from that contained in the permit must be verified. To date, the Division has not been provided with that information nor verification that shows discrepancy with the ownership and/or controller information in the approved permit. Second, if in fact there is a valid discrepancy, the permittee will be given 30 days to update the ownership and controller information in the approved permit in accordance with the AVS-MOU. **Number 1 should be withdrawn.**



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ACT/007/007

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Number 2 of 7 Reads:

"Failure to post and/or maintain stream buffer markers along the buffer zone on Grassy Trail Creek." Location: Along the buffer zone on Grassy Trail Creek. Regulation cited: R645-301-521.260 and R645-301-521.261.

Division Response: The Technical Analysis for the initial permit included Division authorization (variance for activities within 100 feet of Grassy Trail Creek. Information regarding the stream buffer zone are included on Plate III-26 of the mining plan. All areas that were disturbed pre-SMCRA were not depicted on Plate III-26; therefore, this plate must be revised to denote all disturbed areas that infringe upon the 100 foot buffer zone and then be posted accordingly. Number 2 should be withdrawn.

Number 3 of 7 Reads:

"Failure to identify in the plan, measures to control runoff from a disturbed area." Location: Twin Shaft Mine Water Pond Topsoil Pile, Substation identified as central metering area south side of Fan Canyon. Further, areas at Fan and Water canyon are identified on the ground as disturbed area. The Twin Shaft water line is not within disturbed area where it crosses Grassy Trail Creek. Regulation cited: R645-301-731.

Division Response: The permittee met on the ground compliance to control runoff. However, the areas noted need to be identified in the plan. A Division Order will be issued to identify these BTCA areas. Number 3 should be withdrawn.

Number 4 of 7 Reads:

"Storing Coal in an area not approved in the plan." Location: #2 Canyon, North of the archway over the #2 Canyon, South End of the Unit Train Loadout tunnel, tipple area. Regulation cited: R645-301-521.164.

Division Response: A similar violation (#N92-32-16-1) was written by Mr. Henry Sauer in November 1992. The surface facilities map, Plate 7-4, allows coal storage activities within the disturbed area. "Coal storage is an approved activity in the SCC mining and reclamation plan. No new construction accompanied the coal storage activities that are subject of the violation." This violation was vacated. (See attached Findings, Conclusion, and Order of an Informal Hearing

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dated March 17, 1993.) Sunnyside Coal Company was ordered to "amend the permit and accompanying maps to clearly depict the coal storage within the disturbed area." SCC will submit these maps by May 12, 1993. Since this order predated the TDN, number 4 is an arbitrary action on OSM's part and should be withdrawn.

Number 5 of 7 Reads:

"Failure to include power lines within the disturbed area boundary."
Location: Power line running onto and providing electric (electricity) to the mine. Lines were originally installed by coal company. Regulation cited: R645-100-200, R645-301-521.180, R645-301-526.220, and R645-301-526.222.

Division Response: Public utility corridors exist within the permit areas of coal mining and reclamation operations. The disturbed area of underground coal mining and reclamation operations does not necessarily include the utility corridors which are owned and maintained by the utility in the disturbed area of the permit. The "disturbed area means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by coal mining and reclamation operations."

Pursuant to R645-301-526.210, the utility installation description must state that all coal mining and reclamation operations will be conducted in a manner which minimizes damage, destruction, or disruption of services provided by oil, gas, and water wells; oil, gas, and coal-slurry pipelines; railroads; electric and telephones lines.....which pass over, under, or through the permit area, unless approved by the owner of those facilities and the Division.

The utility is not necessarily included in the disturbed area by definition. The substation and power lines are controlled by the utility. The substations and power lines are included in the reclamation cost estimate, however.

Number 5 should be withdrawn.

Number 6 of 7 Reads:

"Failure to identify all disturbed areas on mine maps." Location: Fan Canyon South of Creek, Refuse Area at Water Canyon and Twin Shaft Mine Water

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Discharge line. Regulation cited: R645-301-521.160, R645-301-521.161, and R645-301-521.162.

Division Response: The Division, by modification of NOV #N92-32-2-5 is requiring the permittee to aerially survey the area and obtain new base maps. These base maps will be used to identify all disturbed areas. Number 6 should be withdrawn.

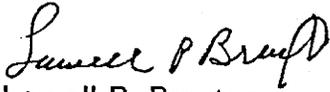
Number 7 of 7 Reads:

"Failure to provide accurate maps, numerous mine maps were found to be inaccurate when compared to on-ground conditions." Location: Permit Area. Regulation cited: R645-301-520.

Division Response: The Division, by modification of NOV #N92-32-2-5, is requiring the permittee to obtain current base maps through aerial photography. These base maps will be used to identify disturbed areas within the permit area and will accurately reflect on-ground conditions. On this base, number 7 is redundant and should be withdrawn.

Copies of the Orders referenced in #2 and #3 will be sent to the Albuquerque Field Office after acquisition of the Division Director's signature.

Sincerely,


Lowell P. Braxton
Associate Director, Mining

cc: James W. Carter
Pamela Grubaugh-Littig
Henry Sauer

007007T