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8/2/93
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veg. name file
file with Tdw



United States Department of the Interior

OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
WASHINGTON, D.C. 20240



JUL 28 1993

RECEIVED

JUL 02 1993

DIVISION OF
OIL GAS & MINING

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

Dear Mr. Carter:

Thank you for your letter of May 28 requesting informal review of the Albuquerque Field Office (AFO) Director's determination that your agency did not take appropriate action with respect to the four alleged violations contained in ten-day notice (TDN) number X93-02-352-005 (Sunnyside Coal Company (SCC), Sunnyside Mine, permit number ACT/007/007).

The first violation alleged is a failure to identify all owners and/or controllers of SCC; the second, a failure to identify in the mining plan, measures to control runoff from a disturbed area; the third, storage of coal in areas not approved in the plan; and last, failure to include power lines within the disturbed area of the permit. These alleged violations are contrary to the Utah regulations at Sections R645-301-112, R645-301-731, R645-301-521.164, and R645-301-521.180, respectively.

Turning to the first alleged violation, you state that the Division believes that the approved permit application contained the requisite ownership and control information, and that the review of the ownership and control information of this mine is being conducted in accordance with the Memorandum of Understanding (MOU) that exists between our agencies relating to the Applicant/Violator System (AVS). You further state that if any discrepancy is determined, you will have the appropriate changes made to the permit.

Your responsibilities under the AVS MOU are found in Section IV. Prior to the initial AVS query, the Division is required to review the application and any reasonably available manual and automated sources to determine

whether the information contained in a permit application concerning ownership and control is complete. If any potential inaccuracies in the application information are identified in this review, Utah is required to contact the applicant and require that the matter be resolved through submission of satisfactory explanation or submission of a modification to the ownership and control information in the application prior to making a final determination with regard to the permitting action.

*we've had since 7-9-93
8/13 no action required by SOB. will process w/11/30 by 5
#1 of 7
do we have this yet?*

Further, your regulations at R645-301-112, which were in effect when the permit revision in this case was issued, set forth information requirements for applicants. Specifically, a permit application is required to contain the name, address, social security number and employer identification number of each person that owns or controls the applicant. Sunnyside Mines is listed in the permit revision application as the owner/controller of all common stock of SCC, but no ownership or control information, as defined under your regulations at R645-150-200, is listed for this company. Your failure to take immediate action to obtain this information is contrary to the AVS MOU as well as your regulations.

Turning to the remaining three violations, you state that there are no allegations of disturbance outside the area permitted for disturbance, that what is required is a clean-up of paperwork in the permit plans and that your agency has issued Division Orders addressing each respective deficiency. You note that failure to comply with the Division Orders will result in enforcement action and ask that your method of resolution be allowed to go forward.

With respect to storage of coal in areas not approved in the plan, I find that your response constitutes good cause for not taking action. In accordance with the Federal rules at 30 CFR 842.11(b)(1)(ii)(B)(4), good cause exists when the regulatory authority is precluded by an order from an administrative or judicial body from acting on a possible violation where that order is based on the violation not existing. As a result of an informal hearing relating to this violation, the enforcement action issued by your agency was vacated by an appropriate administrative body on the grounds that the existence of the violation had not been clearly established.

However, since that administrative order sets forth conditions to finally resolve the coal storage issues, I am instructing the AFO Director by this letter to follow-up on whether that order and your agency's own subsequent order have been satisfied.

*#4 of 7?
where are we on this?
Bour will follow up w/6 Robert submitted 5-11-93*

Mr. James W. Carter

With respect to the second alleged violation, I find that although the permit may be deficient by not including measures for controlling runoff in certain areas, that does not alter the fact that the permittee has disturbed these areas without meeting the performance standards for runoff control required under the Utah regulations cited in the TDN. With respect to the fourth alleged violation, I agree with the AFO that your TDN response to that office was inappropriate because you took no action to correct what you now agree is a permit deficiency. Because you have not provided enough information in your request for informal review concerning when you did issue a Division Order or concerning the particulars of that order, I will maintain my position. However, if upon follow-up, the AFO finds that an acceptable order has been issued, no further Federal intervention will be required with regard to this issue.

2 of 7
we have plans submitted
perm will review for OK. w/ 8/3 (begin approval July 9)

5 of 7?
w/ 8-3
MMS w/ Permit
Permit Dec
8-26-93 from
D.O. and on
1001 093-322#
2 of 5 also
Ext-8-26

In summary, I find that your response to alleged violation three constitutes good cause for not taking action, but that your agency's responses to alleged violations one, two and four are inappropriate. Since enforcement action has not been taken by your agency as required under the Utah program, I find your response to be arbitrary, capricious and an abuse of discretion. Accordingly, I hereby order a Federal inspection.

(# 7 of 7?)

Sincerely,

W. Harold Bigham
Deputy Director

Steve: are my marginal notes on the violation numbers as issued in the TDN correct?
Thyler / [unclear] 8/2