0116

United States Department of the Interior

TAKE PRIDE IN AMERICA

OFFICE OF SURFACE MINING
Reclamation and Enforcement
Suite 1200
505 Marquette Avenue N.W.
Albuquerque, New Mexico 87102

cc: [illegible] 2-24-94
Chrg. [redacted]
File 007/007

IN REPLY REFER TO:

FEB 22 1994

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

RECEIVED
FEB 24 1994
DIV. OF OIL, GAS & MINING

Dear Mr. Carter:

The Albuquerque Field Office (AFO) has reviewed the letter of February 17, 1994, that you sent to Denise Dragoo of the firm of Fabian and Clendenin regarding the proposed sale of real property owned by Sunnyside Mines to Kilter, Inc. The real property involved is the collateral bond which secures reclamation at the Sunnyside Mine.

AFO concurs with the action you have taken to disapprove this transaction. AFO has determined that a permittee cannot pledge property as security for a performance bond that the permittee does not own. This was established in the Interior Board of Land Appeals' decision that you referenced. In addition, this position is supported by Utah regulation R645.301.860.232.3 which requires the applicant to submit "Proof of possession and title to the real property" for any property offered to indemnify a reclamation bond.

AFO realizes that the Division of Oil, Gas and Mining (DOGM) may not be able to prevent the sale. However, because the sale would render the collateral bond invalid and a valid bond is a condition of the permit to operate, the Office of Surface Mining Reclamation and Enforcement (OSM) believes that Sunnyside Coal Company's permit to mine would be invalid the moment the sale was final. OSM believes that DOGM would then have to issue a cessation order for mining without a permit until Sunnyside Coal Company provides an appropriate replacement bond. AFO believes that in order to avoid the situation, DOGM should require that Sunnyside Coal Company submit an alternate bond in the amount required to reclaim the site in accordance with the approved program prior to the consummation of the sale.

If you need to discuss this situation further, please contact me at (505) 766-1486.

Sincerely,

Robert H. Hagen, Director
Albuquerque Field Office