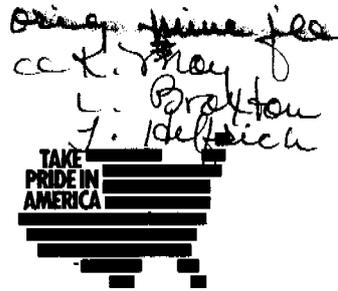




# United States Department of the Interior

OFFICE OF SURFACE MINING  
RECLAMATION AND ENFORCEMENT  
SUITE 310  
625 SILVER AVENUE, S.W.  
ALBUQUERQUE, NEW MEXICO 87102



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DIVISION OF OIL  
GAS & MINING

Dr. Dianne R. Nielson, Director  
Division of Oil, Gas & Mining  
355 West North Temple  
3 Triad Center, Suite 350  
Salt Lake City, UT 84180

Re: U.S. Fuel Company, Hiawatha Mine, T87-02-006-005

Dear Dr. Nielson:

The Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement (OSMRE), has reviewed Utah's Division of Oil, Gas & Mining's response to Ten-Day Notice (TDN) No. 87-02-006-005.

The Division's response to violation 1 of 10 is initially appropriate. The operator's failure to post and maintain perimeter markers has been cited, but OSMRE will review Notice of Violation (NOV) No. 87-17-4-4, 1 of 4, to ensure that it encompasses all applicable areas.

The Division's response to violation 2 of 10 is initially appropriate. The operator's drainage control violation has been cited, but OSMRE will continue to review any future legal proceedings or actions on NOV No. 87-17-4-4, 4 of 4.

The Division's response to violation 3 of 10 is inappropriate. Section 817.49(d) requires slope protection on impoundments so as to minimize surface erosion at the site. No limitation is made that only embankment out slopes should be considered, that gullies must exist, or that the structure's stability is a factor. The regulation essentially requires some type of protection, usually vegetation or rock, on all pond slopes. Section 817.49(c) requires all embankments and surrounding disturbed areas to be graded, fertilized, seeded, and mulched. This would include an embankment's inslope and top as well as its out slope. It may also be considered to include the structure's other inslopes because they are areas disturbed by the construction. The regulation also requires areas where vegetation is not successful to be revegetated. And finally, Section 817.46(s) requires a sediment pond's entire embankment, including the surrounding disturbed areas, to be stabilized with respect to erosion by vegetation or some other means. For this operation, six ponds have numerous areas that violate these three regulations. Two of the structures have sparsely vegetated embankment out slopes, three have sparsely vegetated embankment tops, three have sparsely vegetated embankment inslopes, and all six have other inslopes that are not only poorly protected but actually showing evidence of erosion. A violation exists not for the number or size of gullies on the pond areas but for the lack of vegetation. The presence of erosion merely supports the judgment that adequate protection does not exist. The operator is responsible for revegetating these pond areas, and it has clearly not been done adequately.

The Division's response to violation 4 of 10 is inappropriate. Map Exhibit VII-23 of the approved permit requires construction of a silt fence next to the equipment storage yard's catch basin. That plan specifically requires the fence material to be capable of retaining No. 100 sieve or coarser materials, and Section 817.42(a)(2) requires such treatment facilities to be maintained. Since the existing fence is riddled with dozens of holes (mostly 2-3 inches in size), the structure is not in place in accordance with the plan, and it is not being maintained in accordance with the regulation. Whether the silt fence is actually needed for a certain storm event is irrelevant as long as the permit requires such a structure. A violation exists until the fence is replaced or a revision is approved to delete its requirement.

The Division's response to violation 5 of 10 is appropriate. The permit application does confirm the five slurry ponds' existence prior to 1977. Although their approval as is may not be complete in accordance with Section 784.12, part III-6 does imply that they are stable in their present condition.

The Division's response to violation 6 of 10 is inappropriate. A review of the permit and operator's records for the pond certifications should have already been completed. Unless after construction certifications as required by Sections 817.46(r) and 817.49(h) are found, a violation exists that needs to be cited.

The Division's response to violation 7 of 10 is initially appropriate. The operator's pond construction violation has been cited, but OSMRE will review NOV No. 87-17-4-4, 3 of 4, to ensure that it includes all of the pond's problems.

The Division's response to violation 8 of 10 is inappropriate. Section 817.52 and the permit application require water-monitoring reports to be submitted to DOGM quarterly, not annually. OSMRE's review of DOGM's records shows that 1986's first, second, third, and fourth-quarter reports were not mailed in quarterly but, rather, annually on 06/17/87. Unless other records are now available to indicate otherwise or the permit has been revised, a violation exists.

The Division's response to violation 9 of 10 is inappropriate. The operator has been correctly cited with NOV No. 87-17-4-4, 2 of 4, for 11 culvert plugging and collapse problems; however, at least 17 other culvert problems have not been addressed. First, Sections 817.153(c)(i)(ii) and 817.163(c)(i)(ii) require class I and II road drainage culverts to be constructed so as to avoid erosion at the inlets and outlets. This includes all pipes and is usually accomplished with riprap or concrete, although any protective measure is acceptable that will minimize bank cutting. The inspection found at least nine culvert inlet/outlets that were not only unprotected but were showing evidence of erosion. Second, Section 817.153(c)(i)(iii) requires trash racks for the Class I road drainage structures wherever debris from the drainage area could impair their functions. Although this interpretation is judgmental, the regulation's wording of "shall be installed" and "could impair" provides strong likelihood of their need. OSMRE believes that with trees and brush

in a drainage culvert's watershed the possibility exists, without determining how likely, that such material could wash into the drainage structure. The inspection found at least ten culvert inlets on Class I roads, with watersheds containing trees and brush, offering no type of trash rack. These additional violations need to be included with the enforcement action.

The Division's response to violation 10 of 10 is inappropriate. Section 817.150(b) requires Class I roads to not cause additional contributions of suspended solids to streamflow. Section 817.41(d)(1) also requires practices that prevent or minimize water pollution, with (d)(2) addressing vegetation and mulching as acceptable practices. Finally, Section 817.45 requires appropriate sediment control measures using the best technology currently available to prevent additional contributions of sediment to streamflow or to runoff outside the permit area and to minimize erosion. The Class I road outslope in question clearly has no protective measures in place for preventing or controlling erosion. The inspection shows the road fill outslope bank as coal fines (or similar material), barren of vegetation, and riddled with gullies. Sediment laden water was observed during the inspection running down the slope and into the adjacent wash, where it continues off of the permit without passing through any approved drainage control structure. The vegetative filter (approximately 5 feet wide) between the slope and Middle Fork was found to be ineffective in controlling this drainage. So the first point is made that the operator has no sediment control practices in place.

Second, sediment is leaving the site. And third, technology does exist to prevent or correct such a problem: The slope can be protected from erosion with vegetation or other means, or the off site sediment can be minimized by catching it with straw dikes, silt fences, sumps, etc.

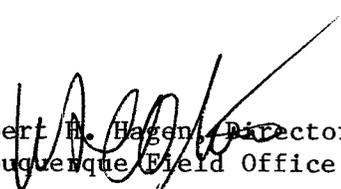
The Division's responses and final comments indicate a continuing problem regarding enforcement obligations. It is suggested that Federal oversight inspections should concentrate on "areas where compliance failures have a potential for environmental degradation." This implies that if a violation is causing no environmental problem it should not be cited. Our position remains that such discretion is not allowed under the approved State program. A violation must be cited in a notice of violation or cessation order whether or not there is accompanying environmental harm. The civil penalty system provides for adjustments of penalty in cases where there is little or no environmental harm, not the enforcement program. Additionally, many regulations are designed to prevent environmental damage thus, violations must be cited whether the event has occurred or not.

Dr. Dianne Nielson

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In summary, DOGM's responses to violations 1, 2, 5, and 7 are initially appropriate while responses to violations 3, 4, 6, 8, 9, and 10 are inappropriate; thus, OSMRE may re-inspect the operation and cite any unresolved violations. Please address any questions concerning this evaluation to Steve Rathbun, Supervisory Reclamation Specialist, at (505) 766-1486.

Sincerely,

  
Robert H. Hagen, Director  
Albuquerque Field Office