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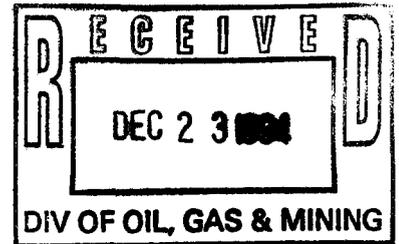
United States Department of the Interior

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

cc: JWG
LPB
PGL
JCH
12/23/94
orig. File

December 21, 1994

CERTIFIED RETURN RECEIPT: #P-293-288-865



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: Responses to Ten-Day Notices (TDN) X94-020-179-004 and X94-020-179-005

Dear Mr. Carter:

Part 2 of 2 of TDN X94-020-179-004 was issued to address the failure to design and certify drainage control structures around topsoil stockpiles. The specific stockpiles in question were the South Fork topsoil stockpile and the stockpile near Slurry Pond 5, between sediment ponds D006 and D007. These stockpiles were not within the drainage control of any of the sediment ponds, but berms had been constructed around them. There were no designs or certifications on these berms. Your response was that "Since the structures in question are not functioning as sediment control devices, nor were they intended as sediment control in the mining and reclamation plan, the certification and design requirements stated in the TDN are not applicable." The Albuquerque Field Office (AFO) found that response acceptable, but also recognized that there was now no drainage control, approved in accordance with the Utah program, for these two disturbed areas (topsoil stockpiles). Therefore, TDN X94-020-179-005 was issued to address this violation.

TDN X94-020-179-005 was issued for failure to construct and certify drainage control for all areas disturbed by mining operations (various topsoil stockpiles throughout the permit). Your response was that the Division of Oil, Gas and Mining (DOG M) has required the operator to amend the permit to include a statement which requires that all berms be maintained at a minimum height of 1' around these topsoil stockpiles. AFO has not seen a copy of a Division Order or any formal request for the operator to comply. You also state that the operator has changed the language in Appendix V-8 of the approved permit to Best Technology

Mr. James Carter

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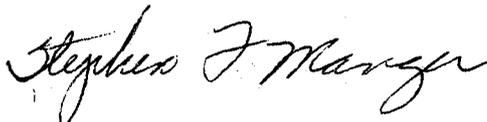
Currently Available (BTCA). BTCA structures such as berms and berms with gabion filtered outlets must have approved designs and those that impound water must be certified by a qualified registered professional engineer or a qualified registered professional land surveyor.

Since there appears to be no designs or certifications of these structures and no enforcement action, Division Order or other written document requiring designs and certifications, AFO finds that the response of DOGM on both TDN X94-020-179-004 and TDN X94-020-179-005 to be arbitrary, capricious and an abuse of discretion and is, therefore, inappropriate.

If you disagree with the above finding, 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 a formal review is requested.

Sincerely,


for Thomas E. Ehmett, Acting Director
Albuquerque Field Office



UTAH
NATURAL RESOURCES
Oil, Gas & Mining

3 Triad Center • Suite 350 • Salt Lake City, UT 84180-1203 • 801-538-5340

MODIFICATION OF NOTICE OF VIOLATION/CESSATION ORDER

To the following Permittee or Operator:

Name U.S. FUEL Co.

Mailing Address P.O. BOX 887 PRICE, UTAH 84501

State Permit No. ACT/007/011

Utah Coal Mining & Reclamation Act, Section 40-10-1 et seq., Utah Code Annotated (1953):

Notice of Violation No. N ⁹⁴⁻⁴¹⁻⁶⁻² 94-41-7-1 dated 10/6, 10/21, 19 94.

Cessation Order No. C _____ dated _____, 19 _____.

Part ____ of ____ is modified as follows: THE NOTICES OF VIOLATIONS ARE EXTENDED TO NO LATER THAN MONDAY FEBRUARY 13TH, 1995 EFFECTIVE THIS 17TH DAY OF NOVEMBER 1994.

Reason for modification is ADMINISTRATIVE WAIVER OF 2645-4100-327, 362 (ATT.)

Part ____ of ____ is modified as follows: _____

Reason for modification is _____

Part ____ of ____ is modified as follows: _____

CERTIFIED RETURN RECEIPT

Date of ~~service~~ mailing P 074 976 141 11/22/94 Time of service/mailing 3:30 a.m. p.m.

Date of inspection 9/13/14/94

Michael Watson
Permittee/Operator representative

PRESIDENT
Title

MAILED FROM D.O.G.M. OFFICE
Signature

Lowell P. Braxton
Division of Oil, Gas & Mining

ASSOCIATE DIRECTOR MINING
Title

Lowell P. Braxton
Signature