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VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

October 17, 1996

Mr. John A. Kuzar, District Manager
U.S. Department of Labor
Mine Safety & Health Administration
P.O. Box 25367
Denver, Colorado 80225-0367

RE: *REQUEST FOR RECONSIDERATION - AUGUST 7, 1996 DECISION -
WELLINGTON PREPARATION PLANT, I.D. NO. 42-00099, PLANT
REFUSE PILE, I.D. NO. 1211-UT-09-00099-01, (FORMER ID NO.
1211-UT-0010) CONSTRUCTION PLANT*

Dear District Manager Kuzar:

On behalf of Nevada Electric Investment Company ("NEICO") we appreciate your agreement to reconsider the Decision dated August 2, 1996 ("Decision") regarding NEICO's request for a variance under 30 C.F.R. § 77.215(h). In response to this request, the Mine Safety and Health Administration ("MSHA") conducted a tour of the Wellington coarse refuse pile on October 3, 1996. At the time of this inspection, representatives of NEICO discussed the intent of MSHA's safety standard for refuse piles as set forth at 30 C.F.R. § 77.215. The MSHA standards clearly relate only to post-1975 construction requirements as follows:

§ 77.215 Refuse piles: construction requirements.

...

(h) After October 31, 1975 new refuse piles and additions to existing refuse piles, shall be constructed in compacted layers not exceeding 2 feet in thickness

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and shall not have any slope exceeding 2 horizontal to 1 vertical (approximately 27°) except that the District Manager may approve construction of a refuse pile in compacted layers exceeding 2 feet in thickness and with slopes exceeding 27° where engineering data substantiates that a minimum safety factor of 1.5 for the refuse pile will be attained [emphasis added].

The Wellington refuse pile does not appear to be regulated under 30 C.F.R. § 77.215 because (1) the refuse pile is no longer in active construction or modification, and (2) the area of concern was not disturbed after 1975. The Wellington refuse pile was initially constructed in March of 1958. MSHA has been on notice regarding the refuse pile since 1976 when United States Steel notified MSHA of the refuse pile and received an MSHA I.D. number. NEICO is no longer adding to the refuse pile; therefore, the construction requirements of this standard do not apply. Furthermore, Mr. Kirkwood, U.S. Steel's Superintendent during this time period, has informed NEICO that the portion of the refuse pile of concern was not disturbed after 1975. The MSHA regulation specifically applies to refuse piles constructed or modified after 1975. Therefore, NEICO believes that the refuse pile in question may be grandfathered and is not subject to MSHA regulation.

We appreciate your consideration of this matter. Please let me know if you need anything further.

Very truly yours,



Denise A. Dragoo

DAD:jmc:113135

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