

0015

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(801) 359-3940

Mr. Paul Baker  
State of Utah  
Department of Natural Resources  
Division of Oil, Gas & Mining  
1594 West North Temple, Suite 1210  
Salt Lake City, Utah 84114-5801

November 15, 1996

RE: N95-39-2-2 - EXTENSION REQUEST -- WELLINGTON  
PREPARATION PLANT, ACT/007/012

Dear Paul:

On behalf of Nevada Electric Investment Company ("NEICO"), we respectfully request an extension of time in which to abate Notice of Violation N95-39-2-2 (the "NOV") regarding the Wellington Preparation Plant, ACT/007/012. NEICO is required to abate the NOV by obtaining a variance regarding the Wellington Refuse Pile under 30 C.F.R. § 77.215(b) from the Mine Safety and Health Administration ("MSHA"). In connection with NEICO's variance request, MSHA conducted a site inspection of Wellington on October 3, 1996. In addition, by letter dated October 17, 1996, NEICO has questioned MSHA's jurisdiction over the coarse refuse pile. 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. A copy of this letter is enclosed. MSHA has not responded either to NEICO's request for clarification regarding their jurisdiction in this matter or NEICO's request for a variance. Therefore, we respectfully request an additional thirty days in which to clarify this matter with MSHA.

Post-it<sup>®</sup> Fax Note 7671

Date	11/15/96	# of pages	4
To	Steve Demczak		
From	Paul Baker		
Co./Dept.	Co.		
Phone #	538-5261		
Fax #	359-3940		

VAN COTT, BAGLEY, CORNWALL & MCCARTHY

Mr. Paul Baker  
November 15, 1996  
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We appreciate your consideration in this matter.

Very truly yours,



Denise A. Drago

DAD:jmc:87672

Enclosure

cc: Richard Hinckley, Esq. (via facsimile)  
Dennis Schwehr (via facsimile)  
Patrick Collins (via facsimile)  
Jerry Slusser (via facsimile)

*file*

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DENISE A. DRAGOO

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**CONFIRMATION OF  
FACSIMILE**

*mailed 10/17/96*

VIA FACSIMILE -- (303) 231-5553

and

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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Mr. John A. Kuzar

October 17, 1996

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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

cc: Richard Hinckley, Esq.  
Dennis Schwehr  
Patrick Collins  
Gregory J. Poole  
Mary Ann Wright  
Stephen Dmytriw, MSHA, Denver  
Ronald Poletta, MSHA, Price



State of Utah  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

Michael O. Leavitt  
Governor  
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Executive Director  
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Division Director

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801-538-5340  
801-359-3940 (Fax)  
801-538-5319 (TDD)

November 14, 1996

Patrick Collins, Ph.D.  
Nevada Electric Investment Company  
Mt. Nebo Scientific, Inc.  
330 East 400 South, Suite 6  
P.O. Box 337  
Springville, Utah 84663

Re: Siaperas Ditch Designs. Amendment 96-C #3, Nevada Electric Investment Company, Wellington Preparation Plant, ACT/007/012-96C, Folder #2, Carbon Coutny, Utah

Dear Mr. Collins:

The Division has approved the above mentioned amendment, effective Novvember 12, 1996. Enclosed is a stamped incorporated copy for insertion into your Mining and Reclamation Plan.

If you have any questions or comments, please call me.

Sincerely,

Joeseph C. Helfrich  
Permit Supervisor

blb  
Enclosure

cc: Mark Page, Water Rights, Price (w/o enclosure)  
Dave Ariotti, Health, Price (w/o enclosure)  
Bill Bates, Wildlife, Price (w/o enclosure)  
PFO

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