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Norman H. Bangerter
Governor
Dee C. Hansen
Executive Director
Dianne R. Nielson, Ph.D.
Division Director

State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340

December 29, 1989

Ms. Denise Dragoo, Esq.
Fabian and Clendenin
P O Box 510210
Salt Lake City, Utah 84151

Dear Denise:

Re: Horse Canyon Permit, PRO 007/013, Carbon County, Utah

Attached is a copy of OSM's response to the TDN appeal concerning the Horse Canyon Mine. Note that OSM sent a copy of this letter to Kaiser Coal, Raton, New Mexico.

The response addresses two issues. The second issue, concerning performance standards, resulted in the issuance of a federal NOV. Please keep us informed of Kaiser's response to this NOV, including copies of correspondence in addition to that sent to Lowell Braxton on December 28.

Regarding the permit, note that the Division received the response December 4, 1989, which means the 60-day deadline for DOGM response is February 2, 1990. You have indicated that Kaiser intends to submit the necessary revisions. I would encourage Kaiser to contact Lowell Braxton or Pam Grubaugh-Littig as soon as possible to discuss that response. The required submission is "the revisions necessary to approve," i.e., a complete submission, not just a schedule for submission.

If you have any questions on either issue, please call. Thanks for your assistance with this matter.

Best regards,

Dianne

Dianne R. Nielson
Director

ksg
Attachment
cc: B.W. Roberts
L. Braxton
P. Grubaugh-Littig
AD556/51

an equal opportunity employer

CC: LP Braxton

United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
WASHINGTON, D.C. 20240

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copy for Pam PFO UB

NOV 29 1989

RECEIVED
Barbara Roberts
DEC 04 1989
DIVISION OF OIL, GAS & MINING

Dianne R. Nielson, Ph.D.
Department of Natural Resources
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180-1203

Dear Dr. Nielson: Dianne

This is in response to your October 16, 1989, request for informal review of the Albuquerque Field Office Director's determination that your agency did not take appropriate action or show good cause for inaction concerning ten-day notice number X89-02-107-6TV2 (Kaiser Coal Corporation, Horse Canyon Mine, PRO 007/013, Carbon County, Utah).

The ten-day notice alleges that two violations exist on the site. The first alleged violation is that Kaiser Coal Corporation (Kaiser) has failed to obtain a valid Utah permanent program permit to engage in or carry out underground coal mining activities. The second violation is that Kaiser has failed to conduct underground coal mining activities in accordance with the applicable performance standards.

With respect to the first alleged violation, you point out that Kaiser is presently in bankruptcy, that the minesite is in the process of being sold to a third party, and that it would serve no useful purpose to require the seller, Kaiser, to initiate reclamation or complete the permitting process on a property it would no longer control. The record indicates that after extending several prior deadlines, your agency established December 30, 1988, as a new deadline for Kaiser to correct deficiencies in its Operations and Reclamation Plan application. The record also shows that when Kaiser did not respond by this deadline, your agency did not pursue the matter further. The fact that Kaiser is involved in bankruptcy proceedings or is negotiating the sale of its mining interests does not affect the obligation under the Utah program to either diligently secure approval of a permit or reclaim the minesite in a timely manner. Accordingly, I am affirming the determination of the Albuquerque Field Office Director. However, before ordering a Federal inspection, I will grant your agency a sixty-day period after receipt of this letter in which to either secure from Kaiser the revisions necessary to approve the Operations and Reclamation Plan or order Kaiser in writing to initiate and complete reclamation in accordance with a reasonable and specified schedule. Please inform the Albuquerque Field Office Director within the time prescribed of actions taken by your agency.

Turning to the alleged performance standard violation, your letter points out that many of the specific performance standard regulations cited in the ten-day notice require prior approval of designs and subsequent construction in accordance with those designs before a finding can be made that a performance standard is fully met, and that such design approval would require an approved permit. However, as your letter also notes, even though there is no permit for this site your agency has issued notices of violation in the past for which the operator has responded appropriately. Your agency now maintains that it would be inconsistent to support the property sale while at the same time to force Kaiser to initiate reclamation.

Utah's approved program requires performance standards to be met even when an operator is merely maintaining a dormant site. The pending sale of the site property has not been closed and, until that has happened, Kaiser remains responsible for ensuring that the site is maintained in accordance with the applicable performance standards. Furthermore, the pending sale does not relieve or otherwise justify any suspension of Utah's inspection and enforcement obligations for this site. Utah has not taken appropriate action in response to the second violation of the ten-day notice nor has it shown good cause for not taking action. Therefore, I find that Utah's apparent decision to not enforce performance standards necessary to maintain the site in an environmentally sound condition until such time as a successor takes over the site to be arbitrary. Accordingly, the determination of the Albuquerque Field Office Director regarding the second alleged violation is affirmed and an immediate Federal inspection is hereby ordered.

Sincerely,

Acting
Deputy Director
Operations and Technical Services

cc: Kaiser Coal Corporation
P.O. Box 1107
Raton, New Mexico 87740

Robert Hagen
Director, Albuquerque Field Office

Raymond Lowrie
Assistant Director, Western Field Operations

Carl C. Close
Assistant Director, Eastern Field Operations