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STATE OF UTAH
NATURAL RESOURCES
Oil, Gas & Mining

Scott M. Matheson, Governor
Temple A. Reynolds, Executive Director
Dr. G. A. (Jim) Shirazi, Division Director

4241 State Office Building • Salt Lake City, UT 84114 • 801-533-5771

August 23, 1983

CERTIFIED RETURN RECEIPT REQUESTED

Mr. Robert H. Hagen, Director
Office of Surface Mining
219 Central Avenue, NW
Albuquerque, New Mexico 87102

RE: 10-Day Notice, N83-II-242-6
Beaver Creek Coal Company
Gordon Creek #2 Mine
ACT/007/016, Folder No. 7
Carbon County, Utah

Dear Mr. Hagen:

A violation was not issued on the subject of the 10-day notice in question due to the following reasons:

1. When the operator was contacted upon receipt of the notice by the Division, the State inspector was informed the sediment control was almost complete and would be done before the end of the day.
2. The operator expressed a willingness to permit the area and would pursue it. The inspector, at the same time is pursuing a clarification of jurisdiction, in this case, by the State Attorney General's Office

Federal Enforcement

1. 10-day Notice #83-II-242-6 was received August 12, 1983 ascertaining jurisdiction of SMCR, P.L. 95-87, Sections 506(A) and 511(3) and 30 CFR 817.181(A) and 30 CFR 817.45(A)(1).

Mr. Robert H. Hagen
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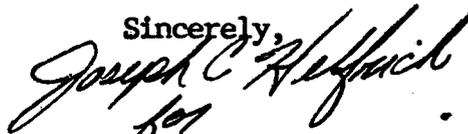
As the State regulatory authority awaits legal determination of jurisdiction under corresponding statutes and regulations, 10 working days will have lapsed, at which time the operator will not have obtained a valid permit nor demonstrated that the area in question is an incidental boundary revision.

Unresolved Issues

1. What is the legal foundation for OSM's jurisdiction under SMCRA of the sections cited in the 10-day notice.
2. OSM has demonstrated jurisdiction in the sense of the contents of the 10-day notice served to the State. What Federal enforcement action will be initiated as required under 521(a)(1) to insure compliance with UCA, 40-10-9 and UCA 40-10-12(1)(C) and corresponding Federal requirements.
3. Please demonstrate how 10-day notice recommendation #(2) will comply with 40-10-9 for adequate abatement.
4. OSM has cited UCA 40-10-12(1)(c) requiring the operator to revise his permit. Federally mandated policy to the State regulatory authority prohibits any revisions to existing permits. Please reference legal foundation to support this policy and demonstrate compatibility with P.L. 95-87, Section 511(3) and UCA 40-10-12(1)(c).
5. If OSM fails to demonstrate legal jurisdiction for said notice and does not take Federal enforcement action as required, therein will the 10-day notice #83-II-242-6 be retracted?

If you have any questions please contact myself or Joe Helfrich of the Division

Sincerely,



for
BARTON D. KALE
FIELD SPECIALIST

BDK/jvb

cc: J. Helfrich, DOGM