



0003

STATE OF UTAH  
NATURAL RESOURCES  
Oil, Gas & Mining

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**RECEIVED**  
DEC 16 1985

August 5, 1985  
(Revised December 4, 1985)

ATTORNEY GENERAL'S OFFICE

*AEI/007/016*  
*#7*

TO: Dianne R. Nielson, Director  
THRU: Barbara W. Roberts, Assistant Attorney General  
FROM: Ronald W. Daniels, Coordinator of Minerals Research  
RE: Pattern of Violations at Beaver Creek Coal Company's Gordon Creek No. 2 Mine

This memo constitutes my finding on the potential pattern of violations at the Gordon Creek No. 2 Mine. I seek your concurrence with my finding of "no pattern" to conclude this case.

I will first provide you with a brief history of the events leading up to my decision and recommendation. The Division began work on this suspected pattern in July, 1984 with a memo from Barton Kale to Joe Helfrich. On October 17, 1985 and on November 29, 1984, I wrote a draft memo to Ms. Barbara Roberts through you which asked for guidance in making the determination that the pattern involved willful intent or an unwarranted failure to comply.

Ms. Roberts asked me to hold an informal, fact-finding conference with the operator so that more specific facts could be presented on the violations. I agreed, and did so.

On May 7, 1985, I held an informal conference with Beaver Creek representatives, Jim Hericoff, Dan Guy, Mike Watson, and Pete Haller. The Division was represented at this conference by Joe Helfrich, Barton Kale, and Barbara Roberts.

Due to the statute of limitations on NOV's N83-6-8-2 (1 of 2) which was finalized on December 19, 1983, the discussion centered on NOV's N84-6-3-1, N84-6-7-1, N84-6-6-5 (2 of 5), and N84-6-5-1. All of these violations occurred at the Gordon Creek No. 2 Mine within a twelve-month period and were related to hydrologic concerns.

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Memorandum - Dianne R. Nielson, Director  
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NOV N84-6-3-1 involved a company employee dredging material and depositing it on the bank of the pond. The company management attributed the employee's actions to the lack of a specifically designed training program in how to deal with problems related to environmental protection. Management also indicated that an employee training program is now in place to address this problem.

NOV N84-6-7-1 involved a violation in which the water fill-up area was only partially in compliance with a previously-approved revision. Water fill up trucks were still entering the perennial stream while taking on water.

Size of the trucks was an issue presented by the company in that a wheel five feet in diameter was difficult to maneuver in the close quarters of this fill-up area. The company also pointed out that a difference of opinion existed between inspectors Pruitt and Kale on whether to berm or not in the fill-up area. However, this was resolved prior to NOV issuance.

In addition, the Division's inspector in this case noticed that the berm intended to bolster the water level in this area had not been completed and that the fill materials used to bolster the dam consisted of boulders and fine soil, and dumped on the dam but not compacted.

Again, the operator alleged that an employee acted independently to solve an operational problem, thus causing a compliance problem. The operator again stated that the training program was instituted to avoid these problems.

N84-6-6-5 (2 of 5) was issued for short circuiting of a sediment pond at the #7 Mine portal area. Rocks included within the construction materials for the pond allegedly caused a leak to occur and water to drain in a way which it was not designed, through the bottom of the pond. The company maintained that the leak was not caused by having constructed the pond with frozen soil as previously suspected by the Division. The trouble spot was excavated and the area was recompacted before the NOV was issued.

NOV N84-6-5-1 was issued by inspector for exceeding NPDES effluent standards for March 1984. The discharge was occurring from the sediment pond at the No. 2 Mine and was caused by the pond being overfull due to snow having been dumped into the pond. Prior to the issuing the violation, the operator inquired of the Division on decanting measures since the pond was near full, but took no apparent action until the NOV was issued.

Rule UMC 843.13 provides that when three or more inspections of a mine result in violations of the same or related requirements of the Act within twelve consecutive months, this will

be considered to be a pattern, if such violations are caused by an unwarranted failure to comply or willful intent on the part of the operator.

Willful intent, or the operator intending the result of such violation listed above cannot be shown to be involved in these violations. Since the willful category obviously does not apply in any of the NOV's in this case, three or more of the NOV's would need to be the result of an unwarranted failure to comply on the part of the operator. Unwarranted failure to comply means that the operator failed to prevent the occurrence of the violation(s) due to "indifference, lack of diligence, or lack of reasonable care." The following analysis examines whether an unwarranted failure to comply is applicable in any of these violations.

#### Analysis

NOV N84-6-3-1 involved an untrained employee taking action to resolve an operational problem and thereby caused a compliance problem. The utilization of a pragmatic solution to this operational problem by an environmentally untrained employee combined with the company's prompt implementation of an employee training program shows that an unwarranted failure to comply is not applicable in this case.

NOV N84-6-7-1 involved the operator repairing one part of the violation, part of the water fill-up area and part of the dam bolstering the dam for the same area, but again, the operator's environmentally untrained worker on the ground had tried to solve an operational problem. The operator showed an intent to comply by performing partial compliance work prior to NOV issuance and also implemented an employee training program in environmental compliance after NOV issuance. Since efforts to comply were made prior to NOV issuance, the operator's representative on site again acted pragmatically to solve an operational problem, and an environmental awareness program was implemented after issuance, an unwarranted failure to comply is not applicable in this case.

N84-6-6-5 (2 of 5) was issued due to a leak in the company's sediment pond which was alleged by the inspector to have been caused by constructing the pond with frozen soil. The company maintains that it had done all things possible to construct the pond in accordance with the approved plans and that the pond was certified by the registered professional engineer after construction. An unwarranted failure to comply does not apply in this case since the company constructed the pond according to plan, yet it still leaked.

NOV N84-6-5-1 was issued for exceeding NPDES effluent standards. The operator, while aware that a problem existed did not act to deal with the violation until the NOV was issued. An

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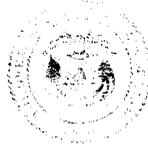
unwarranted failure to comply may be applicable in this case since a level of cognizance of the problem was present, the operator knew that the pond was full and potentially overflowing but took no measures to deal with the problem until the NOV was issued. I believe that the operator failed to exercise reasonable care in this instance.

#### Recommendation

It is recommended that the operator, Beaver Creek Coal Company be found to have received the requisite number of NOV's or CO's to constitute a demonstrated pattern of violations but that only one of the NOV's and CO's so cited (N84-6-5-1) be found to have been caused by an unwarranted failure to comply on his part. Further, it is recommended that an order to show cause not be issued by the Board since no pattern as defined by the Utah Act or Regulation exists.

I am including a copy of the draft "revised procedure to determine if a pattern of violation exists" for your reference. I seek a memo from you on either concurring with or rejecting my determination. We are now at step five on the draft procedure.

mjm  
Attachment  
0345V



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TO: DIANNE R. NIELSEN, Director  
Division of Oil, Gas and Mining

THRU: RONALD W. DANIELS, Coordinator of  
Minerals Research

FROM: BARBARA W. ROBERTS  
Assistant Attorney General

DATE: November 8, 1985

RE: Pattern of Violations at Beaver Creek  
Coal Company's Gordon Creek No. 2 Mine

I have studied Ron Daniels' memo dated August 5, 1985, on the above-cited matter and support his determination that no pattern of violations exists as a result of these violations. Please note that there is an error in the last sentence of the "Analysis". I believe "greater" should be "operator".

If I can be of further assistance, please contact me.

REVISED PROCEDURE TO DETERMINE IF A  
PATTERN OF VIOLATIONS EXISTS

D R A F T

April 3, 1985

