



United States Department of the Interior

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

Area mine file
cc L Gray



JUL 25 1990

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DIVISION OF
OIL, GAS & MINING

Dr. Dianne R. Nielson
Director, Division of Oil, Gas,
and Mining
Department of Natural Resources
355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203

Dear Dr. Nielson: *Dianne*

This is in response to your July 10, 1990, request for informal review of the Albuquerque Field Office Director's determination that your agency has not taken appropriate action with respect to ten-day notice number X90-02-116-1. The ten-day notice alleges that Soldier Creek Coal Company (permit number ACT/007/018) failed to document accurate daily blasting logs for each surface blast. Direction and distance to the nearest dwelling were not completed on daily blasting records for any blasting records reviewed.

In your request for review, you explain that at the time of the inspection which resulted in the ten-day notice, your agency issued a notice of violation to the operator for failure to have a valid certificate of blaster certification during blasting activities. You contend that since accountability for recordkeeping is one of the reasons for blaster certification, the recordkeeping violation can be attributed to this lack of certification. Therefore, you contend that the notice of violation issued by your agency appropriately encompasses the violation alleged in the ten-day notice.

Since the record does not indicate any disagreement that the operator failed to document all blasting information required under the Utah program, the issue before me is whether this failure constitutes a separate violation of the Utah blasting regulations in addition to the violation cited by your agency concerning the lack of blaster certification. While your agency correctly cited UMC 816.61 as the basis for the certification violation, this section contains only general requirements pertaining to other aspects of blasting. Absent any language to the contrary, a specific regulatory requirement takes precedence over any general provision. The alleged violation in this case is governed by specific language under UMC 817.68(d) which requires the operator to retain a record for each blast of the

Dr. Dianne R. Nielson

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direction and distance, in feet, to the nearest dwelling, school, church, or commercial or institutional building either not located in the permit area or not owned or leased by the permittee. This information is essential to determine the amount of explosives which are allowed to be detonated under the Utah program.

Based on the foregoing, I find that the violation alleged in the ten-day notice cannot be subsumed under the notice of violation issued by your agency for lack of blaster certification and, therefore, it should have been cited as a separate and additional violation of the Utah blasting regulations. Accordingly, I am affirming the determination of the Albuquerque Field Office Director and hereby order a Federal inspection.

Sincerely,



Deputy Director
Operations and Technical Services

cc: Soldier Creek Coal Company
P.O. Box I
Price, Utah 84501

Robert H. Hagen
Director, Albuquerque Field Office

Carl C. Close
Assistant Director, Eastern Field Operations

Raymond Lowrie
Assistant Director, Western Field Operations



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

State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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

July 10, 1990

CERTIFIED RETURN RECEIPT REQUESTED
No. P 075 063 345

Mr. Robert H. Hagen, Director
Albuquerque Field Office
Office of Surface Mining
Reclamation and Enforcement
Suite 310, Silver Square
625 Silver Avenue, S.W.
Albuquerque, New Mexico 87102

Dear Mr. Hagen:

Re: TDN X90-02-116-1, Soldier Creek Coal Company, ACT/007/018, Folder #5,
Carbon County, Utah

Pursuant to provisions enumerated in Section (3)(b) of OSM Directive INE 35, the Division disagrees with the findings made by OSM's Albuquerque Field Office (AFO) that the Division's response to part 1 of the above-referenced TDN is inappropriate, arbitrary and capricious. The Division hereby requests a timely informal review and appeal of OSM's June 20, 1990 finding in this matter. As per our conversation upon receipt of the AFO response, I have delayed writing this appeal pending the return from vacation of one of my staff members.

Number 1 of 1 reads: "Failure to record accurate blasting logs for each surface blast. Directions and distance to nearest dwelling was not completed on daily records for any blasting records, and location of each blast was not accurately documented on any blasting records reviewed."

At the time of the oversight inspection that resulted in the TDN in question, the Division issued NOV N90-27-6-1 to Soldier Creek Coal Company for "failure to have a valid certificate of blaster certification during blasting activities", (copy enclosed). Regulations cited as violated in the NOV are UMC 817.61 (C)(1)(2)(3)(4), "old regulations" and "new regulations" R614-301-524.100 through R614-301-524.140. While there are differences in specific language between the old and new regulations, the intent of both sets is clear: surface coal mine blasting operations must be conducted by a certified person. Cognizance of the blasting regulations and accountability for the attendant paperwork is a reason for certification, and both the old and new regulations require adherence to "site-specific performance standards". The Division's position is that a violation of the blasting regulations existed, due to lack of certification, and that daily blasting records signed by an uncertified blaster are a

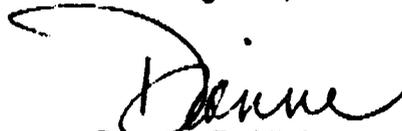
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violation of the program. On this basis, I feel that the language used in the state violation is more encompassing than that used in the federal TDN. This concept was explained to the federal inspector at the time the state violation was issued, and when the federal inspector reviewed the state's response to the TDN.

The subject of discussion is not the existence of a violation, rather how many paperwork facets must be addressed in order to document the violation to the satisfaction of the AFO. I believe there is no arbitrary or capricious action on the part of the Division, and that by writing an encompassing NOV the Division demonstrated wise use of discretion.

My appeal then is for recognition that by issuing the above-referenced NOV, the Division followed the requirements of its program, and in so doing rendered the alleged federal violation (the TDN) redundant. On this basis, TDN X90-02-116-1 should be vacated.

Best regards,



Dianne R. Nielson
Director

vb
Enclosures
cc: T. Paluso, Soldier Creek Coal Co.
L. Braxton
D. Haddock
J. Helfrich
MI78/75&76