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United States Department of the Interior

OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
SUITE 310
625 SILVER AVENUE, S.W.
ALBUQUERQUE, NEW MEXICO 87102



In Reply Refer To:

November 20, 1991

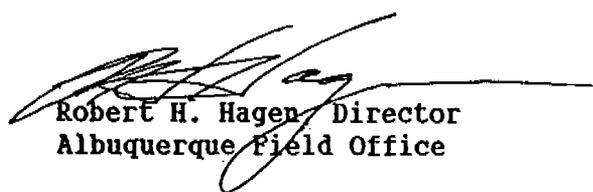
Dr. Dianne R. Nielson, Director
Division of Oil, Gas and Mining
Department of Natural Resources
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, UT 84180-1203

Dear Dr. Nielson:

Enclosed for your review is a summary of the meeting held in Salt Lake City on November 6 through 7, 1991.

Please provide comments to me by December 4, 1991.

Sincerely,


Robert H. Hagen, Director
Albuquerque Field Office

Enclosure

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cc L Broxton
T Mitchell*

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

UTAH - OFFICE OF SURFACE MINING PROGRAM MEETING
SALT LAKE CITY, UTAH
NOVEMBER 6-7, 1991

A Utah Program Meeting was held in Salt Lake City, Utah on November 6 and 7, 1991. Representatives of the Utah Department of Natural Resources, Division of Oil, Gas and Mining (the Division); the Office of Surface Mining Reclamation and Enforcement (OSM); and the Office of the Field Solicitor, Denver (OFS) participated. The following is a synopsis of the major items of discussion, together with the agreed to resolution of each item.

PARTICIPANTS

The Division: Dianne Nielson, Lowell Braxton, Tom Mitchell
OSM: W. Hord Tipton, Robert Hagen, John Heider
OFS: Albert Kashinski, John Retrum

DISCUSSION

1. The March 1, 1991 proposed amendment to the Utah program which included revisions to the definitions of "public road" and "road" with a policy statement titled "Division of Oil, Gas and Mining Policy for the Implementation of Site Specific Determinations of the Public Status of Roads Under R614-100-200" dated February 25, 1991 (administrative record no. UT-610).

OSM pointed out that a) it determined that there are three parts to the Utah submittal, i.e., (1) the definition of "road", (2) the Policy Statement, and (3) the definition of "public road"; b) that in the OSM view, the definition of "public road" only applies in the context of the Utah counterpart to 30 CFR Part 761 AREAS UNSUITABLE FOR MINING; and c) that the Division's February 25, 1991 Policy Statement appears to categorically exclude all public roads from permitting under the approved Utah regulatory program.

It was resolved that because there did appear to be an unintended ambiguity in the Division's February 25, 1991 Policy Statement concerning permitting of public roads under the Utah program, the Division will

withdraw the Policy Statement from OSM's consideration. In addition, the Division will permit "roads" on a case-by-case determination consistent with the definition of "coal mining and reclamation operations" as contained in the approved Utah regulatory program and will work with OSM to develop an informal policy that will serve as a rationale for determining when, and if, a public road, or any part thereof is subject to the permitting requirements of the Utah program. Finally, the Division offered to submit a draft letter withdrawing the Policy Statement and describing its intent to permit roads consistent with the provisions of its approved regulatory program. The draft letter will be included in the administrative record relating to the March 1, 1991 proposed amendment submittal and OSM will provide comments on the content of the draft for the Division's consideration.

2. The August 16, 1991 informally proposed amendment concerning highwall retention (administrative record no. UT-669) and the November 4, 1991 letter to the Division detailing the results of the OSM review.

OSM and the Division jointly examined the six issues identified by OSM subsequent to the OSM review.

It was resolved that in any formally proposed amendment the Division would 1) either restore the deleted language as it relates to surface mines, or propose a suitable substitute standard for surface mines; 2) informally discuss with OSM the necessity to include a separate and distinct criterion that restricts the highwall exemption to complete elimination of highwalls to the replacement of a natural clifflike escarpment that has been reduced or removed by the mining process; 3) consider the results of OSM's analysis of the rationale behind adoption of the requirement that all retained highwalls achieve stability equivalent to that required of backfilled areas, i.e., a minimum long-term static safety factor of 1.3 (the Division is concerned that naturally occurring cliffs do not attain the 1.3 static safety factor and that it is reasonable to only match the natural area of stability); 4) submit a proposed provision that retained highwalls cannot be "significantly [emphasis added] greater in height or length than the dimensions of existing cliffs in the disturbed area" in the formal amendment submittal. It was agreed that this provision would be restricted to the "disturbed area" rather than the "surrounding area" as proposed by the Division. The reference to disturbed area instead of surrounding area is consistent with OSM's January 14, 1991 30 CFR Part 732 notification to the Division. In addition, OSM will

address the term "significantly" in the Federal Register preamble on a decision relating to a formal submittal concerning a highwall retention amendment; 5) not include a provision in it's formally proposed amendment addressing the U.S. District Court for the District of Columbia decision in NWF v. Lujan. OSM would address the decision in the Federal Register preamble on a decision relating to a formal submittal concerning a highwall retention amendment; and 6) demonstrate in any formal submittal that no amendment specifying that any highwall created prior to the effective date of SMCRA as a faceup area for an underground mine that continued to operate after SMCRA took effect need be eliminated only to the extent feasible using all reasonably available spoil is necessary. The Division will provide information showing that such relief is already provided by existing State rules governing the remaining of previously mined areas.

3. The Component concerning a "Failure to cite violations" in the Draft 1991 Utah Annual Evaluation Report. Specifically, the Division expressed concern that the LSCI (Last State Complete Inspection) data used by OSM to develop this issue does not look at the full-range of Division enforcement actions and that evidence exists that the noted violations did not exist at the LSCI.

It was resolved that OSM will evaluate any new Division data concerning it's initial findings on this component and reexamine the OSM justification used in determining that a violation existed on the LSCI. By way of explanation, the Division stated that it now mandates a complete permit review prior to each complete inspection, and utilizes an inspection "team" with a designated "lead inspector" in the conduct of complete inspections. OSM and the Division agreed that violations readily apparent as existing for some time but not previously detected by either the Division or OSM (during Random Sample Inspections, i.e., an RSI) would not be cited as an LSCI problem in oversight reports. This situation was termed a "mutual miss" occurring during the Divisions inspections and OSM's RSI's.

4. Reclamation of Highwalls.

It was resolved that OSM and the Division would informally review the permitting of highwalls on a case-by-case basis. OSM agreed that the existing Utah rule can be used for bond releases until such time as the State program is amended, provided that the State

program is properly interpreted. Upon approval of the amendment, all permits for mines that are not in the process of reclamation will be reviewed for compliance with the amended rule. The Division will develop a schedule for reviewing each case and submit it to OSM.

5. Use of Division Orders. OSM is concerned that Division Orders are being inappropriately used in the issuance of permits, i.e., in lieu of permit renewals.

It was resolved that OSM admittedly has no problem with the utilization of Division Orders per se but is concerned that they are being used to compensate for delays in permit renewal actions by the Division. OSM and the Division agreed that the Division will send OSM a letter explaining it's position on the use of Division Orders.

6. Applicant Violator System (AVS). OSM indicated in the Draft 1991 Utah Annual Evaluation Report that the Division AVS computer made no queries for 6 months of the Evaluative Year. However, OSM did not allege that there were any improvidently issued permits during the period.

It was resolved that after the Division provided OSM with a November 4, 1991 document detailing it's AVS "Methodology for Review" in which it demonstrated that the Division ". . . notified OSM Washington of communications problems attendant to AVS . . . OSM Washington acknowledged the problem, but failed to resolve same.", OSM will reword the final Report to reflect all accurate considerations and append the Divisions comments to the final version of the Report. In further resolution of the issue, the Division will utilize "phone logs" for documentation of State contacts regarding 510 (c) checks and will query the System just prior to issuance of a permit, and will evaluate the need for a query upon receipt of the permit application package. Additionally, OSM provided the Division a listing of 14 "maintenance deficiencies" and the Division will review them and respond to OSM.

7. Permit Transfer Procedures. OSM is concerned about changes of ownership and the "direction" of the on-the-ground operations as they relate to the Division's program requirements. OSM encourages the Division to conduct a 510 (c) check of the "successor-in-interest" at the time of an application for transfer, assignment, or sale of permit rights.

It was resolved that OSM will reexamine the wording on this issue in the Draft 1991 Utah Annual Evaluation Report. OSM will specify that this is not an

"environmental" problem but is a "procedural" concern. In addition, OSM and the Division will meet to informally review the Division's implementation of its rule at Section 614-303-300. In the interim, the Division will require a known successor-in-interest to supply the required legal, financial, compliance, and related information to the Division within 15 days of notification. The Division will initiate a 510 (c) check upon receipt of the information. Also, the Division will provide OSM with a legal opinion as to the Division's authority, or lack of authority under its program, to stop the "successor" from operating on-site after a sale but prior to Division approval of a transfer, as well as prior to the results of the 510 (c) check by the Division.

8. The Divisions joining industry appellants as "intervenor" in three pending appeals to OHA. OSM requested the Division to reconsider its action in these cases.

It was resolved that the Division, absent OSM action to "vacate" its three Notices of Violation, would continue as "Intervenor" in all three cases.