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# State of Utah

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

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*file*

December 5, 1991

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

Dear Bob:

Re: Comments and Additions to the Draft Summary of the OSM/DOGM Meeting, November 6 and 7, 1991

The following comments and additions are provided in response to your November 20, 1991 letter, and should be included in the final summary of the above-referenced meeting in Salt Lake City.

1. As background to this discussion on the Division's program amendment, the Division was informed that it was necessary for OSM to take specific notes on this discussion, consistent with the requirements of federal notice and rulemaking. Therefore, an accurate accounting of this discussion is important.

It should also be noted that OSM inquired whether the policy was adopted by the Board. The Division explained that the policy was a Division policy and had not been formally adopted by the Board.

Paragraph 2, Page 1

The paragraph should reflect that the Division was clear that it did not interpret the policy to categorically exclude all public roads from permitting, nor did it find it capable of such interpretation. In fact, the policy specifically states that all roads are initially presumptively subject to permitting. The case-by-case evaluation is then utilized to determine if any road or part thereof should not be permitted.

Paragraph 3, Page 2

There was no agreement that the Division would permit roads "consistent with the definition of coal mining and reclamation

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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 permitting requirements of the Utah program."

The Division and OSM agreed that in the absence of the policy the Division would make a determination regarding the permitting of a road in accordance with the Utah regulatory program as amended and applicable law. There was no agreement to substitute another policy for the existing policy. In fact, there was considerable discussion of the fact that OSM did not have a policy for road permitting determinations and, therefore, there was no basis for the Division adopting a policy.

The Division was also informed that, upon receipt of the Division letter withdrawing the policy, OSM would notice that withdrawal in the Federal Register, with a 30-day comment period. (However, OSM's Federal Register publication of November 22, 1991, has obviated the need for such withdrawal notice.)

2. Paragraph 2, Page 2

It should be noted that those six concerns were submitted to the Division in a letter from OSM, dated November 4, 1991.

Paragraph 3, Page 3

The discussion on this matter provided an opportunity for the Division to understand OSM's concerns with respect to the highwall amendment. However, there was no commitment by the Division to do certain things. In fact, because rules are formally adopted by the Board, not the Division, and only after public notice and comment, OSM is aware that the Division could not have committed to specific rules at this meeting.

With respect to part (1), the Division acknowledged OSM's concern, which went specifically to the issue of the final slope of any reclaimed areas.

The Division acknowledged OSM's concern in parts (2), (3), and (4). With respect to part (4), the Division understood that the term "significantly" would be addressed in the amendment, not in OSM intent language.

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The Division is confused by OSM's statement in part (5), and therefore cannot agree with this portion.

The Division also finds the wording in part (6) to be confusing. We think the discussion focused on the need for the Division to demonstrate that its program provides an exemption from highwall elimination where the highwall was created prior to SMCRA and continued to be utilized after SMCRA, with elimination only to the extent feasible using all reasonably available spoil.

3. Paragraph 2, Page 3

For clarification, note that the inspection "team" reviews the permit prior to the inspection. When the oversight inspection (RSI) occurs, only one inspector, generally the "lead inspector" conducts the inspection.

4. No additional comments.

5. No additional comments.

6. Paragraph 2, Page 4

For clarification, the Division is currently querying the AVS system at the time the PAP is received. The Division will now consider if it needs to query the system upon receipt of the PAP, in addition to the query prior to issuance.

7. Paragraph 1, Page 5

The Division questioned its authority under the program to limit operations of a "successor" prior to completion of the permit transfer, provided that the original permittee remained liable for operations, and that all requirements of the program, including reclamation surety and liability insurance, were being met. The Division did not commit to a legal review, but will provide further justification for its procedures if necessary.

8. No additional comment.

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Thank you for incorporating these comments in the record of the meeting. If you have any questions, please call me.

Best regards,

A handwritten signature in cursive script, appearing to read "Dianne".

Dianne R. Nielson  
Director

kak  
cc: T. Mitchell  
L. Braxton  
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