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State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Norman H. Bangerter
Governor

Dee C. Hansen
Executive Director

Dianne R. Nielson, Ph.D.
Division Director

355 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

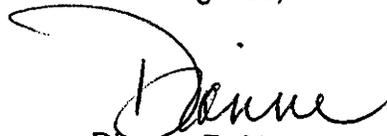
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violation of the program. On this basis, I feel that the language used in the state violation is more encompassing than that used in the federal TDN. This concept was explained to the federal inspector at the time the state violation was issued, and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



Jdk

NO. N 90-27-6-1

Effective May 15, 1990

To the following Permittee or Operator:

Name Soldier Creek Coal Company

Mine Soldier Canyon Surface Underground Other

County Carbon State Utah Telephone 637-6360

Mailing Address P.O. Box T

State Permit No. ACT/007/018

Ownership Category State Federal Fee Mixed

Date of inspection May 15, 19 90

Time of inspection 7:30 a.m. p.m. to 5:30 a.m. p.m.

Operator Name (other than Permittee) _____

Mailing Address _____

notice of violation

Under authority of the Utah Coal Mining and Reclamation Act, Section 40-10-1 et seq., *Utah Code Annotated*, 1953, the undersigned authorized representative of the Division of Oil, Gas & Mining has conducted an inspection of above mine on above date and has found violation(s) of the act, regulations or required permit condition(s) listed in attachment(s). This notice constitutes a separate Notice of Violation for each violation listed.

You must abate each of these violations within the designated abatement time. You are responsible for doing all work in a safe and workmanlike manner.

The undersigned representative finds that **cessation of mining** is is not expressly or in practical effect required by this notice. For this purpose, "mining" means extracting coal from the earth or a waste pile, and transporting it within or from the mine site.

This notice shall remain in effect until it expires as provided on reverse side of this form, or is modified, terminated or vacated by written notice of an authorized representative of the director of the Division of Oil, Gas & Mining. Time for abatement may be extended by authorized representative for good cause, if a request is made within a reasonable time before the end of abatement period.

Date of service/ mailing May 22, 1990

Time of service/ mailing 10:00 a.m. p.m.

Dave Spillman
Permittee/Operator representative

Mine Engineer
Title

Signature
Harold G. Sandbeck
Division of Oil, Gas & Mining representative

Reclamation Spec.
Title

Signature
Harold G. Sandbeck

#27
Identification Number

SEE REVERSE SIDE

WHITE-DOGM YELLOW-OSM PINK-PERMITTEE/OPERATOR GOLDENROD-NOV FILE



print cc
sent 5/15/90
D.B.
Jad

VACATION/TERMINATION OF NOTICE OF VIOLATION/CESSATION ORDER

To the following Permittee or Operator:

Name Soldier Creek Coal Company

Mailing Address P.O. Box I

State Permit No. ACT/007/018

Utah Coal Mining & Reclamation Act, Section 40-10-1 et seq., Utah Code Annotated (1953):

Notice of Violation No. N 90-27-6-1 dated May 15, 19 90.

Cessation Order No. C _____ dated _____, 19 ____.

Part 1 of 1 is vacated terminated because No abatement is possible.

Part _____ of _____ is vacated terminated because _____

Part _____ of _____ is vacated terminated because _____

Date of ~~service~~/mailing May 22, 1990

Time of ~~service~~/mailing 3:00 a.m. p.m.

Date of Inspection May 15, 1990

Dave Spillman
Permittee/Operator representative

Mine Engineer
Title

Signature
Harold G. Sandbeck
Division of Oil, Gas & Mining

Reclamation Spec.
Title

Signature
Harold G. Sandbeck



NOTICE OF VIOLATION NO. N 90-27-6-1

Violation No. 1 of 1

Nature of violation

Failure to have a valid certificate of blaster certification during blasting activities.

Provisions of act, regulations or permit violated

UMC 817.61 (2)(A)(2)(3)(4) / R614-301-524.100 through R614-301-524.140

Portion of operation to which notice applies

New Portal Facilities.

Remedial action required (including any interim steps)

None possible.

Abatement time (including interim steps)

NA