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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:

June 18, 1991

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
P 965 799 191

RECEIVED

JUN 20 1991

DIVISION OF
OIL GAS & MINING

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

Re: Ten-Day Letter (TDL) No. 91-02-244-3 (TV-1) Andalex Resources,
Centennial Project Mine

Dear Dr. Nielson:

The following is a written finding, in accordance with 30 CFR 842.11, regarding the Division of Oil, Gas and Mining's (DOGM) response to the above-referenced TDL.

On May 15 and 16, 1991, the Albuquerque Field Office (AFO) conducted a random sample inspection of the Centennial Project Mine. The AFO inspector was accompanied by a DOGM inspector. The inspection resulted in the issuance of the TDL referenced above for the alleged violation of the Utah Regulations. The TDL was sent by certified mail to DOGM on May 20, 1991, and was received in your office on May 22, 1991, thereby setting the response due date at June 3, 1991. The written response, dated May 30, 1991, was received in AFO on June 6, 1991, via tele-fax. AFO will, therefore, consider this a timely response.

Violation 1 of 1 of the TDL cites Utah R614-301-742.223 as the regulation believed to have been violated. The TDL states that the operator failed to provide a combination of principal and emergency spillways that will safely discharge a 25-year, 6-hour precipitation event on pond "C."

DOGM's response is that the operator was contacted and initiated an amendment to correct the spillway problem prior to the AFO oversight inspection. The operator submitted plans on May 29, 1991, to amend the Mine Reclamation Plan (MRP) to provide for the correct combination of spillways on the pond. The Division is reviewing the submission and, on approval, a schedule will be established for the implementation of the construction.

Dr. Dianne R. Nielson

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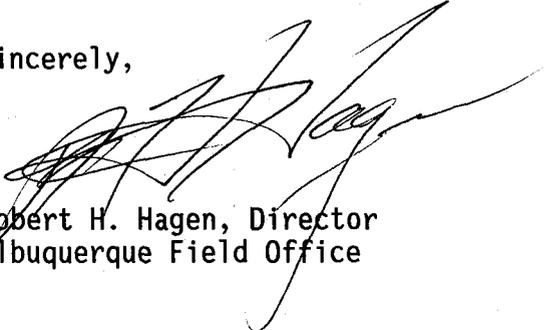
DOGM believes that the TDL is redundant and unnecessary because the State program was amended, and the operator was notified to change the MRP. That opinion is based on the Division's interpretation of the Office of Surface Mining Reclamation and Enforcement's (OSM) Directive REG-29, Permit Revisions Following Regulatory Program Modifications. DOGM is misinterpreting REG-29. REG-29 applies when permits must be revised to ensure compliance with new regulatory requirements. This is not the case in this situation. The "old" Utah regulations had the same requirement to install a combination of principal and emergency spillways. That is, Utah's regulations required separate primary and emergency spillways. The operator was not in compliance with that rule because a single pipe spillway existed. The new rule allows the operator the option of constructing a single spillway to serve as both a primary and emergency spillway provided that the spillway is an open channel spillway.

AFO also does not consider it inappropriate to have issued the TDL because DOGM states that it had required revision of the permit prior to the inspection. AFO found that DOGM had not initiated a permit revision in accordance with procedures of the State program prior to the inspection. Information available from the DOGM inspector and the operator at the time of the inspection disclosed that discussions had occurred regarding the need to make the change, but that a permit revision had not been ordered specifying the action to be completed and setting a reasonable and specific time for completing the revision. The operator has subsequently submitted the necessary documentation to meet the requirements of Utah's program for reconstruction of the spillways on pond "C." Therefore, OSM finds DOGM's response to violation 1 of 1 of the TDL to be appropriate.

If you disagree with any of these findings, you may request an informal review in accordance with 30 CFR 842.11(b)(1)(iii)(A). Your request must be received within 5 days of receipt of this letter.

If you wish to discuss the matter further, please contact Tom Ehmett or me at (505) 766-1486.

Sincerely,



Robert H. Hagen, Director
Albuquerque Field Office