

0013



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 84180-1205
801-538-5340

May 30, 1991

CERTIFIED RETURN RECEIPT REQUESTED
P074 979 075

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

Dear Mr. Hagen:

Re: TDL X91-02-244-3, Andalex Resources, Centennial Project, ACT/007/019, Folder #5, Carbon County, Utah

This letter is in response to TDL X91-02-244-3, the certified copy of which was received at the Division offices on May 22, 1991.

Part 1 of 1 was issued for "Failure to provide a combination of principal and emergency spillways that will safely discharge a 25 year, 6 hour precipitation event (Pond C)." Regulation cited is R614-301.742.223.

RESPONSE: In accordance with the Division's Inspection and Enforcement Policy, a pre-inspection permit review was held prior to the April complete inspection. The site conditions at the Centennial Mines complex were discussed and the concern with spillways at "Pond C" was raised. Dave Darby, Division Geologist, discussed the situation with the operator during the inspection (See April inspection report). Division Hydrologist, Rick Summers, contacted the operator and initiated an amendment to correct the spillway problem (See phone log dated April 26th and May 2nd, 1991).

The operator has subsequently submitted plans (May 29, 1991) to amend the MRP to provide for the correct combination of spillways on Pond C. The Division will review this submission under the provision of R614-303-223,225 (amendments). Upon approval

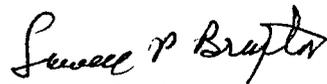
Page 2
TDL ACT/007/019
May 30, 1991

of the amendment the Division will establish a schedule for implementation of the construction.

The issuance of this TDL appears to be redundant and unnecessary. There was no problem with Andalex Resources' spillways until the Utah program was amended with the inception of the new coal rules. In this case, OSM Reg-29 should apply. That is, when a regulatory program is amended the regulatory agency will identify and require any permit revisions necessary to ensure the operation is in compliance with the appropriate performance standards as part of either the midterm review or permit renewal process. The chronology indicates identification of a problem and steps to ensure resolution prior to either of these two permit actions.

Based on the Division's action being taken in advance of the requirement of the program and the guidance provided by Reg. 29, this TDN should be vacated.

Sincerely,



Lowell P. Braxton
Associate Director, Mining

mbm
Attachments
cc: D. Haddock
D. Darby
R. Summers
J. Helfrich
ANDATDLR.LET

DOGM ROBERT HAGEN DIRECTOR TDL X91-02-244-3
 JBE OFFICE OF SURFACE MINING ACT/007/019

P 074 979 075

RECEIPT FOR CERTIFIED MAIL

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 RECLAMATION AND ENFORCEMENT
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 ALBUQUERQUE NM 87102
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3. Article Addressed to: ROBERT HAGEN DIRECTOR OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT SUITE 310 SILVER SQUARE 625 SILVER AVENUE S W ALBUQUERQUE NM 87102		4. Article Number P 074 979 075	
5. Signature - Address X Yolanda Lujan OSM		Type of Service: <input type="checkbox"/> Registered <input type="checkbox"/> Insured <input checked="" type="checkbox"/> Certified <input type="checkbox"/> COD <input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise	
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STATE OF UTAH
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 OIL, GAS, & MINING
 TRIAD CENTER, SUITE 350
 BAL LAKE CITY, UTAH 84180-1203



State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Norman H. Bangerter
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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

return to LPS, ccl: Joe
Pam
Naren

May 13, 1991

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: Inspection and Enforcement Policy

Enclosed is the final Division Inspection and Enforcement policy, as provided for in the MOU between the Division and OSM. The comments from your March 29, 1991 review have been incorporated.

Best regards,

Dianne R. Nielson
Director

vb
Enclosure
cc: H. Tipton, OSM, Washington
L. Braxton
T. Mitchell
MI3/51



State of Utah

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DIVISION OF OIL, GAS AND MINING

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INSPECTION AND ENFORCEMENT POLICY UTAH COAL REGULATORY PROGRAM

Effective Date: May 13, 1991

Authorized by: Dianne R. Nielson *[Signature]*

Introduction

When it established the Utah Coal Mining and Reclamation Act, the Utah Legislature made specific findings in Utah Code Ann. § 40-10-1 (1) through (4), stating that it is "...essential to the national interest to insure the existence of an expanding and economically healthy underground coal mining industry." It called for "...establishment of appropriate standards to minimize damage to the environment and to productivity of the soil and to protect the health and safety of the public." It recognized that "Surface mining and reclamation technology is now developed so that effective and reasonable regulation of surface coal mining operations is an appropriate and necessary means to minimize so far as practicable the adverse social, economic and environmental effects of mining operations."

One of the purposes of the Utah Coal Mining and Reclamation Act is to: "Grant the Board and Division of Oil, Gas and Mining the necessary authority to assure exclusive jurisdiction over non-federal lands and cooperative jurisdiction over federal lands in regard to regulation of coal mining and reclamation operations as authorized pursuant to Public Law 95-87." Utah Code Ann. § 40-10-2(1).

Utah achieved primacy for the Coal Regulatory Program, January 21, 1981. In March 1987, the Governor entered into a Cooperative Agreement with the Secretary of the Department of the Interior providing for state regulation of coal mining and reclamation operations on federal lands in Utah. Regulation of coal mining and reclamation operations is the responsibility of the Board and the Division of Oil, Gas and Mining (DOGM).

The Coal Regulatory Program is comprehensive and complex. Professional judgment is required in interpreting permit data submitted in compliance with rules. The review process results in the issuance or denial of a permit under the Utah Coal Regulatory Program. Inspection of operations under this program also requires professional judgment in evaluating the permit and the operations on the ground to ensure compliance with the requirements of the program.

Assignment of Inspections

Each Reclamation Specialist on a coal permitting team will be assigned by the Permit Supervisor to serve as lead inspector on a given number of mines. This assignment will include the responsibility for adequately conducting all complete inspections at the assigned mines for at least one year. The responsibility for partial inspections will be made by the Permit Supervisor on a quarterly basis. Schedules for complete and partial inspections will be prepared by the Permit Supervisor under current procedures.

Pre-Inspection Permit Review

Prior to a scheduled complete inspection, the Permit Supervisor and the lead inspector will conduct a quality control review of the permit for the subject mine. All members of the team are to attend.

The purpose of this meeting is to share the collective team knowledge of the permit and operation with the lead inspector, to discuss compliance with program performance standards, and to discuss consistency between the permit and the field operations.

The meeting should include a review of all current, approved operations maps and recently approved permit changes for the mine. Areas requiring maintenance, as identified during a previous inspection, should be discussed with appropriate reference to the maps.

The approved drainage control system must be discussed, with attention given to any portions of the disturbed area that does not report to a sedimentation pond. This review and the subsequent inspection should ensure adequate description of alternative

sediment control structures in the permit and their functionality under Best Technology Currently Available (BTCA). If there is an area requiring a sediment control structure not previously identified in the permit, it should be identified during the quality control session. Failure to provide approved drainage control in the field is a violation.

Redundant portions of the permit should be identified for elimination at mid-term or permit renewal, whichever occurs first. Maintenance of this list will be the responsibility of the Permit Supervisor.

Conflicting statements within the permit should be identified and rectified after categorization as either performance standard problems or permit defects, as described below.

The disposition of all monitoring and certification reports required for the forthcoming inspection must be determined at the pre-inspection permit review. The lead inspector is responsible for making a compliance determination for these reports at the time of the inspection. However, the team may wish to discuss a mechanism that ensures technical adequacy of the data.

Any defective element of the permit should be identified. Examples of permit defects are referenced in OSM Directive INE-35 (Rev. October 19, 1990). OSM has characterized a permit defect as a situation where the operator is performing in accordance with the approved plan, but the plan fails to comply with the requirements of the program.

The Permit Supervisor will ensure that within five working days after the conclusion of the pre-inspection meeting, the operator is given an order to correct any defect and a schedule for making the corrections. A permit defect delineated during an inspection should be noted in the inspection report. The action required for resolution of the permit defect should also be included in the inspection report. A permit defect identified in this manner will not be the subject of a Notice of Violation unless the Permit Supervisor, in consultation with the Associate Director for Mining,

determines that the operator has failed to correct the defect as required.

Citation of Violations

DOGM is a regulatory agency. Compliance with the approved state program is mandatory. The approved state program requires that an enforcement action be taken when a violation is observed. All violations must be cited regardless of the degree of environmental harm. Determination of whether a surface coal mining and reclamation operation is in violation shall be based on whether the permittee is in compliance with the terms of the approved permit, except where a permit defect as described in OSM Directive INE-35 3.g and 4.c(5)(b) is identified, and the permittee is in compliance with applicable program performance standards.

If during or as a result of an inspection, a DOGM inspector determines that a violation of either a program performance standard or a non-defective permit exists, a Cessation Order or a Notice of Violation, as described in R614-400-310 or 320 respectively, must be issued.

Existing Division policies regarding issuance of a violation on site or from the office remain in effect. A violation that is completely abated prior to the conclusion of that day's field inspection need not be cited if it does not constitute an imminent harm situation, unless the event that the standard was designed to prevent has occurred.

DOGM will continue to enforce applicable water quality effluent limitations, in accordance with the enforcement process of the approved state program, immediately upon DOGM's determination that a violation exists.

Compliance with the permit must be based on what is approved in the permit at the time of the inspection and not on a permit revision that may have been requested by the operator or that is in the process of being approved. If there is a permit defect, action will be taken in accordance with procedures described below. An operation being conducted that is not in accordance with the

approved permit must be cited through the issuance of a Notice of Violation or Cessation Order. Such enforcement action shall provide a reasonable time for the permittee to cease the unauthorized practice and either perform any remedial action necessary to conform with the approved permit or diligently submit and obtain approval of a permit revision which, if approved, would authorize the practice.

Whenever the permittee is conducting surface coal mining and reclamation operations in accordance with an approved permit, but the permit is found to contain a defect, DOGM may, in lieu of an enforcement action, notify the permittee that a permit revision is required within a specified and reasonable time; provided that if the permit defect results directly or indirectly in a violation of a performance standard, the performance standard violation will govern. This means that an enforcement action must be issued for the performance standard violation. As part of any corrective action required by the enforcement action, DOGM will include a requirement to revise the permit to conform with the approved program.

Ordering a permit revision is appropriate when the operator is in compliance with the state program performance standards, but the permit contains a permit defect. A permit defect is defined in the Memorandum of Understanding, signed February 26, 1991, between OSM and DOGM as: "...any procedural or substantive deficiency in a permit-related action taken by the regulatory authority (including issuance of a permit, permit revision, permit renewal, or transfer, assignment, or sale of permit rights) or in the permit itself." Examples are found in OSM Directive INE-35. A permit defect shall not be considered to exist in those situations when the permittee has violated a performance standard or other state program requirement not explicitly addressed or covered in a permit, or the permit does not apply a performance standard to the entire permit area, or the operator has violated the terms of a permit or approved mining and reclamation plan. In these situations, an enforcement action is required. In the instance where DOGM has, prior to the inspection, identified such a permit defect and ordered the operator to correct the permit defect, no additional action will be required. The permit revision will be accomplished within a reasonable and specified time frame.

THURSDAY • MAY 2, 1991 122nd Day, 243 Days Left

TO BE DONE TODAY (ACTION LIST)	APPOINTMENTS & SCHEDULED EVENTS	DIARY AND WORK RECORD • EXPENSES	\$/TIME
			8
			9
		Meet w/ Gerson in Cante	10
			11
			12
			1
			2
			3
			4
			5

Index w/ Gerson: he was wired Dan Guss to do hydrology & cleanup on Spillway for Ford C.

FRIDAY • MAY 3, 1991 123rd Day, 242 Days Left

			8
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			11
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			2
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*G³ Review
- TOPSOIL PILES*

SATURDAY • MAY 4, 1991 124th Day, 241 Days Left

			8
			9
			10
			11
			12

Green River?

SUNDAY • MAY 5, 1991 125th Day, 240 Days Left

			8
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			10
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			12

*Responal
TRVP - WHEELER*



State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

10674
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Norman H. Bangarter
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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

INSPECTION REPORT

INSPECTION DATE & TIME: April 25, 1991
10:30 am to 4:30 pm

Permittee and/or Operators Name: Andalex Resources, Inc
Business Address: P.O. Box 902
Mine Name: Centennial Project Permit Number: ACT/007/019
Type of Mining Activity: Underground X Surface Other
County: Carbon
Company Official (s): Mike Glasson
State Official(s): David W. Darby
Partial: Complete: XX Date of Last Inspection: March 26, 1990
Weather Conditions: Cold, clear with snow on the ground
Acreage: Permitted 3368 Disturbed 34 Regraded Seeded Bonded 34
Enforcement Action: None

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS
1. PERMITS	(X)	()	()	(X)
2. SIGNS AND MARKERS	(X)	()	()	()
3. TOPSOIL	(X)	()	()	()
4. HYDROLOGIC BALANCE:				
a. STREAM CHANNEL DIVERSIONS	(X)	()	()	(X)
b. DIVERSIONS	(X)	()	()	()
c. SEDIMENT PONDS AND IMPOUNDMENTS	(X)	()	()	(X)
d. OTHER SEDIMENT CONTROL MEASURES	(X)	()	()	()
e. SURFACE AND GROUNDWATER MONITORING	(X)	()	()	(X)
f. EFFLUENT LIMITATIONS	(X)	()	()	(X)
5. EXPLOSIVES	()	()	(X)	()
6. DISPOSAL OF DEVELOPMENT WASTE & SPOIL	(X)	()	()	()
7. COAL PROCESSING WASTE	(X)	()	()	()
8. NONCOAL WASTE	(X)	()	()	()
9. PROTECTION OF FISH, WILDLIFE AND RELATED ENVIRONMENTAL VALUES	(X)	()	()	()
10. SLIDES AND OTHER DAMAGE	(X)	()	()	()
11. CONTEMPORANEOUS RECLAMATION	(X)	()	()	()
12. BACKFILLING AND GRADING	(X)	()	()	()
13. REVEGETATION	(X)	()	()	()
14. SUBSIDENCE CONTROL	(X)	()	()	()
15. CESSATION OF OPERATIONS	(X)	()	()	()
16. ROADS				
a. CONSTRUCTION	(X)	()	()	()
b. DRAINAGE CONTROLS	(X)	()	()	()
c. SURFACING	(X)	()	()	()
d. MAINTENANCE	(X)	()	()	()
17. OTHER TRANSPORTATION FACILITIES	(X)	()	()	()
18. SUPPORT FACILITIES				
UTILITY INSTALLATIONS	(X)	()	()	()

INSPECTION REPORT

(continuation sheet)

Page 2 of 3

PERMIT NUMBER: ACT/007/019

DATE OF INSPECTION: 04-25-91

(Comments are Numbered to Correspond with Topics Listed Above)

1. Permit

The Division completed its review of the Graves Lease Revision (Federal Coal Lease UTU-66066) on December 13, 1990. The permit was approved by OSM March 12, 1991 and signed by the Division on April 8, 1991. Andalex has until May 8, 1991 to respond to stipulations outlined in the permit package.

4c. Sediment Ponds and Impoundments

All sedimentation ponds and impoundments were checked during the inspection. All ponds appeared intact with only minor amounts of water from current snow storms. The annual pond certification was conducted by Dan Guy on March 27, 1991. His report indicated that the upper cell in Pond B (sediment control prior to going to Pond C) should be cleaned and that some bank erosion below the first cell (B-4) should be reconstructed. Mike indicated that the cell functions properly and would be cleaned this spring, and that the embankment would be reconstructed at the same time. This embankment was checked and appeared sufficiently stable to function properly until reconstructed. Riprap had been placed below the cell overflow pipe to ensure stabilization.

Rick Summers and Mike Glasson are currently working on designs for a new emergency spillway for Pond C. The pond's discharge system consists of a 36 inch standpipe with an oil skimmer and an 18 inch elbow which allows controlled discharge of events greater than the 10 year- 24 hour peak runoff event. The open end of the 36 inch standpipe acts as the emergency spillway which discharges directly to the buried undisturbed drainage culvert beneath the mine pad.

Copy of this Report:

Mailed to: John Kathman-OSM, Mike Glasson-Andalex

Given to: Daron Haddock-DOGM, Joe Helfrich-DOGM

Inspectors Signature & Number: Samuel W. Dandy #18 Date: 5-1-91

INSPECTION REPORT

(continuation sheet)

Page 3 of 3

PERMIT NUMBER: ACT/007/019

DATE OF INSPECTION: 04-25-91

(Comments are Numbered to Correspond with Topics Listed Above)

4e. Surface and Ground Water Monitoring

First quarter water monitoring was conducted on March 28, 1991 and submitted to the Division on April 19, 1991. Some of the sites remained inaccessible due to snow conditions.

4f. Effluent Limitations

First and second quarter UPDES samples were collected by the operator. The monitoring was conducted on February 8 and April 2 of 1991. There have been no discharge from any of the sedimentation ponds. Mine water discharge averages 108,000 gallons per day.

Copy of this Report:

Mailed to: John Kathman-OSM, Mike Glasson-Andalex

Given to: Daron Haddock-DOGM, Joe Helfrich-DOGM

Inspectors Signature & Number: *Daniel W. Daily* #18 Date: 5-1-91



U · S · DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
DIRECTIVES SYSTEM

Subject Number:

REG-29

Transmittal Number:

533

Date:

MAR 28 1989

Subject: Permit Revisions Following Regulatory Program Modifications

Approval:

Title: Director

RECEIVED OSM

APR 13 1989

1. PURPOSE.

ALBUQUERQUE FIELD OFFICE
This directive establishes the Office of Surface Mining Reclamation and Enforcement's (OSMRE) policy for revising permits following the modification of regulatory programs. These requirements shall be employed in conducting oversight and evaluation of State programs, in implementing, administering and enforcing a Federal program in States without approved State regulatory programs, and in regulating coal mining operations on Indian lands and on Federal lands in States without a cooperative agreement.

2. SUMMARY OF CHANGES.

This directive outlines situations where the regulatory authorities must revise permits to ensure compliance with new requirements. The changes made to this directive include the conversion of the subject number from SFP to REG, revision and update of the format, correction of the division name, and the addition of keywords.

3. DEFINITIONS. None

4. POLICY.

a. Background. When Federal statutes or regulations are revised or, in States with primacy, when an approved State regulatory program is amended, some existing permits may no longer be adequate to ensure compliance with the new standards or other requirements. The Federal regulations at 30 CFR 774.11(b) provide authority for the regulatory authority, at midterm review or at any other time, to require permit revisions to ensure compliance with the regulatory program. The regulations at 30 CFR 774.15(c)(1) (ii) provide a similar basis for requiring permit revisions at the time of permit renewal.

b. Regulatory Authority - OSMRE. In Federal program States, on Indian lands, and on Federal lands in States without cooperative agreements, OSMRE will identify and require any permit revisions necessary to ensure the operation is in compliance with the appropriate performance standards as part of either the midterm review or permit renewal process, whichever occurs first unless a special review indicates that the impact of the deficiency on public health or safety or the environment is sufficiently serious to require earlier correction.

c. Regulatory Authority - States. In States with primacy, the schedule for identifying permit revision needs shall be established by the regulatory authority in accordance with any relevant State program requirements. For oversight purposes, OSMRE will respect any review and update process established by a regulatory authority, provided the process is consistent with the State counterparts to 30 CFR 774.11(b) and 774.15(c)(1)(ii) and results in the revisions necessary to ensure that the operation is in compliance with the performance standards of the approved program. The review and update process must be completed within timeframes no longer than those inherent in the permit renewal process. State regulatory authorities should be encouraged to conduct special expedited reviews of activities and structures likely to produce lasting effects which would be difficult to alter, such as design and construction of excess spoil fills and permanent impoundments and the handling of toxic materials and coal mine waste.

5. REPORTING REQUIREMENTS. None.

6. EFFECT ON OTHER DOCUMENTS.

This directive supersedes SFP-1, Transmittal Number 316, dated February 11, 1987, subject "Permit Revisions Following Regulatory Program Modifications."

7: REFERENCES. None.

8. EFFECTIVE DATE. Upon Issuance.

9. CONTACT.

Chief, Division of Regulatory Programs, (202) 343-5351.

10. KEYWORDS.

Permit revisions, permit modifications, State and Federal regulatory programs.

11. APPENDICES. None.

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*****  
*                                     *  
*           ** TRANSMIT CONFIRMATION REPORT **           *  
*  
*      Journal No.   : 010                               *  
*      Receiver      : 1 505 766 2609                   *  
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*      Date          : Jun 3,91 16:53                   *  
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*      Time          : 11'16"                            *  
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*  
*****
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FAX COVER SHEET

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

Telephone (801) 538-5340
FAX (801) 359-3940

DATE: 6-3-91

FAX #: (505) 766-~~486~~ 2609

FROM: Lowell Braxton

PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

Robert Hagen, Director

TOTAL NUMBER OF PAGES, INCLUDING THIS PAGE 16

COMMENTS: _____

If you do not receive all pages or have any problems with receiving,
please call (801) 538-5340 and ask for:

Janean