



United States Department of the Interior

OFFICE OF SURFACE MINING

Reclamation and Enforcement

WASHINGTON, D.C. 20240

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DIVISION OF
OIL, GAS & MINING

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

Dear Dr. Nielson: *Dianne*

This is in response to your December 1, 1989, letter requesting informal review of the Albuquerque Field Office Director's determination that your agency has not taken appropriate action under the Utah program with respect to two violations alleged in ten-day notice number 89-02-116-002 (North American Equities, Blazon No. 1 Mine).

The first alleged violation concerns failure to eliminate or reduce all highwalls to closely resemble the general surface configuration of the surrounding terrain. In your request for review, you acknowledge that all highwalls have not been totally eliminated at this site. However, you argue that highwall reduction authorized by your agency under the discretionary language contained in sections 817.101(b)(1) and (b)(5) of the Utah regulations meets the requirements for approximate original contour. You also maintain that the reclaimed surface configuration does not interfere with the industrial postmining land use approved for the mine pad area or the postmining wildlife use approved for the highwalls.

Although UMC 817.101(b)(1) and (b)(5) provide your agency a certain amount of discretion with respect to determining the approximate original contour for a postmining industrial land use and determining whether highwall elimination may be accomplished through backfilling or highwall reduction, such discretion cannot supersede the requirement contained in these regulations to completely eliminate all highwalls. To implement the regulations otherwise would be inconsistent with the interpretation of the Utah program approved by the Secretary of Interior. The photographic evidence contained in the record gives me reason to believe that the highwalls adjacent to the concrete pad area and along the access road above the working areas have not been eliminated by either backfilling or highwall reduction and that the highwall reduction adjacent to the portal area has failed to the point where the natural outcrop of highwall strata remains exposed and the required static safety factor may now be in doubt. Therefore, I am affirming the determination of the Albuquerque Field Office Director and hereby order a Federal inspection.

The second alleged violation involves the failure to dispose underground development waste as approved in the mining and reclamation plan. In your request for review, you explain that prior to the issuance of the ten-day notice, your agency found that a small amount of weakly acidic waste material

Dr. Dianne R. Nielson

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was being placed in an unapproved location near a drainage course. As a result, your agency directed the permittee to cover and seed the area and obtain a permit amendment to incorporate this disposal area. Furthermore, you explain that the permit already authorized similar material to be buried in an analogous topographic setting on the opposite side of the drainage course and that the technical merits and hydrologic impact of the material in question have been considered in allowing the permit amendment.

Section 817.103(a)(1) of the Utah regulations requires acid forming materials to be buried in a manner which prevents the contamination of water and section 817.103(a)(4) prohibits such materials from being buried in proximity to a drainage course so as to cause or pose a threat of water pollution. The determination of whether methods used to dispose acidic mine wastes will prevent water contamination or will cause or pose a threat to water pollution rests with the regulatory authority based on its technical expertise during the permitting process.

Therefore, I will defer to your agency's technical determination that the manner of placement and burial which will be authorized in the permit amendment will ensure that the events the performance standards were designed to prevent will not occur. Accordingly, the determination of the Albuquerque Field Office Director is reversed provided that within 15 days after receipt of this letter, you transmit to the Albuquerque Field Office a copy of your written notification to the permittee informing him of the need for the permit amendment within a reasonable and specified timeframe. If this condition is not satisfied within the prescribed time, a Federal inspection is hereby ordered to address this issue.

Sincerely,



Deputy Director
Operations and Technical Services

cc: North American Equities, LTD.
c/o Mr. William B. Prince
50 S. Main Street
Salt Lake City, Utah 84144

Robert Hagen
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