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United States Department of the Interior

OFFICE OF SURFACE MINING

Reclamation and Enforcement

WASHINGTON, D.C. 20240

Lib Pagan cc *WGR Mitchell*



L. Bryson

MAR 13 1991

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, Utah 84180-1203

Dear Dr. Nielson: *Dianne*

On February 12, 1991, you requested that the deadline in my January 9, 1991 Part 732 notification to you concerning highwall elimination be extended on the basis that the notification was premature because the Utah Board of Oil, Gas and Mining had not yet issued a final order in the Blazon Mine litigation.

As you are aware, on February 28, 1991, the Board issued the order in question. This order and its accompanying findings of fact and conclusions of law do not differ substantively from the decision reached by the Board on October 25, 1990, and the rationale for that decision, as set forth in the hearing transcript upon which the Part 732 notification was primarily based. Therefore, there is no need to alter the notification. The Board's corollary findings that highwall retention is justified because (1) it conforms with and may be needed to accomplish the approved industrial postmining land use and (2) elimination would require disturbance of currently undisturbed and previously reclaimed areas are similarly inconsistent with and have no basis in the Surface Mining Control and Reclamation Act of 1977 (SMCRA), which contains an absolute requirement for highwall elimination on areas mined after August 3, 1977. SMCRA does allow the regulatory authority to grant a variance from approximate original contour restoration requirements, but this authority does not extend to waiver of the requirement for highwall elimination.

Given the delay in issuance of the final order, I am extending until April 15, 1991, the deadline by which proposed amendments or a description thereof, together with a timetable for adoption and implementation, must be submitted. The date for completion of the program amendment process also is extended to August 15, 1991; however, I must reiterate my serious concern about this matter and the need for prompt action to resolve this

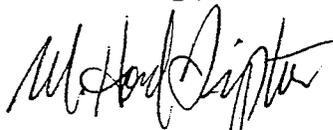
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DIVISION OF
OIL GAS & MINING

programmatic problem. Please contact Mr. Robert H. Hagen,
Director of the Albuquerque Field Office, if you have any
questions concerning submission requirements or procedures.

Sincerely,

A handwritten signature in cursive script, appearing to read "W. Hord Tipton".

W. Hord Tipton
Deputy Director
Operations and Technical Services

cc: Albuquerque Field Office

Date April 10, 1991

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

Dear Board Members:

Re: Blazon Mine Reclamation Hearing, October 17, 1990;
Docket No.s 90-026, 90-044, and 90-045; Cause No. INA/007/021

Pursuant to Utah Admin. R619-110-100. Time For Filing, and in light of the fact the Board inadvertantly neglected to inform me of my rights of this rule at the Hearing, and that the Board was not timely in their Findings of Fact and Conclusions of Law and Order, I hereby respectfully request a Rehearing afforded me by this rule, as I feel the order is unlawful, unreasonable, and unfair.

I have recieved two versions of the Findings of Fact (FOF), one signed by Gregory B. Williams, Chairman, Dated February 28, 1991, which I will assume was prepared by the same, and one unsigned version prepared November, 1990 with Holme Roberts and Owen as Attorneys for Respondents.

The February 28, 1991 FOF appears to be part of the November, 1990 FOF. It is extremely difficult for me to understand why there is such an enormous difference between the two FOF's. It would be greatly appreciated if the Board could explain why there is a difference. Also I would like to know the reason only one copy was signed and why the Board members neglected to sign either FOF.

Exhibit "C" clearly states DOGM approval for removing certain structures, while Page 22 of said exhibit is very explicit about the retention of certain other structures as part of the post mining land use. Those structures to be retained were the major qualifier for Carbon County agreeing to change the zoning for the mine site, as attested to by Carbon County Planner, Mr. Harold R. Marston in his June 20, 1985 correspondence to NAE. Without doubt, those said structures were part of the post mining land use criteria as afforded by R614-301-850 thru 301-800.800 (Bonding Requirements for UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES and Associated Long-Term Coal-Related Surface Facilities and Structures).

The landowner consent letter (Haynes), UDOGM's permit approval, and NAE's approved reclamation plan definitely exhibits the failure of UDOGM, the Board, and NAE to recognize the "Approved Permit". Why has UDOGM and the Board demonstrated such an unwillingness to enforce NEA's "Bond" commitments to retain and maintain said structures? Again I refer to R614-301-850 thru 301-800.800.

The Holme Roberts and Owen submittal of September 17, 1990, very candidly twisted the permit and regulations totally out of context. According to their assumptions the only obligation NAE has is the alledged reclaimed area. Why then, are NAE and UDOGM directing water from the pad area into the sediment pond, monitoring the discharge and maintaining the road drainage if NAE is not reasonable for all the disturbed areas described within the Approved Plan? The Regulations do not distinguish one disturbed area from another as evidenced by the Perimeter Markers around the total disturbed area. Ms. Sue Linner allowed NAE to move the "Disturbed Area Boundary" on the maps, after I objected they were returned to the original locations, which brings to light that the "access road" from the pad area to the Mud Creek crossing (Culvert A) has not been returned to its original state of being as was committed to in the "Approved Plan". Furthermore, the above described settling pond was not in the "Approved Plan" at all. This was yet another "minor Modification of said plan by NAE and UDOGM, which encroached upon the pad area.

It becomes quite obvious the "LANDOWNER CONSENT AND UNDERSTANDING" with regard to the variance from the AOC, has been postured and rendered to fit the need of the occasion, especially since Lowell Braxton stated in the Hearing, "The only reason I approved the highwall was to get OSM off my back". There are no highwall(s) similar in character in the immediate area, and height and width of the existing cliffs in the area does not apply in this case unless, of course you want to incorporate a Variance of the Approximate Original Contour into the permit, which does in fact require the "LANDOWNERS UNDERSTANDING" and written consent for a variance. The "Effective Date" of April 10, 1990 of the newly reformed state regulations, is only the effective date of the acceptance of the new state format, not state-federal regulations. The AOC regulations were in fact in place prior to 1985, which required "LANDOWNERS CONCENT AND UNDERSTANDING".

How many times may the "Approved Permit" be altered, adjusted, modified, and amended, before its contents become so distorted for the benefit of the holder? Revisions to this permit were purposely done as amendments to avoid public notice and land owner consent, R614-121.200. States, "The applicant will file "ANY" changes to the application with the public office at the same time the change is submitted".

I am certain the other coal mines in Utah will be extremely interested to know the Division of Oil, Gas & Mining now only require the "More Visible Areas" to be reclaimed if they should run short of backfill material.

A Mid-Permit Term Review was also set aside which is required every two and one half years, if for nothing else, so the Bond can be adjusted with the Cost Index. By NAE's own admittance, the design and reclamation cost has exceeded the \$300,000 (Three hundred thousand dollars) mark. The question of why a bond adjustment was not required seems to be in order, since said bond appears to be low by a factor of six.

The conflicting evidence mentioned in the February, 1991 FOF, brings up the question of the quality of the mass balance and calculation since a large portion of fill was left at the toe of the slope and does in fact encroach upon the dimension of the pad area.

Where is the Reclamation Revegetation Reference Area located which will be used for comparison in the determination of "successful reclamation and revegetation"?

With regards to the "Stream Restoration", it was observed by all parties during the onsite inspection (DWR included), that Cutthroat trout were trapped upstream of the "Designed Stream Restoration", and it was noted that the DWR said "Sometimes Mother Nature needs Help". The Regulations are very finite about the protection of the Wildlife and Fisheries and it is the obligation and duty of the Utah Division of Oil, Gas & Mining, North American Equities, and the Division of Wildlife Resources to provide maximum protection. Why then, was this part of the fishery not considered in the "Reclamation Plan" or is it only required when an individual alters a fishery? Recently I installed a diversion structure for an individual just North of the Alpine School property near Scofield in this very creek and was required by DWR to incorporate additional fish ladders so the Cutthroat trout could pass over the diversion more effortlessly to their destination in the headwaters of Mud Creek, which ultimately trapped those same trout that passed over the diversion fish ladders. The potential for highwall failure is always present, in this particular case more so because of the distance to the Mud Creek Cutthroat trout spawning area.

I have indeed confronted the Division on several occasions about my concerns of the backfilling, grading, drainage work, and loss of certain structures afforded by the Approved Permit, but was repeatedly told the landowner, "Has no rights". My complaints were all considered to be ill-founded, without substance, and dismissed.

After reading this letter, I am certain you must feel you have possibly overlooked portions of the regulations and facts, and will want to reconsider your decision towards myself and my families protective devices we are entitled to by the State of Utah.

Thank you for your time and consideration.

Sincerely,

Jack Otani

cc: OSM Washington D.C.
Osm Albq. New Mexico