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United States Department of the Interior

OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
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ALBUQUERQUE, NEW MEXICO 87102



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DIVISION OF
OIL, GAS & MINING

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

Re: C.V. Spur, T87-02-006-012

Dear Dr. Nielson:

The Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement (OSMRE), has reviewed Utah's Division of Oil, Gas and Mining's (DOGM) response to Ten-Day Notice 87-02-006-012. Following, is our determination:

The Division's response to violation 1 of 8 is appropriate. The permit's requirement for topsoil compaction can be considered a permit defect; thus, the operator's revision submittal is appropriate, but DOGM should specify a timetable for its review and decision.

The Division's response to violation 2 of 8 is appropriate. The implication for annual water-monitoring reporting can be considered a permit defect; thus, the operator's revision submittal is appropriate, but DOGM should specify a timetable for its review and decision.

The Division's response to violation 3 of 8 is appropriate. Although a revision was approved May 4, 1987 that deleted the requirement for boron and fluoride sampling, the operator failed to comply with the plan up to that time.

The Division's response to violation 4 of 8 is appropriate. The permit's requirement for topsoil revegetation may, in this specific case, be considered a permit defect; thus, the operator's revision submittal is appropriate, but DOGM should specify a timetable for its review and decision.

The Division's response to violation 5 of 8 is initially inappropriate. Although the regulations do not require sediment markers, their inclusion into the approved plan cannot be considered a permit defect. In accordance with OSMRE's Directive INE-27 policy, the operator has failed to comply with the permit. Such a situation requires a permit revision to be approved, not merely submitted, or requires the issuance of a Notice of Violation. Upon approval of the proposed revision, a new determination will be considered.

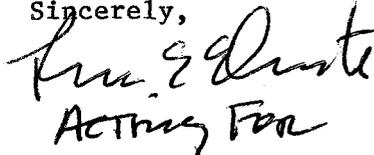
The Division's response to violation 6 of 8 is initially inappropriate. UMC 817.43 requires diversions to be designed so as to minimize erosion and 771.19 requires the operator to comply with the approved plan. That the operator did not construct and/or maintain the diversions according to the plan does not constitute a permit defect. Unless a revision is approved, the diversions still need to be regraded according to the permit's plan.

The Division's response to violation 7 of 8 is initially inappropriate. The operator may have repaired and protected the culvert ends, but the work still needs to be field-verified by DOGM as adequate.

The Division's response to violation 8 of 8 is initially inappropriate. Again, the approved culvert plan cannot be considered a permit defect. Because the operator has not complied with the permit, a revision must be approved or the violation cited.

In summary, DOGM's responses to violations 1, 2, 3, and 4 are appropriate, while responses to violations 5, 6, 7, and 8 are initially inappropriate, pending field verification or revision approvals. Additionally, the Ten-Day Notice was received by DOGM October 13, due October 23, but not postmarked until October 29, making the response 6 days late. Please address any questions on this determination to Steve Rathbun, Supervisory Reclamation Specialist, at (505) 766-1486.

Sincerely,

A handwritten signature in cursive script, appearing to read "R. H. Hagen".

ACTING FOR
Robert H. Hagen, Director
Albuquerque Field Office