



United States Department of the Interior

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

Mine file # 5

S. Hoover

L. Braxton

J. Helfrich

pfo



In Reply Refer To:

August 16, 1989

RECEIVED
AUG 21 1989

DIVISION OF
OIL, GAS & MINING

Mr. Lowell P. Braxton, Deputy Director
Mineral Resources Development and Reclamation Program
Division of Oil, Gas and Mining
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, UT 84180-1203

Re: Ten-Day Notice 89-02-107-4(1), (2) Banning Siding

Dear Mr. Braxton:

The following is a written finding, in accordance with 30 CFR 842.11, regarding the Division of Oil, Gas and Mining's (the Division) response to the above-referenced two-part Ten-Day Notice (TDN).

On June 13, 1989, the Albuquerque Field Office (AFO) conducted a random sample inspection of the Soldier Creek Coal Company, Banning Siding. The inspection resulted in the issuance of the TDN referenced above for alleged violations of the Utah regulations.

Part 1 of the TDN addresses the operator's failure to maintain records in accordance with UMC 840.14. Specifically, a modification to the NPDES permit could not be located at the time of the inspection. The Division's July 5, 1989, response confirmed that the modification to the NPDES permit was located after the random sample inspection. Therefore, AFO finds that the Division's response to part 1 of the TDN is not arbitrary, capricious, or an abuse of discretion.

Part 2 of the TDN addresses the operator's failure to obtain a valid permit prior to engaging in or carrying out underground coal mining activities in accordance with UMC 700.5 and UMC 771.11. Specifically, the TDN addresses part of a revegetation test plot located outside the approved permit area and coal materials that, as a result of being spilled or wind-blown, have been deposited outside the permit boundary. DOGM received the TDN via certified mail on June 23, 1989. AFO received two interim responses to the TDN: One on July 5, 1989, and the other on July 17, 1989. In a July 21, 1989, letter, AFO provided additional information (to the Division) which described the location of the coal that has been deposited outside the permit area as the east, north, and

Mr. Lowell P. Braxton

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northwest boundaries of the area and the approximate extent of deposition. The Division's final response was received in AFO on August 7, 1989.

The Division's July 5 and July 17, 1989, responses stated that an Incidental Boundary Change (IBC) for the test plot would be approved by July 21, 1989. A subsequent telephone conversation confirmed that the IBC was approved. In regard to the coal material located outside the north and northwest permit area boundaries, the Division's August 4, 1989, response confirmed that the operator has been required to submit an application for an IBC by September 1, 1989, and that the application will be approved by November 3, 1989. Therefore, AFO finds that the Division's response to this part of the TDN is not arbitrary, capricious, or an abuse of discretion.

In regard to the coal outside the permit boundary on the east, the Division's response further states that, because the rail spur is used by others for coal-related activities, it is difficult to assign liability. AFO accepts this argument but cautions the Division to evaluate the eastern permit boundary in the vicinity of the coaling tower to ensure that, as coal is loaded into rail cars, it is not spilled onto areas that are not permitted. In addition, the Division's August 4, 1989, response references our July 21, 1989, letter. As stated in our letter, the 30-foot wide zone of disturbance along the north and northwest side of the boundary is only an approximate estimate. AFO suggests that the Division conduct additional investigations as necessary to confirm that extending the boundary 30 feet will incorporate the disturbance.

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

Sincerely,



Robert H. Hagen, Director
Albuquerque Field Office