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United States Department of the Interior

OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
SUITE 310

625 SILVER AVENUE, S.W.
ALBUQUERQUE, NEW MEXICO 87102

In Reply Refer To:

July 21, 1989

RECEIVED
JUL 26 1989

DIVISION OF
OIL, GAS & MINING

CERTIFIED MAIL--RETURN RECEIPT REQUESTED

Mr. Lowell P. Braxton, Administrator
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, Banning Siding

Dear Mr. Braxton:

This letter responds to your request for additional information concerning the above-referenced Ten-Day Notice (TDN). You have requested assistance regarding the specific areas of the violation, the Utah regulation that was violated, and a clarification of the Federal regulations dealing with wind erosion.

As described in the TDN and inspection report, the random sample inspection of the Banning Siding indicated that coal has been deposited outside the designated and approved disturbed/permitted area boundaries. The TDN and inspection report identify the areas of deposition as being along the east, north, and northwest boundaries of the permit. The Banning Siding permit area has not been disturbed by any activities other than the mining operations at Banning Siding. The permit boundary is clearly marked, thus making easy identification of the coal deposited outside the permit. The inspection that led to the subject TDN was a joint inspection; that is, a representative of the Division of Gas, Oil and Mining (DOGM) was present during the entire inspection and the resultant identification of the alleged violation.

OSMRE is providing the following additional information relating to the specific locations of the coal deposited outside the permit area. The coal is evident adjacent to the chain-link fence that defines the permit as it parallels the haul road to the loading dock. As one moves from the boundary

in the direction of the undisturbed area, the amount of coal decreases significantly. An approximate estimate of the extent of the disturbance outside the designated boundaries is 30 feet. Along the east side of the permit, coal has been deposited from the boundary to the outside edge of the railroad tracks. The distance to the outside edge of the tracks varies due to the meandering of the permit boundary.

Your second request was for clarification of the Utah regulations allegedly violated. The TDN references two regulations: UMC 700.5 defines underground coal mining activities and areas upon which those activities disturb the natural land surface; and UMC 771.11 requires that a valid permit be issued by DOGM prior to conducting underground coal mining activities. The alleged violation is of UMC 771.11, failure to have all of the disturbed area affected by the underground mining activities, as defined in UMC 700.5, included within the permit area.

Your third request revolved around the Federal regulations dealing with wind erosion. I presume your request stems from the manner in which the coal may have been deposited outside the permit area. The random sample inspection revealed that the coal has been deposited by a combination of spillage through handling of the material and from wind-borne particles from the stockpile areas. It should be noted that it is virtually impossible to distinguish between wind-blown and spilled material when the two are being deposited in the same location.

It is not necessary to separate the coal found outside the permit area according to the cause of the deposition. The amount of coal in this area (both wind-blown from stock piles and spilled during coal handling) constitutes a disturbance to the natural land surface resulting from the coal mining activities. The operator has the responsibility to limit the disturbance to those lands approved within the Mining and Reclamation Permit.

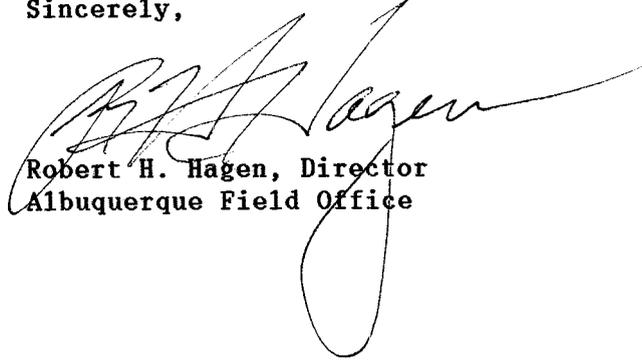
Your letter of July 5, 1989, reported that you were having your staff review regulations for fugitive dust. We subsequently sent to your staff copies of the regulations and Federal court decisions affecting fugitive dust control. A Federal Court remanded those regulations which concerned fugitive dust not attendant to erosion in Re: Permanent Surface Mining Regulation Litigation, CA 79-1144 (D.D.C. May 16, 1980). Subsequent to this ruling, OSMRE promulgated 30 CFR 816.95 and 817.95 regarding the stabilization of surface areas. A discussion of the need to control wind erosion can be found in the preamble to the revised 30 CFR 816.95 and 817.95 (Federal Register, January 10, 1983, pp 1160-1163). These regulations were upheld by the U.S. Court of Appeals for the District of Columbia Circuit in National Wildlife Federation v Hodel, 839 F.2d 694, 764-765 (D.C. Cir January 29, 1988). The Court of Appeals held that SMCRA does not provide general authority for the regulation for all air pollution attendant to surface coal mining operations but only those impacts attendant to erosion.

Mr. Lowell P. Braxton

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I hope that the above discussion will be helpful in your rendering a final response to TDN #89-02-107-4. The issue could be easily resolved by revising the permit boundary to include this disturbed area through an incidental boundary revision. The Albuquerque Field Office will expect DOGM's final response within 10 days from receipt of this correspondence.

Sincerely,

A handwritten signature in black ink, appearing to read "R. H. Hagen", written in a cursive style. The signature is positioned above the typed name and title.

Robert H. Hagen, Director
Albuquerque Field Office