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State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Michael O. Leavitt
Governor

Kathleen Clarke
Executive Director

Lowell P. Braxton
Division Director

1594 West North Temple, Suite 1210

PO Box 145801

Salt Lake City, Utah 84114-5801

801-538-5340

801-359-3940 (Fax)

801-538-7223 (TDD)

March 28, 2001

CERTIFIED MAIL

No. 7000 1530 0002 3016 9333

Mike Glasson, Environmental Coordinator
West Ridge Resources, Inc.
P.O. Box 902
Price, Utah 84501

Re: Findings of Fact, Conclusions of Law and Order for Informal Hearing and Assessment Conference for NOV N-00-26-1-1, West Ridge Resources, Inc, West Ridge Mine

~~CONFIDENTIAL. Outgoing File~~

Dear: Mr. Glasson:

On March 16, 2001 an Informal Hearing and Assessment Conference was held to review the Fact of Violation and proposed assessment for state violation N00-26-1-1, West Ridge Resources, Inc., West Ridge Mine. As a result of a review of all pertinent data and facts, including those presented in the Informal Hearing and Assessment Conference, the following shall constitute the findings of fact, conclusions of law and order and finalized assessment:

Fact of Violation

NOV N-00-26-1-1, "the NOV", was written for "Failure to comply with the terms and conditions of the permit, all applicable performance standards, and requirements of the State Program. Failure to comply with the Technical Analysis is dated September 26, 2000. This identified six areas and subjects that the permittee needed to address. This has not been completed to date." The NOV was issued November 27, 2000.

At the conference, Bill Malencik, the Division inspector for this enforcement action, provided a chronology of events leading to issuance of the violation. Mr. Malencik provided photos taken at the time of inspection indicating no performance problems were found on site. He asked that a finding be made by the Coal Regulatory Program concerning permitting of utility poles within the pump house disturbed area. Specifically, which utility poles juxtaposed to the

pump house would be counted as part of a utility corridor as contemplated in the regulations, and which actually service the mining operation and are subject to regulations. The conference officer described some precedent setting actions by Board of Oil Gas & Mining and by the Division that might help the Division make this finding.

Mr. Malencik noted that in discussions with the operator's representative, Mike Glasson, prior to issuance of the NOV, Mr. Glasson appeared to be confusing the unpermitted pumphouse issue with a soil experimental practice that was also under discussion. Mr Malencik referenced the Division's September 26, 2000 (TA) of the West Ridge Permit (including the pumphouse) was sent to the operator September 28, 2000. The September 28, 2000 cover letter concluded by saying that failure to address the permit deficiencies noted in the TA by November 1, 2000 might result in enforcement action. Mr. Malencik described site inspections prior to issuance of the NOV, including discussions with Mr. Glasson, and (again) noted Mr Glasson's evident confusion over the TA response issue with the soils Experimental Practice Issue noted above. Mr. Glasson indicated that his records did not include a copy of the TA and the cover letter requiring response by November 1. He indicated that after discussing the need to respond with Mr. Malencik, he discussed his records and response obligations with his environmental consultant, and again found no record of the TA and the cover letter of September 28 requiring response by November 1.

Findings

1. The Division acted within its authority by setting a 60 day response time line for its September 28, 2000 TA.
2. The Division does not have a regulatory mandate to send all permit related correspondence by certified mail or other means that substantiate receipt by the addressee.
3. The Division inspector exercised appropriate discretion in issuing the NOV after the November 1 response deadline was not met.
4. The NOV has been terminated.
5. Mr. Glasson's discussion suggesting he never received the 9-26 TA under the 9-28 cover letter was credible.

Order

1. NOV N-00-26-1-1 is vacated.
2. Vacation of this NOV does not constitute a precedent of relief to an operator that fails to respond to appropriately documented future requests for permitting information.

Remarks

While enforcement action for failing to meet a mandated deadline is supportable under certain circumstances, better communication between the operator's representative and the Division's representative could have possibly eliminated the need for enforcement action. The operator could have requested a copy of the TA and the transmittal letter when initially approached by the Division's inspector. Conversely, when sensing the evident confusion on the operator's part, the Division could have provided a copy of the TA and letter to clarify the situation.

Basis for the vacation of the NOV was due to the fact that the site configuration evidently met performance standards, coupled with the case presented by Mr. Glasson for never having received the cover letter and TA.

Assessment Conference

The operator requested an assessment conference follow the fact of violation informal hearing. While mooted by vacation of the NOV, the Assessment Conference Officer noted that the proposed assessment was well considered and dealt with the facts available to the Assessment Officer at the time of the proposed assessment in an objective and orderly manner.

Finalized Assessment

Vacation of the NOV precluded additional penalty consideration.

Sincerely,


Lowell P. Braxton
Assessment Conference Officer

VS

CC: M. Wright
P. Grubaugh-Littig
W. Malencik

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