



State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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October 19, 1988

CERTIFIED RETURN RECEIPT REQUESTED
(# P 879 596 378)

Mr. Robert Hagen, Director
Albuquerque Field Office
Office of Surface Mining
Reclamation & Enforcement
Suite 310, Silver Square
625 Silver Avenue, S. W.
Albuquerque, New Mexico 87102

Dear Mr. Hagen:

Re: Division Response to TDN (#X-88-02-107-10 TV-1), Western States Minerals, J.B. King Mine, INA/015/002, Folder #5, Emery County, Utah

This letter responds to the above referenced Ten-Day-Notice, the certified copy of which was received at the Division's offices on October 11, 1988.

Number 1 of 1 was issued for "Failure to cover a portion of the coal processing waste (refuse) with a minimum of four feet of best available, non-toxic, non-combustible material and failure to revegetate the same area.

Response: The area in question is the top eastern portion of the reclaimed refuse pile, approximately 20 feet x 500 feet. The aforementioned TDN was issued by your office following a September 29, 1988 oversight inspection.

According to the Final Permit Approval (August 9, 1985) and pages 18-19 of the Final Technical Analysis, an area of approximately one acre was established as a revegetation test plot. The area is shown on map 4050-5-13-R and scales out approximately 100 feet x 500 feet, roughly one acre. The TDN covered a 20 foot x 500 foot portion of this test plot, approximately .23 acre. The test plot and subdivisions thereto was established per the Division's request and WSM is not liable for revegetation success. Hence, WSM is operating in accordance with the approved plan.

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R. Hagen
TDN INA/015/002
October 19, 1988

Further, a careful reading of UMC 817.85(d) substantiates that the Division may allow less than four feet of cover if certain conditions are met. Division staff has performed quantitative vegetation sampling on the test plot area. These data indicate that success for the uncovered refuse was comparable to other treatments where the refuse is covered.

The objective of any reclamation test plot program is to determine reclamation success under controlled conditions. In the J.B. King case, the operator is clearly in compliance with the terms of his permit. The Division has a responsibility to assure that reclamation can be accomplished at J.B. King and at similar settings in the future, hence the test plot program at J.B. King.

I believe you can appreciate the difference between not requiring establishment of cover for a controlled, scientific test program for a fraction of an acre, and relieving an operator from a reclamation success liability in general, although in writing this TDN it is evident that your field representative failed to make the distinction.

This TDN should be withdrawn. No enforcement action will be undertaken by the Division on this Ten-Day Notice. I believe this type of issue is better discussed by our technical staffs prior to issuance of a TDN than afterwards.

Sincerely,



Lowell P. Braxton
Administrator
Mineral Resource Development
and Reclamation Program

JJW/djh
cc: L. Johnson, WSM
K. May
J. Helfrich
J. Whitehead
B. Warmack
AT7/73-74

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U.S.G.P.O. 1987-197-722

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Office of Surface Mining	
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TDN 10/15/002

PS Form 3811, Dec. 1980

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TDN 10/15/002