

0021



State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

File

Norman H. Bangertter
Governor
Dee C. Hansen
Executive Director
Dianne R. Nielson, Ph.D.
Division Director

355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340

December 7, 1992

CERTIFIED RETURN RECEIPT REQUESTED
P 540 713 916

Mr. E. M. Gerick
Vice President of Operations
Western States Minerals Corporation
Suite 130
250 South Rock Boulevard
Reno, Nevada 89502

Dear Mr. Gerick:

Re: Western States Minerals Corporation, J. B. King Mine, NOV's
N91-35-6-1, N91-35-7-1, and N91-32-6-1, ACT/015/002,
Folder #5, Emery County, Utah

As we discussed at our August site meeting, the exchange of information and discussions of reclamation alternatives oriented towards abatement of these violations has been lengthy. This site review made me appreciate that although the facts of these violations are supportable, and abatement is required, a continued review of the options available to both Western States Minerals Corporation (WSMC) and the Division of Oil, Gas and Mining (DOGM) for abatement justified the extended review time. I have now reviewed the September 15, 1992, information submitted to abate these violations, and have discussed the applicability of this information with my staff. The following constitutes the agency's response for abatement of the individual NOV's.

N91-35-6-1

This NOV was issued for:

"Failure to comply with the terms and conditions of the permit. Failure to completely address and satisfy the requirements of permit stipulation R614-301-742.113 (TM) in a timely manner."

The portion of the operation to which the notice applies:

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"All reclaimed surfaces with erosion problems."

Remedial action:

"Address the requirements of the stipulation in a complete and adequate manner that is in compliance with the regulations and acceptable to the Division."

The referenced stipulation reads:

"Within 60 days of permit approval, the applicant must submit a plan to provide long term solutions for phasing out silt fences and incorporating more permanent erosion control structures in their place. The plan must identify the structures that will be used and how they will be designed and implemented. The material must be submitted for insertion into the PAP."

Assessment of WSMC's Response

Page three of the September 15, 1992, submittal discussed N91-35-6-1. Dr. Bamberg's recommendations on page 3 provide language oriented to abatement of N91-35-6-1:

Allow vegetation and soils to continue to mature,

Prevent any man-made re-disturbance of the soil,

Remove silt fencing and other sediment control structures to allow the site to adjust to natural erosion rates given the configuration of the site.

The Division's evaluation of the site at the time the stipulation was written was that the silt fences were not performing the erosion control function anticipated in the Mining and Reclamation Plan, hence the permit stipulation and subsequent notice of violation.

Conclusion

The Division will accept the proposal to remove silt fences, without placement of additional structures, to satisfy the permit stipulation. Abatement of N91-35-6-1 will be accomplished when the text and appropriate maps in the Mining and Reclamation Plan are modified to show elimination of the silt fences. These permit changes must be submitted within 45 days of receipt of this letter.

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In accepting silt fence removal as appropriate abatement of N91-35-6-1, the Division is not making a finding that the site is erosionally stable. The Division is not representing that, in the event of future erosion in the permit area, measures beyond those contemplated by Dr. Bamberg, will not be required. Nor is the Division representing that the present site configuration will meet future bond release criteria with respect to erosion.

If WSMC believes site stability can be enhanced by additional seeding and shrub planting at the time of silt fence removal, you are encouraged to discuss methodology and documentation with DOGM staff.

It is essential that the permit (Reclamation Plan) accurately reflect what is occurring on the ground. Any changes in the plan must be approved by the Division before implementation. Site maintenance in accordance with performance standards, rules, and the permit is an ongoing responsibility.

N91-35-7-1

This NOV was issued for:

"Failure to minimize erosion to the extent possible, and failure to minimize erosion off of the refuse pile."

Portion of the operation to which the notice applies:

"The reclaimed surface of the refuse pile and the slope south and east of the refuse pile."

Remedial action:

"Provide a complete and adequate plan to the Division outlining methods to minimize erosion on the areas referenced above."

Assessment of WSMC's Response

The September 15, 1992, submittal addresses abatement of N91-35-7-1 on pages 1-3. Although somewhat complicated by combining the abatement of N91-35-6-1 and N91-35-7-1 in one discussion, it is clear in WSMC's response that erosion control of the coal refuse pile carries considerably more baggage in the eyes of DOGM and WSMC than the issuing language and remedial action would imply. In the simplest sense, in issuing the violation, DOGM asked WSMC to demonstrate that, given observable erosion at the locations, it had controlled or prevented erosion

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to the extent possible (R645-301-742.113).

WSMC's response did not enumerate additional steps that could enhance erosion control (as requested), but instead concentrated on discussions indicating that performance standards cited at R645-301-752 through 752.250 had not been violated. In responding to the NOV, WSMC provided a considerable amount of information suggesting many of the requisite sediment control performance standards are being satisfied.

Conclusion

The information provided by WSMC basically documents how the approved plan is performing. Since N91-35-7-1 asked for a plan "outlining methods to minimize erosion to the areas referenced" and did not allege performance standard violations beyond minimization of erosion, WSMC's response will be considered satisfactory for abatement purposes.

In making the finding that N91-35-7-1 is abated based on the September 15 submission, the Division is not representing that the present site configuration is acceptable for post-mining land use and bond release purposes or that compliance with the sediment control performance standards cited at R645-301-752 has been established with respect to future inspections.

The discussion of minimization of erosion may have a bearing on adequacy of cover material over the coal refuse pile. R645-301-553.252 establishes a minimum of four feet of cover over refuse materials. This regulation grants the Division authority to allow less than four feet of cover when a demonstration of soil stability and revegetation success can be made. WSMC's submittal included an analysis of the acid neutralization/acid generation potential for selected sample locations using the Nevada Meteoritic Water Mobility Test (NMWMT) procedure. While the data from this procedure are encouraging, if WSMC proposes to rely on the NMWMT procedure to substantiate compliance with water quality performance standards, it should ensure that samples collected and analyzed are representative of the site in a 3-dimensional sense. I would encourage you to discuss representative sampling with my staff. The Reclamation Plan should also be amended to reflect changes in the site or the criteria for evaluation of the site. It is essential that WSMC be able to demonstrate through monitoring, analyses, or other means that any erosion that occurs on-site will not adversely impact water quality off-site and on-site, with respect to the post-mining land use.

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In support of the NMWMT procedure, a discussion of its comparability with other analytical techniques used for acid/toxic determination and its value as a measure of site conditions is necessary.

DOGM will be evaluating the J. B. King site in 1993, using an Erosion Condition Classification System developed by BLM and modified by OSM. We anticipate annual evaluations of the site using this technique to establish trends in site stability. We will make these results available to WSMC, and invite you to participate in discussions and field studies.

I believe continued coordination of results of vegetation surveys will enhance our ability to evaluate the appropriateness of cover to the post mining land use and bond release criteria. With respect to the vegetation survey, please include a concurrent survey of the reference area, so that comparisons can be made and vegetation success demonstrated.

N91-32-6-1

This NOV was written for:

"Failure to comply with the terms and conditions of the approved permit. Failure to implement and control the Main Feeder Ditch and the Feeder Ditch in accordance with the Design criteria specificized in the permit."

The portion of the operation to which the notice applies:

"The Main Feeder Ditch and the Feeder Ditch (Maps No. 4050-5-14B)."

Remedial Action:

"Construct the feeder ditch and the feeder ditch in accordance with the approved permit."

Assessment of WSMC's Response

The response dated September 15, 1992, proposed replacement of section 817.44 of the permit to allow natural erosion to seek the most stable location and configuration for the subject ditches. The justification proposed is that the sinuous channels (the feeder Ditch and the Main Feeder Ditch) in the approved permit differ from straight channels existing in adjacent undisturbed drainage basins, and conformance to the presently approved design represents an uphill fight against natural

geomorphic processes.

The argument that geomorphic stability under arid land erosion conditions is evolutionary may have merit to the extent that previous attempts to engineer a solution to the problem have not proven successful. To fully apply this concept, under the authority provided at R645-301-743.314, the portions of the plan discussing final reclamation configuration and design would need to be amended to show:

1. The current configuration, in plan and cross-section, of the feeder ditch and main feeder ditch;
2. An evolutionary "design sequence" beginning with the constructed configuration in the approved plan, through the present configuration, to an ultimate configuration more compatible with the prevalent geomorphology. Included with additional text would be a series of maps and channel sections (cross sectional and longitudinal) depicting anticipated evolutionary stages ultimately resulting in geomorphic stability;
3. A discussion of how the proposed amendment to the Reclamation Plan will ensure compliance with applicable laws, rules, and performance standards, including prevention to the extent possible additional contributions of suspended solids to stream flow outside the permit area; and
4. How these changes will approximate the characteristics of the original, premining channels.

Conclusion

N91-32-6-1 cannot be abated based on the information submitted in the September 15, 1992, package. In allowing submission of additional data directed towards abatement, the Division is not making a finding of their adequacy in advance of submission. The Division will consider the adequacy of any additional data for abatement of this violation, if submitted within 45 days of receipt of this letter.

Summary

Information to abate violation N91-35-6-1 is enumerated in that section of this letter. Additional information is required to abate violation N91-32-6-1. The nature of that information is described in that section of this letter. In both cases, the

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information is to be submitted to the Division within 45 days of receipt of this letter. Violation N91-35-7-1 is determined to be abated.

Thank you for your ongoing effort to address these concerns. If you have questions or want to discuss items, please contact Lowell or me.

Best regards,



Dianne R. Nielson
Director

vb
cc: L. Braxton
P. Grubaugh-Littig
jbkg1192

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NATURAL RESOURCES

OIL, GAS, & MINING

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DCGM VB ACT/015/002 11/25/92

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