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United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
Suite 1200
505 Marquette Avenue N.W.
Albuquerque, New Mexico 87102
June 17, 1993



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CERTIFIED RETURN RECEIPT # P 079 749 490

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JUN 21 1993

DIVISION OF
OIL GAS & MINING

Mr. James W. Carter, Director
Division of Oil, Gas and Mining
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180-1203

Re: Response to Ten-Day Notice (TDN) 93-020-190-03 TV2, J.B. King Mine Permit Act/015/002

Dear Mr. Carter:

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

During May 10 through 11, 1993, the Albuquerque Field Office (AFO) accompanied DOGM on a random sample inspection (RSI) of the J.B. King mine. This inspection resulted in the issuance of two TDNs of which the one addressed here covered two violations of the Utah Regulatory Program. This TDN was sent by certified mail and received by DOGM on May 21, 1993.

Violation Number 1 was issued for failure to have an adequate cover of nontoxic noncombustible material over mine development waste which had been exposed by an erosion channel on the northern slope of the reclaimed coal refuse area.

Violation Number 2 was issued for failure to protect and stabilize surface areas by effectively controlling erosion. This covers slopes of the reclaimed waste disposal area where numerous rills and gullies have developed and not been repaired. According to information from DOGM correspondence at least 50 features deeper than 6" have developed.

It is DOGM's response on the first violation that due to the lack of precipitation at the site, it is unlikely that acid mine drainage could result. No action, other than a meeting with Western States Mineral's to resolve Division concerns regarding this site, has been initiated.

AFO's response is that Regulation R645-301-553.252 is specific in stating that coal mine waste be covered with a minimum of four feet of nontoxic and noncombustible material unless approval is obtained based on chemical and physical tests. Division records show that DOGM representatives have determined the material to be acidic/toxic.

The RSI of May 11, 1993, clearly showed that cover over the acidic/toxic material has been reduced by erosion to less than the required four foot minimum.

Therefore, a performance standard violation exists and DOGM is required to take an enforcement action. Because DOGM has failed to take the required action, AFO finds DOGM's response to be arbitrary, capricious, an abuse of discretion and is, therefore, inappropriate.

DOGM's response on the second violation is that it is already covered by the outstanding Notice of Violation N91-32-6-1, and the Ten-Day Notice is redundant.

AFO's response is that the Notice of Violation N91-32-6-1 covers erosion of the feeder and main feeder ditch which are not the areas covered under the TDN. However, in 1991 DOGM issued Notice of Violation N91-35-6-1 covering all reclaimed areas with erosional problems and Notice of Violation N91-35-7-1 addressing erosion off the refuse area. On December 7, 1992, Director Dianne R. Nielson agreed to a submittal from Western States Minerals on abatement of the action that does not meet the requirements of Utah's program. This submittal called for removal of silt fences after revision of the mining and reclamation plan and would allow what Western States Minerals calls naturally occurring erosion to occur with any erosion repairs subject to Western States Minerals' discretion.

The TDN was issued for failure to protect and stabilize surface areas by effectively controlling erosion. In 1991, DOGM addressed this problem with the issuance of the two NOVs. However, by accepting the company's proposal to remove the currently inadequate measures, DOGM has failed to require the violations to be corrected. DOGM's own documentation clearly indicates the site to be erosionaly unstable and worsening. A violation of the Utah program exists and the action by DOGM will not cause the violation to be corrected within requirements of the program.

Therefore, AFO finds that DOGM's action is arbitrary, capricious, an abuse of discretion, and is inappropriate.

If you disagree with the above finding you may request an informal review in accordance with 30 CFR 842.11(b)(1)(iii)(A). The request may be filed at this office or with the:

Deputy Director
Office of Surface Mining Reclamation and Enforcement
1951 Constitution Avenue, N.W.
Washington, D. C. 20240

Your request must be received within five days of receipt of this letter. A Federal inspection may be conducted after the five day appeal time has elapsed unless a formal review is requested.

Sincerely,



For Robert H. Hagan, Director
Albuquerque Field Office