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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

cc: JWE
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orig; mine file

TAKE PRIDE IN AMERICA

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IN REPLY REFER TO:

May 28, 1993

CERTIFIED RETURN RECEIPT NO.: P 079 749 532

RECEIVED

JUN 01 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) 93-020-190-02 TV1, 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 TDN's. The one addressed here covered one alleged violation of the Utah Regulatory Program. This TDN was dated May 11, 1993, and received by DOGM on May 14, 1993. DOGM's response was received at AFO on May 21, 1993.

Violation number 1 was issued for failure to establish a diverse, effective, and permanent vegetative cover on the north face of the refuse area and the area shown in green on the topographic reclamation map disturbed during channel construction.

DOGM's response did not address the performance standard violation noted in the TDN. The main thrust of DOGM's response is inappropriately directed toward a discussion of Revegetation Success standards and Final Bond Release requirements, found at R.645-301-356, which are not addressed by the TDN.

The instant TDN addresses the permittee's failure to establish a vegetative cover (R645-301-353) that is diverse, effective, and permanent (R645-301-353.110) and capable of stabilizing the soil surface from erosion (R645-301-353.140). The revegetation success standards relating to a final bond release decision will, obviously, not be considered until all applicable performance standards, such as those cited in the TDN, have been met.

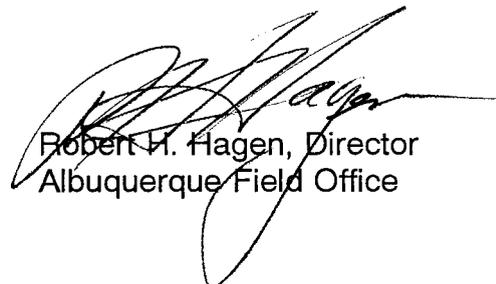
In addition to the above, DOGM's response indicates that because the permittee had prepared the ground and seeded in accordance with the requirements of his permit he is now in full compliance with the Utah program. DOGM is failing to recognize the standard for which the seeding requirement of the permit was meant to achieve. Namely, the establishment of a diverse, effective, and permanent vegetative cover capable of stabilizing the soil surface from erosion.

The J.B. King site, which consists of approximately 30 acres, was graded and seeded in 1985. In 1989, a small portion of the disturbed area (2 acres) was reaffected to repair erosion relative to a reestablished drainway. This isolated area was reseeded after completion of the repair work. Recent revegetation analysis, conducted by DOGM, clearly indicates that vegetation has not been established and, in fact, has been declining. The predominant vegetation type has been found to be weeds. In addition, the site exhibits severe sheet and rill erosion. DOGM documented this condition during a site visit in October 1992, where over 50 gullies in excess of 6 inches were identified. While the attempt at revegetation is declining throughout the disturbed area the TDN addressed two areas for which there has been a complete failure at establishing vegetation. The combined acreage of these two areas constitutes approximately 17 percent of the disturbed area.

As indicated above, a violation of the Utah program exists. Therefore, DOGM is required by R645-400-321 to take an enforcement action. Because DOGM has failed to take the required action, AFO finds DOGM's response to be arbitrary, capricious, and an abuse of discretion and is, therefore, 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 5 days of receipt of this letter. A Federal inspection may be conducted after the 5 day appeal time has elapsed unless a formal review is requested.

Sincerely,



Robert H. Hagen, Director
Albuquerque Field Office