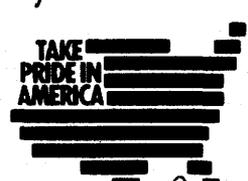


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05/01/2025

orig mine file



**RECEIVED**  
United States Department of the Interior  
OFFICE OF SURFACE MINING  
Reclamation and Enforcement  
WASHINGTON, D.C. 20240



MAR 12 1990  
DIVISION OF  
OIL, GAS & MINING

cc L. Bixson  
OK  
P.G. Lottig  
J. Helfrich  
P.F.O.

Dr. Dianne R. Nielson  
Director  
Division of Oil, Gas and Mining  
3 Triad Center, Suite 350  
355 West North Temple  
Salt Lake City, Utah 84180-1203

MAR 7 1990

Dear Dr. Nielson: *Dianne*

This is in response to your December 29, 1989, and February 7, 1990, requests for informal review of the Albuquerque Field Office Director's determination that your agency has not taken appropriate action with respect to ten-day notices 89-02-107-012 and 89-02-370-003.

Ten-day notice 89-02-107-012 alleges that Co-Op Mining Company; Bear Canyon Mine, has failed to pass drainage from a certain disturbed area through a sedimentation pond before leaving the permit area. In your request for review, you maintain that the alleged violation constitutes a permit defect for which your agency has asked the permittee to modify the Mining and Reclamation Plan to show an Alternate Sediment Control Area (ASCA), to install appropriate field treatment in the area and to monitor the drainage to ensure compliance with your agency's requirements for ASCA's. You argue that it is entirely appropriate that a regulatory authority have the discretion to address such permit defects through the permit revision process rather than through the issuance of enforcement actions.

Ten-day notice 89-02-370-003 alleges that Co-Op Mining Company; Trail Canyon Mine, has failed to pass all drainage from six locations through a sedimentation pond or other treatment facility and in five locations, has failed to comply with the drainage designs contained in the approved permit. In your request for review, you explain that your agency typically evaluates the on-the-ground status of the permit at the end of the construction season (December 15) and as a result, requires any necessary permit revisions at that time. In this case, you maintain that your agency had broadly identified many of the alleged violations in advance of the ten-day notice and had begun corresponding with the permittee to cure these permit defects.

To ensure consistency in evaluating State responses to ten-day notices, the Office of Surface Mining Reclamation and Enforcement (OSM) has established policy (OSM Directive INE-35), under 30 CFR 842.11(b)(1)(ii)(B), to guide its Field Offices in determining appropriate State action in response to two distinct types of permitting problems encountered during oversight. The first type is where permits are approved by the regulatory authority which contain inadvertent omissions or defects and where the permittee is performing in accordance with the permit as approved. In such case, an appropriate State response to a ten-day notice would, in lieu of an enforcement action, consist of requiring interim steps where necessary to minimize any potential environmental harm and to notify the permittee in writing that a permit revision is required within a reasonable and specified timeframe in order to correct the defect.

Dr. Dianne R. Nielson

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The second type of problem arises where the permittee is conducting a practice which is inconsistent with the mining and reclamation plan proposed by the permittee and approved by the regulatory authority. In this case, an appropriate State response to a ten-day notice would require issuance of an enforcement action which provides a reasonable time for the permittee to cease the unauthorized practice and either perform any remedial actions necessary to conform with the approved permit or submit and diligently pursue approval of a permit revision which, if approved, would authorize the practice.

① Based on my review of the record and in view of the distinction discussed above, I find that the alleged violation in ten-day notice 89-02-107-012 and the alleged violations in all but two locations in ten-day notice 89-02-370-003 fall under the latter category. In the case of ten-day notice 89-02-107-012, the practice of exposing Bear Creek to untreated mine drainage for which an ASCA had not been planned and approved is not a permit defect, but rather, a violation of a specific permit requirement. While revising the permit to authorize an ASCA may remedy the problem after it was discovered, it does not alter the fact that a violation for failing to pass all drainage through a sediment pond has occurred for which enforcement action is required under the Utah program.

Similarly, in the case of ten-day notice 89-02-370-003, the practices of not passing all drainage through a sediment pond or other approved treatment facility in four locations and not following the approved drainage designs in five locations do not constitute defects in the original permit, but instead, are practices which violate specific permit requirements. Allowing the permittee to revise the permit at the end of the construction year in order to reconcile discrepancies between the approved Mining and Reclamation Plan and actual drainage conditions in the field cannot constitute appropriate action under the Utah program without the issuance of an enforcement action. With respect to the alleged drainage violations at the lower shop and the equipment storage areas, I find that the action taken by your agency to require a permit revision in lieu of an enforcement action is appropriate because these areas appear to have been omitted from consideration during the permitting process.

① Based on the foregoing, I am affirming the determination of the Albuquerque Field Office Director and hereby order an immediate Federal inspection of the Bear Canyon and Trail Canyon Mines. Your agency will be provided the opportunity to participate in the Federal inspection and to take appropriate enforcement action if it is determined that violations of the approved permit continue to exist.

Sincerely,



Deputy Director  
Operations and Technical Services

cc: Co-Op Mining Company  
P.O. Box 1245  
Huntington, Utah 84528

Robert H. Hagen  
Director, Albuquerque Field Office

Raymond Lowrie  
Assistant Director, Western Field Operation

Carl C. Close  
Assistant Director, Eastern Field Operations