



United States Department of the Interior

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

orig memo file
KK 10/19/92 *Act 10/15/92*



IN REPLY REFER TO:

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OCT 19 1992

DIVISION OF
OIL GAS & MINING

cc L. Preston
J. Helrich
P. G. ...
J. Mitchell

October 14, 1992

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

Dear Dr. Nielson:

The Division of Oil, Gas and Mining (DOGM) has asked what effect a 48-hour permit suspension at the Bear Canyon Mine would have on future permitting actions by the company. AFO understands that the permit suspension, if it occurs, will be based on a pattern of violations (POV).

It is not the status of an operator's permit that impacts his ability to be approved for a permitting action, it is his compliance status. That is, the issuing agency must consider the operator's compliance history, his apparent intent to comply with the law, and his current compliance status. The fact that a permit is suspended does not affect a permitting action, but if the basis for the suspension is unabated violations, unpaid civil penalties or unpaid Abandoned Mine Reclamation Fund fees, the permit would be blocked - because of the noncompliance. If the basis for the suspension is a POV, yet all the violations have been abated, the permitting action would not be blocked unless DOGM makes a finding that the POV was

"of such a nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Act * * *" (R614-300-132.3).

Dr. Dianne R. Nielson

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If the Board of Oil, Gas and Mining upholds the POV determination but does not address the seriousness of the POV violations, DOGM would have to make a finding of the extent of the seriousness within the written findings for the next permitting action for this operator. Should the Board determine that a pattern occurred but did not cause irreparable harm, there is no further action necessary. However, the operator will have to report the suspension within the compliance information of future applications.

If you have any questions concerning this, please contact Donna Griffin or me at (505) 766-1486.

Sincerely,

A handwritten signature in black ink, appearing to read "R. H. Hagen", written in a cursive style.

Robert H. Hagen, Director
Albuquerque Field Office