0014

Joe H

State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Norman H. Bangerter
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

April 12, 1989

TO: Dianne R. Nielson, Director

FROM: Lowell P. Braxton, Administrator LPB

RE: Pattern of Violations Procedure, Summit Coal Company, Boyer Mine, ACT/043/008, Summit County, Utah

Pursuant to the Pattern of Violations Procedure of May 1, 1986, the following memo addresses step 5, Review of Violations for Unwarranted or Willful Failure to Comply.

On November 28, 1988, Joe Helfrich provided the Associate Director of Mining with a memo substantiating the following with respect to the above referenced operation:

"The following violations were reviewed for a potential pattern of violations:

Summit Coal Company - Boyer Mine - ACT/043/008

NOV No.	Issued Date	Finalized Date	Reg. No.	Nature of Violation
N88-27-2-2 #1 of 2	8/23/88	9/23/88	UMC 771.19	UD1 Culvert installation.
N88-27-6-3 #1 of 3	10/17/88	12/21/88	UMC 771.19	UD1 Culvert installation.
N88-15-1-1	2/25/88	5/4/88	UMC 771.19	Failure to maintain adequate sediment control at the inlet to the UD1 culvert."

These data substantiate three same or similar violations in a twelve month period, the violations having been finalized (Steps 1-4 of the POV Policy).

The Associate Director drafted a memo to you initiating step 5, but evidently did not finalize this document. The text of this draft dated January 4, 1989 reads as follows:

"RE: Review of Violations for Unwarranted or Willful Failure to Comply

Lowell Braxton, Joe Helfrich and I have reviewed the violations outlined in the Memorandum of November 28, 1988 (attached) with the following determinations:

None of the violations occurred as a result of a willful failure to comply.

Violation No. 88-15-1-1 reflected no degree of unwarranted or willful failure to comply.

The two remaining violations, N88-27-2-2 #1 of 2, and N88-27-6-3 #1 of 3 reflected an unwarranted failure to comply caused by a greater degree of negligence concerning compliance with permit conditions."

At this time, I believe the history and facts are enumerated in the above memos to be sound.

Step 5c of the Patterns Procedure requires a review of this information be requested of the Attorney General by the Director. Should the Director and Attorney General concur that a potential pattern exists, the Division is to notify the operator (in writing) of a potential pattern, and notify the operator that an appeal may be filed within 30 days (step 6b).

I believe that given 3 same or similar violations in a 12 month period, 2 of which suggest an unwarranted failure to comply, that the potential for a pattern exists. Should you support this position, I recommend that the operator be notified in accordance with the Pattern of Violation Procedures. This action would be on solid ground in terms of our program, although it may be overkill in terms of our action to suspend the permit (March 31, 1989) and the operator's filing of a Chapter 11 Bankruptcy.

jb/djh
MN1/69-70
AT18/38-39