



United States Department of the Interior

OFFICE OF SURFACE MINING

Reclamation and Enforcement
1027 Virginia Street, East
Charleston, West Virginia 25301

AUG 29 2011

Mr. Joseph C. Stanley

Dear Mr. Stanley:

This is to advise you of my final decision on your December 11, 2010, letter and email alleging violations at Marfork Coal Company's Bee Tree Mine S-3010-04 and its Brushy Fork Impoundment O-3010-95. Potential violations alleged in your letter were provided to the West Virginia Department of Environmental Protection (WVDEP) under the following Ten-Day Notices (TDN):

TDN X11-111-440-002 (01) for Marfork Coal Co., Inc. Permit S-3010-04 (Bee Tree Mine)
TDN X11-111-440-004 (01) for Marfork Coal Co., Inc. Permit S-3010-04 (Bee Tree Mine)
TDN X11-111-440-001 (02) for Marfork Coal Co., Inc. Permit O-3010-95 (Brushy Fork Impoundment)

My standard for review of a state response to an alleged violation is explained in 30 CFR Part 842.11 which requires that "...a response by a state regulatory authority that is not arbitrary, capricious or an abuse of discretion under the state program shall be considered appropriate action..." I have determined the WVDEP's response to be appropriate for the four alleged violations for the reasons described below. I have enclosed those documents provided by WVDEP that were considered in this decision. You are also being given the right to appeal my final decisions as explained at the end of this letter.

You should also observe in my August 29, 2011, letter (copy enclosed) to Tom Clarke that we are doing independent testing of compaction at the Brushy Fork dam and we are going to work with WVDEP to determine how Mine Safety and Health Administration (MSHA) findings may relate to State and Office of Surface Mining Reclamation and Enforcement (OSM) findings. However, the fact that we continue to examine the Brushy Fork impoundment as part of a topical study on lift compaction does not give me reason to find the State response to the TDN related to your December 2010 letter as inappropriate.

The same is true with the MSHA records I agreed we should consider in OSM examinations of dams. While I have sent the information on previous MSHA violations to the State and will follow up with them as part of our study on lift compaction, it will take some time to review these records against state activities. The fact that another agency previously cited a company for violations does not necessarily meet the standard of "reason to believe" a violation of the State program continues to exist or that the WVDEP is acting arbitrarily in responding to the existing TDN. Should the additional efforts in the lift compaction study, including consideration of MSHA activities, provide evidence of an existing State violation or a problem with the dam that is not being investigated by other means, we will treat that as new evidence of a violation.

You may also recall that at one time we were awaiting certain documents that were mentioned at a meeting with WVDEP and the operator's consultants. WVDEP provided those documents (a June 20, 2005, report in response to MSHA comments and a March 9, 2009, drilling report) and they are included in the enclosures.

Reasons for the resolution of each TDN violation are as follows:

TDN X11-111-440-002 (01)
S-3010-04

The TDN alleged blasting at the Bee Tree mine could damage the impoundment at Brushy Fork. Data received from the WVDEP's Office of Blasting and Explosives demonstrates that the approved blasting plan has not exceeded limits for peak particle velocity at the closest other structure to the blasting area, Gas well #34. Gas well #34 is located between the blast area and the Brushy Fork Impoundment. Using the data from the highest peak particle velocity (1.58ips), a regression analysis was performed that showed that the maximum peak particle velocity at the embankment to be 0.42ppv. We concurred that this is under any regulatory standard that might be applied to protect the structure and determined the State response was appropriate. However, we still believed that the Bee Tree blasting plan should specifically acknowledge and address the adjacent Brushy Fork Impoundment. Therefore, we issued another TDN as explained below.

TDN X11-111-440-004 (01)
S-3010-04

The TDN was issued to WVDEP on April 28, 2011, for permit defects and failure to protect public safety. This TDN stated that permit defects were evident in the approved permit for failure to identify and protect structures, such as the Brushy Fork Impoundment, from detrimental effects of blasting. After further discussion between WVDEP and OSM, Marfork Coal Company submitted a revision to the blasting plan issued for the Bee Tree permit. This revision places maximum ground vibration limits of 2.0 inches per second (ips) on the Brushy

Fork Impoundment. Measurements will be recorded by use of two seismographs. Seismograph #1 will be placed at the boundary between the embankment and natural ground. Seismograph #2 will be placed at the embankment centerline. The revision also states that if ground vibrations exceed 1.0 ips at seismograph #1, pore pressures will be monitored prior to and following any shot believed to possibly exceed 1.0 ips. We determined the State response was appropriate. In conversations with me, you have mentioned that the blast limits should be more restrictive if the dam is not properly constructed. It is our position that the WVDEP would first have to conclude that the dam did not meet safety standards and then secondarily consider restricting nearby blasting until the dam meets safety standards.

TDN X11-111-440-001 (02)

O-3010-95

Violation 01

The TDN issued January 24, 2011, states that Marfork failed to prevent liquefaction and provide safeguards against the development of the condition. As explained in my August 29, 2011, letter to WVDEP, WVDEP has advised OSM that the operator is following the May 2009 MSHA Engineering and Design Manual for Coal Refuse Disposal Facilities which also considers seismic impacts. This document includes a section on "Seismic Screening Analysis" which assists in satisfying the State's requirements for providing safeguards against liquefaction. WVDEP has also asked for further testing. Therefore, we have determined the State has provided acceptable rationale for concluding there is not currently cause for issuing a State violation.

O-3010-95

Violation 02

This TDN alleges that compaction specifications have not been met. Based on information submitted by WVDEP, calculations and testing demonstrated that compaction values were within the standard proctor density value of 95%. The State response mentions "averaging" which is not an acceptable method of analysis but when we reviewed the actual data we found the consultant had retested the material in following appropriate protocols and then the testing passed at all points. Therefore, we determined the State response to be appropriate. Should OSM's compaction study now underway provide different results, we will revisit this issue.

In summary we have determined the State's response is appropriate and based on information reviewed to date I also have no reason to order a Federal inspection for a potential imminent harm.

Copies of relevant documents are listed and enclosed. If you do not agree with the actions concerning your complaint, you have the right under 30 CFR 842.15 to request an informal

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review. Your request should contain how you may be adversely affected and why you feel our actions merit informal review. Your appeal should be addressed to:

Thomas D. Shope, Regional Director
U.S. Department of the Interior
Office of Surface Mining Reclamation and Enforcement
Appalachian Region
Three Parkway Center
Pittsburgh, Pennsylvania 15220

Sincerely,

A handwritten signature in black ink, appearing to read "R. Calhoun". The signature is fluid and cursive, written over a white background.

Roger W. Calhoun, Director
Charleston Field Office

Enclosures

Item No.	Date	Subject
1	Undated	CD – Compaction Certification Documents
2	Undated	CD – Permit Documents
3	06/20/2005	Geo/Environmental Associates, Inc., (GA) Letter to Marfork Coal Company Regarding Response to Mine Safety and Health Administration (MSHA) Comments, Stage 9 through 11 Modifications
4	03/06/2009	GA Letter to Marfork Coal Company regarding Stage 10 Embankment Drilling
5	10/06/2009	GA Quarterly Report and Certification <ul style="list-style-type: none"> • October 6, 2009 • January 6, 2010
6	07/22/2010	GA Talking Points from July 22, 2010, Meeting with the West Virginia Department of Environmental Protection (WVDEP) and the Office of Surface Mining Reclamation and Enforcement (OSM)
7	01/24/2011	TDN X11-111-440-001 TV2 – Brushy Fork: <ol style="list-style-type: none"> 1. Liquefaction; 2. Compaction
8	01/24/2011	TDN X11-111-440-002 TV1 – Bee Tree Blasting
9	02/14/2011	Final State Response to TDN X11-111-440-002 TV1 – Bee Tree Blasting
10	02/14/2011	State Response on Compaction TDN X11-111-440-001 Violation 2 with: <ul style="list-style-type: none"> • Four sets of compaction records; • Annual Report and Certification June 2009 to June 2010
11	03/30/2011	WVDEP Response with: <ul style="list-style-type: none"> • April 28, 2010, MSHA Inspection Report • April 22, 2010, WVDEP Engineers Annual Inspection of Dams • February 7, 2011, MR-6 Inspection Report
12	04/25/2011	OSM Appropriate Response Letter – TDN X11-111-440-002 TV1 – Bee Tree Blasting

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| 13 | 04/25/2011 | OSM Appropriate Response Letter – TDN X11-111-440-001 Violation 2 - Compaction |
| 14 | 04/28/2011 | TDN X11-111-440-004 TV1 – Bee Tree Blast Plan |
| 15 | 04/29/2011 | State’s April 29, 2011, Response with: <ul style="list-style-type: none">• April 28, 2010, MSHA Report• GA Revision #6 - February 12, 2010, Memo Addressing Upstream Stability• GA Evaluation of Upstream Stability - July 29, 2009• Liquefaction Assessment Modification 20 – February 18, 2003• Upstream Slope Stability – Revision #6 |
| 16 | 05/13/2011 | State Response – Bee Tree Blast Plan – TDN X11-111-440-004 |
| 17 | 06/02/2011 | State Response to Liquefaction TDN X11-111-440-001(01) |
| 18 | 06/15/2011 | OSM Appropriate Response Letter – Bee Tree Blast Plan – TDN X11-111-440-004 |
| 19 | 06/27/2011 | GA - Talking Points from June 27, 2011, meeting with WVDEP and OSM |
| 20 | 08/05/2011 | State Response to Liquefaction TDN X11-111-440-001(1) |
| 21 | 08/29/2011 | OSM’s Response to WVDEP’s August 5, 2011, letter |