Department of Energy
Grand Junction Projects Office
Post Office Box 2567
Grand Junction, Colorado 81502-2567

September 11, 1991

Mr. Robert E. Bornstein
On-Scene-Coordinator
Emergency Response Section (H-8-3)
Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

SUBJECT: DOE Mining Lease AT(05-1)-ML-60.8-NM-B-1

Dear Mr. Bornstein:

This letter will confirm our telecon on or about August 29, 1991. During our discussion, I advised you that the Department of Energy (DOE) had encountered a potential legal problem with the corrective action to be performed at the subject mine lease located near Grants, New Mexico. The following is a summary of the problem.

At the time the DOE submitted the corrective action plan to the EPA, it was contemplated that the required work would be performed by the Lessee, George Warnock. Subsequently, a statement of work was submitted to George Warnock for quotation. George Warnock took exception to the design and, in addition, took exception to the radiological data on which the health advisory had been issued. Several conference calls involving the undersigned, Mark Olsen (ID/OCC), George Warnock, Chuck Saunders and Allen Hall (Warnock's legal advisors) and Vince Tonc (Chem-Nuclear Geotech [DOE Prime Contractor]) were conducted with no resolution. DOE attempted to negotiate with George Warnock and was unsuccessful in doing so. By letter dated August 23, 1991, (copy enclosed) George Warnock advised DOE that he would not participate in any corrective action work.

George Warnock's letter also stated that he would consider any action taken by the DOE to perform the required corrective action as a "taking of an asset" without due consideration. The DOE does not believe this argument has merit, but the issue is being pursued with DOE-HQ. However, based on a series of letters from Exploration and Development Corporation (Todilto), it would not be prudent for DOE to perform the corrective action as long as Todilto still has a leasehold interest in the property.

During the referenced course of conversations and correspondence with Mr. Warnock, it also became apparent for the first time that not only does Todilto have no intention of performing any further reclamation on the property (which reclamation is required under the lease), but Todilto is reportedly without sufficient assets to perform such work. Therefore, in order to address both the reclamation issue and the taking of asset issue, it is DOE's intention to direct Todilto to (1) perform all reclamation work required by the lease and

(2) increase its performance bond to $150,000. If Todilto fails to perform either task, the DOE will take all appropriate actions, including possibly canceling the lease.

I also want to reiterate the DOE position that the DOE will resolve whatever issues remain and will perform the corrective action required to address the health advisory issued.

In turn, both you and Bill Weiss have assured me that the EPA has no intention of issuing a principal responsible party action letter to George Warnock or the DOE.

If you have any questions, please call me at FTS 326-6003.

Sincerely,

Robert E. Ivey
Contracting Officer

cc: J. L. Lyle, DOE/ID, MS-1117, w/o enc.
W. Weiss, EPA/CA, w/o enc.