



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

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August 19, 1994

Denise A. Dragoo, Esq.
Fabian & Clendenin
215 South State Street
P.O. Box 510210
Salt Lake City, Utah 84151

Re: NOV N94-39-2-1 and NOV N94-43-2-1, White Oak Mining and Construction Company, Inc., ACT/007/001, Folder #5, Carbon County, Utah

Dear Ms. Dragoo:

I am concerned that our on-site visit at the White Oak Mine last Thursday, August 11th, seems to have further muddied, rather than clarified your understanding on the steps White Oak must take to avoid further enforcement action by the Division. White Oak must take on-the-ground actions, and must submit a proper application to amend its Mining and Reclamation Plan ("MRP"). Neither our discussions nor your letter of August 12th with the "addendum" to White Oak Mining and Construction Company's MRP can abate either NOV.

You accurately state the required steps for abatement of NOV N94-43-2-1 in the first sentence of the second paragraph of your letter. In order to abate NOV N94-43-2-1, White Oak must 1) place identification signs at the point of access from the public road to the office facility in Pleasant Valley, 2) mark the stream buffer zone along Eccles Creek from the junction of the haul road and State Highway 264, and 3) mark the disturbed area boundary. On Thursday, we discussed some of the pros and cons of alternatives to these steps which White Oak proposed for consideration.

With regard to item number one: Mr. Tanner indicated that White Oak no longer uses the Pleasant Valley facility and, therefore, does not need it within the permit area boundary. We discussed its removal from the permit area, and I felt that I had clearly indicated that submittal of a permit amendment application to remove that facility from the permit area before the abatement date would be acceptable as an alternative abatement. I do not recall agreeing to modify the NOV to allow White Oak "a reasonable period of time" in which to submit that amendment. If an amendment cannot be submitted by the abatement date, the site must be marked by the abatement date.

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With regard to number two: Mr. Tanner and Mr. Kiscaden pointed out that some stream buffer zone boundary markers would have to be placed in the traveled surface of the state highway to strictly comply with the 50-foot from center line standard. We then discussed reasonable relocation of those signs to avoid attempting to drive sign posts through asphalt. Mr. Tanner suggested that the signs would be knocked over by snowplows. You suggested that you felt the order of Administrative Law Judge Rampton allowing the permitted coal haul road to remain within the stream buffer zone carried with it a waiver of the requirement to mark the stream buffer zone. I responded that that was an argument that you could make and, if White Oak proposed to rely on that argument rather than actually marking the buffer zone, they should do so. Your August 12th letter contains no such argument or support, but asserts that I agreed that the buffer zone doesn't need to be marked. I didn't. My reading of Judge Rampton's order does not provide the relief you suggested, so the buffer zone markers are still required, placed as close to 50 feet from the centerline of the creek as is reasonably possible.

With regard to issue number three: We discussed the fact that White Oak would rather not relocate the disturbed area boundary adjacent to the haul road, and I indicated that relocation of that disturbed area boundary was not a requirement of abatement of the NOV. I pointed out that enlarging the disturbed area by moving the boundary downhill would eliminate possible future questions about whether snow removal was a mining-related disturbance, and that moving the disturbed area boundary to coincide with the stream buffer zone boundary would allow White Oak to erect and maintain only one series of signs on that side of the creek. I do not, however, recall agreeing that the disturbed area boundary did not need to be marked. I am unable to think of any argument or basis for not marking a disturbed area boundary. Whether the disturbed area boundaries move or stay put, they have to be marked.

Abatement of NOV N94-39-2-1 will require submittal of a proper, complete and accurate formal amendment to White Oak's MRP which describes the snow removal practices to which we have already agreed in principle. These practices are accurately contained in the "addendum" attached to your August 12th letter. The amendment must also contain a commitment by White Oak to maintain, as permanent sediment controls, either the interim control measures already implemented or other sediment control measures which are susceptible of approval by the Division. We discussed whether a "vegetative filter" technique was approvable, and I remarked that, while I was not an expert in either vegetation or sediment control, it seemed a plausible application to make. If White Oak desires to advance that position, it must file the request as part of its permit amendment application, together with the required documentation supporting demonstration of

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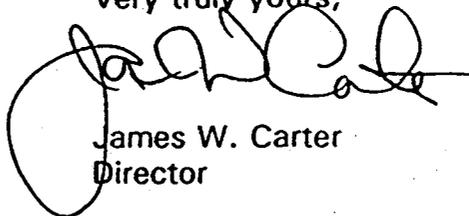
its effectiveness. Whatever White Oak wishes to propose, it must be in the form of a permit amendment application.

The stipulation between White Oak and the Division dated June 22, 1994, and the Board Order dated June 27, 1994, pertains only to NOV N94-39-2-1. NOV N94-43-2-1 is a separate notice of violation, requiring its own abatement. Abatement of both violations requires affirmative actions by White Oak Mining and Construction Company, both on the ground and through appropriate documentary submittals. On-site discussions with the director and the exchange of correspondence will not suffice.

Denise, we are talking about the installation of several hundred dollars worth of marker signs and a written commitment to maintain the straw bales which have already been installed along the creek's edge. These are requirements levied on every other coal mine operator in the state of Utah, and are among the least onerous and least expensive to comply with. For the life of me, I cannot understand why we are unable to get White Oak to take these simple steps in order to resolve the NOVs. There may be other, more convoluted and expensive ways to resolve these issues, like deleting portions of the permit area or applying for approval of vegetative filter BTCAs, but putting up a dozen signs and submitting a short permit amendment will do the trick.

Because of the administrative delay incurred in formulating this response to your letter, I am again extending the time for abatement for both NOVs to the close of business Friday, September 2, 1994. By that date, the Division must have received a complete permit amendment application addressing the agreed-upon snow removal practices, and a commitment to maintain sediment controls along Eccles Creek. In addition, the required signs must be up. If White Oak wishes to include a request to delete the old office area from the permit in its application, that sign need not be installed.

Very truly yours,

A handwritten signature in black ink, appearing to read "James W. Carter". The signature is written in a cursive style with a large initial "J" and "C".

James W. Carter
Director

jbe

cc: S. Tanner
S. Demczak
P. Grubaugh-Littig
J. Helfrich

H:WHITEOK.LTR