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United States Department of the Interior

OFFICE OF SURFACE MINING

Reclamation and Enforcement

Washington, D.C. 20240

cc: JWC

LPB

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11-10-94

~~IMMEDIATE~~

NOV 10 1994

Mr. James W. Carter, Director
Division of Oil, Gas and Mining
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180-1203

Dear Mr. Carter:

This is in response to your letter of August 29 requesting informal review of the Albuquerque Field Office (AFO) Director's determination that the Utah Division of Oil, Gas and Mining did not take appropriate action or show good cause for inaction with respect to ten-day notice (TDN) number 94-020-179-002. The TDN alleges Mountain Coal Company's failure to eliminate the highwalls at its Gordon Creek #3 and #6 mines.

The record reveals that the area was originally disturbed and mining operations began in 1975 and continued through 1980. At the time the highwalls were initially created, prior to the passage of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) in 1977, there were no legal requirements imposed upon an operator to stockpile and protect the spoil material in a manner that would allow it to be used after mining to backfill and grade and eliminate the highwalls. As a result, the operator created the highwalls and merely disposed of the spoil material.

In 1985, Mountain Coal applied for and received an approved reclamation plan from the State and completed its reclamation activities in 1987. OSM was present at the 1987 joint Phase I bond release inspection. The OSM inspector noted that the highwalls had not been eliminated and the retention of the highwalls were in accordance with the reclamation plan and the State of Utah's approved program.

I visited the site on October 24 accompanied by the AFO Acting Director, the Acting Assistant Director, Western Support Center, the inspector who issued the TDN, representatives from the company, and representatives from the State Division of Oil, Gas and Mining.

OPTIONAL FORM 99 (7-90)

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To James W. Carter From Ed [unclear]

Mr. James W. Carter

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Based upon the following, I concur with your finding that there is no spoil material reasonably available to meaningfully reduce the highwalls at the Gordon Creek #3 and #6 mines:

- o a visual inspection of the site
- o review of OSM's inspection report of conditions at the site during the Phase I bond release joint inspection
- o the additional information your office submitted documenting the relative absence of reasonably available spoil material on the site

Further, my analysis is based upon my review of the approved state program provisions on elimination of highwalls for previously mined areas and the approval and issuance of the permit in accordance with Utah's approved program.

On the basis of my review and analysis of the record and my visit to the site, I find that under 30 CFR 842.11(b)(1)(ii)(B)(2)-(4), Utah's response to the TDN established good cause for not taking further action. Accordingly, the determination of the AFO Acting Director is hereby reversed.

Sincerely,



Ed Kay
Deputy Director

cc: Mountain Coal Co.
P.O. Box 1378
Price, UT 84501

Acting Director, Albuquerque Field Office

Acting Assistant Director, Eastern Support Center

Acting Assistant Director, Western Support Center

Mr. James W. Carter

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Assistant Director, Field Operations

Assistant Solicitor, Regulatory Programs

**bcc: OSM Subject: OSM Reading(2); CIMS Reading; DD; AD/RRP; DRP; BI&E Reading
OSM:BI&E:tl:11/10/94:x-2550:DOC\MOUNTCOA\LR-INE 7**