

0004



United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
Suite 1200
505 Marquette Avenue N.W.
Albuquerque, New Mexico 87102

CC: JWC
LPB
JCH
PGL
DH
8-25-94
Orig: File
RECEIVED
AUG 25 1994
DIV. OF OIL, GAS & MINING

August 18, 1994

CERTIFIED RETURN RECEIPT # P 293 288 862

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

Re: Response to Ten Day Notice (TDN) X94-020-179-002 TV1, Mountain Coal Company, Gordon Creek #3 and #6, Permit ACT/007/017

Dear Mr. Carter:

In accordance with 30 CFR 842.11, the following is a written finding regarding the Division of Oil, Gas and Mining's (DOGM) response to the above-referenced TDN. DOGM's response to the referenced TDN was received in this office via fax on July 28, 1994, within the 10 day period.

The TDN was issued for failure to eliminate all highwalls at Mines #3 and #6.

Given the information received by the Albuquerque Field Office, this mine site appears to be a "Continuously Mined Area." This term pertains only to underground mining operations which created highwalls prior to the effective date of the Surface Mining Control and Reclamation Act and continued operations thereafter.

Utah has proposed an amendment to their State program which would provide an exemption from complete highwall elimination on these continuously mined sites where the volume of all reasonably available spoil is demonstrated in writing to DOGM to be insufficient to completely backfill the highwall. This amendment has not been approved to date and cannot be applied for consideration in the case of the Gordon Creek #3 & #6 mines. DOGM's position that the approximate original contour "Window" in the current regulations allows for the creation of highwalls where none existed prior to mining is without merit. An explanation of this is found in the Secretary's finding No. 3(A) in Federal Register/Vol. 58 No. 179/Friday, September 17, 1993/Rules and Regulations. Since DOGM's interpretation of this rule does not meet the Federal requirements, the State must require that all highwalls effected, or created by mining operations, be eliminated.

Mr. James W. Carter

2

The Albuquerque Field Office finds that the response of DOGM on TDN X-94-020-179-002 is arbitrary, capricious and an abuse of discretion and is, therefore, inappropriate.

If you disagree with the above finding, you may request an informal review in accordance with 30 CFR 842.11(b)(1)(iii)(A). The request may be filed at this office or with the Deputy Director, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, N.W., Washington, D. C. 20240.

Your request must be received within 5 days of receipt of this letter. A Federal inspection may be conducted after the 5-day appeal time has elapsed unless a formal review is requested.

Sincerely,

Bernard R. Gorman
Acting

Thomas E. Ehmet, Acting Director
Albuquerque Field Office