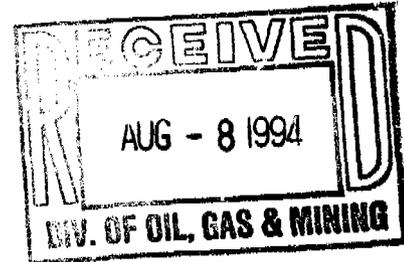


0006

MOUNTAIN Coal Company
P. O. Box 591
Somerset, CO 81434
Telephone 303 929 5015
Facsimile 303 929 5595



August 1, 1994



Mr. Thomas E. Ehmett
Acting Director, Albuquerque Field Office
United States Department of Interior
Office of Surface Mining Reclamation and Enforcement
505 Marquette, Suite 1200
Albuquerque, NM 87102

Re: Ten-Day Notices: Gordon Creek Nos. 3 and 6 Mines and
Huntington Canyon No. 4 Mine

*ACT/007/017 #5
Copy to ACT/015/004 #5*

Dear Mr. Ehmett:

The Albuquerque Field Office of the United States Office of Surface Mining Reclamation and Enforcement ("OSMRE") recently reissued a Ten-Day Notice concerning the Gordon Creek No. 3 and 6 Mine and issued a new Ten-Day Notice concerning the Huntington Canyon No. 4 Mine. The predecessor to Mountain Coal Company, Beaver Creek Coal Company, operated both mines. Both properties are reclaimed and have accomplished Phase I bond release. Both Ten-Day Notices allege that Phase II bond release cannot occur because Mountain Coal "failed to eliminate all highwalls" at these sites. The Ten-Day Notices are without legal foundation and seek to impose inequitable consequences on Mountain Coal Company and promote environmentally unsound practices.

**Mining and Reclamation at the Gordon Creek No. 3 and 6 Mines
and the Huntington Canyon No. 4 Mine.**

The Gordon Creek No. 3 and 6 Mines were opened in 1975 and 1977, respectively, and the Huntington Canyon No. 4 Mine opened in early 1977. Both sites had been disturbed by previous mining. All major facilities at each mine, including portal face-ups, were completed prior to the passage of the Surface Mining Control and Reclamation Act ("SMCRA"). The Gordon Creek

No. 3 and 6 Mines ceased operation in 1983; the Huntington Canyon No. 4 Mine ceased operations in 1984.

Both sites were reclaimed in complete compliance with a Mining and Reclamation Plan approved by the Utah Division of Oil, Gas and Mining ("Division") and OSMRE. The reclamation of the Huntington Canyon No. 4 Mine was completed in September of 1985 and the reclamation of the Gordon Creek No. 3 and 6 Mines was completed in November of 1986. As described in the Division's Final Technical Analysis of the reclamation for the Gordon Creek Nos. 3 and 6 Mines (Attachment A), restoration of the site to approximate original contour was impractical due to the lack of fill material. As a result, remnants of the portal face-up areas were left in place. Similar limitations existed for the Huntington Canyon No. 4 Mine. The reclamation of each site was conducted in complete compliance with the Utah program and the permit issued by the Division. The Division and OSMRE inspected each site, approved of the reclamation, and authorized Phase I bond release for each property. The Huntington Canyon No. 4 Mine received Phase I bond release November 1986; Gordon Creek 3 and 6 Mines received Phase I bond release in June of 1987.

Consistent with OSMRE's oversight rule in Utah, OSMRE reviewed and approved the attached Final Technical Analysis, the permit for the reclamation of the site, and the application for Phase I bond release of the site. Indeed, OSMRE conducted an inspection of the Gordon Creek No. 3 and 6 Mines Site in August of 1987 (shortly after Phase I bond release), and noted that "[n]umerous highwalls have been left by the operator but the DOGM permit specifically allows them to remain." (Attachment B). Similarly, OSMRE was involved in every step of the review and approval of the reclamation of the Huntington Canyon No. 4 Mine.

Mountain Coal is justifiably proud of its reclamation of these sites. In 1987, OSMRE awarded the reclamation of the Huntington Canyon No. 4 Mine an honorable mention in the first Excellence in Surface Mining Awards. (Attachment C). Indeed, the Director of OSMRE wrote a letter to the President of Mountain Coal Company's predecessor company commending it for its work on this reclamation: "By your efforts and those of your dedicated employees, you have furthered the goals of the Surface Mining Control and Reclamation Act (SMCRA) and shown your spirit of commitment to restore the land." (Attachment D). In 1988, the State of Utah designated the Gordon Creek Nos. 3 and 6 Mine site as the State's outstanding reclamation project and nominated it for a Federal Excellence in Surface Mining Award.

OSMRE has always been aware that the reclamation plan for the Gordon Creek No. 3 and 6 Mines and the Huntington Canyon No. 4 Mine allowed for retention of portions of the portal face-up areas. The recent Ten-Day Notice is the first evidence that OSMRE believes that the reclamation of these mines is anything less than superior. Indeed, representatives of Mountain Coal met with the Albuquerque Office of OSMRE on December 7, 1993, and one of the signatories of the original Ten-Day Notice, Henry Austin, described the reclamation of the Nos. 3 and 6 Mines as a reclamation project that is entirely satisfactory to OSMRE.

Retention of Portal Face-up Areas at the Gordon Creek No. 3 and 6 Mines and the Huntington Canyon No. 4 Mine is Consistent with Division Regulations.

Both Ten-Day Notices allege a violation of Utah Program Regulation R645-301-553.120. That regulation requires that disturbed areas be backfilled and graded to "[e]liminate all highwalls, spoil piles, and depressions, except as provided in R645-301-552.100 (small depressions), R645-301-553.620 (previously mined highwalls); and in R645-301-553.650 (retention of highwalls)." The Ten-Day Notices focus on the language of this regulation requiring elimination of highwalls, and conveniently ignore the exceptions to that requirement. The Division, with the review and approval of OSMRE, found that two of those exceptions apply to these properties.

First, both sites are previously mined areas and under the Utah Program postmining slopes may vary from approximate original contour when approval is obtained from the Division for incomplete elimination of highwalls. R645-301-553.620; R645-301-553.500. That exception applies when mining occurs in a previously mined area and there is insufficient spoil to backfill the affected highwall completely. R645-301-553.520. The Division made specific findings in approval of the Gordon Creek No. 3 and 6 Mines and the Huntington Canyon No. 4 Mine that prior mine operators had not preserved spoil and that as a result Mountain Coal Company had approval to leave remnants of the portal faces when performing reclamation. See Mining and Reclamation Plan, Huntington Canyon No. 4 Mine Permit Application § 3.5.4, Backfilling and Grading Plans; Mining and Reclamation Plan, Gordon Creek Nos. 3 and 6 Mines Permit Application § 3.5.4, Backfilling and Grading Plans.

The Division and OSMRE also approved retention of portions of the portal face-up areas under a second exception to R645-301-553.120 found at R645-301-553.650. Under that exception, highwalls may be retained where the highwall resembles natural cliffs in the area. The Division, with OSMRE review and approval, found that this exception applied to the reclamation of the Gordon Creek No. 3 and 6 Mines and the Huntington Canyon No. 4 Mine. See Mining and Reclamation Plan, Gordon Creek Nos. 3 and 6 Mines Permit Application § 3.5.4.2, Removal or Reduction of Highwalls; Mining and Reclamation Plan, Huntington Canyon No. 4 Mine Permit Application § 3.5.4.1, Removal or Reduction of Highwalls. Mountain Coal Company understands that OSMRE is asking Utah to amend R645-301-553.650. The fact remains, however, that the exception to the highwall elimination requirement stated in that rule was in effect at the time these mines were permitted and reclaimed, and is still in effect today. While OSMRE has argued that Utah has not properly applied that exception, the fact also remains that the language in that rule was proposed by OSMRE and accepted by Utah in the development of this Program. See Conditional Approval of the Permanent Regulatory Program Submission from the State of Utah Under the Surface Mining Control and Reclamation Act of 1977, 46 Fed. Reg. 5899, 5902 (January 21, 1981). Whatever OSMRE's desires for the future of this exception, Mountain Coal is entitled to rely on a permit that is consistent with the law and regulations and approved by both the Division and OSMRE.

**The Ten-Day Notices seek to Impose Environmentally Destructive
and Inequitable Requirements at These Sites.**

The drafters of the Ten-Day Notice apparently want Mountain Coal to destroy the existing reclamation to allow additional backfilling of the sites. Disturbing these sites will have no environmental benefit and is likely to cause considerable environmental harm, at least on a short-term basis. The vegetation at both sites is well-established and the reclamation has no adverse impact on the area's hydrology and the portal face-ups are stable. All regulatory agencies – including OSMRE – agree that the reclamation more than adequately protects other resources. Further, the private owner of the lands reclaimed by Mountain Coal is entirely pleased with the results of this reclamation. Indeed, Mountain Coal understands that all parties reviewing the site for Phase II bond release agree that it meets the conditions necessary for that step in the bond release process.

The State of Utah made a determination concerning the reclamation of this site that was and is consistent with the Utah program and SMCRA. OSMRE's policy concerning approximate original contour (AOC) directs OSMRE to defer to the State's determination:

While a subsequent different AOC opinion of an OSMRE inspector demonstrates the subjectivity inherent in interpreting AOC, it nevertheless serves no useful purpose to substantially redisturb a stabilized and reclaimed minesite when the regulatory authority has exercised its discretion in good faith and remains satisfied that the applicable program standards, including restoration of AOC and postmining land use, have been met.

OSMRE Directives System: Approximate Original Contour (subject No. INE-26) (May 26, 1987) (Attachment E). While OSMRE may now wish to second-guess the reclamation process at these Mines both the Division and OSMRE found at the time reclamation was conducted that the approach taken to reclamation was consistent with the Utah program and SMCRA, and adequately protected the area's resources. An operator must be allowed to rely on such regulatory determinations. It is quite simply too late for OSMRE to attempt to reopen the settled issue of how the Huntington Canyon No. 4. and Gordon Creek Nos. 3 and 6 Mines are to be reclaimed. Requiring the disruption and re-reclamation of this site would create no additional environmental benefit, would be inconsistent with the desires of the private landowner, is not required by SMCRA or the Utah Program, and would be fundamentally unfair to Mountain Coal Company.

Mountain Coal therefore requests that OSMRE vacate these Ten-Day Notices.

Mr. Tom Ehmett
August 1, 1994
Page 5

Thank you for your attention to the issues raised in this letter. Please feel free to contact me to discuss this issue or if you need any additional information.

Sincerely,



Gene E. DiClaudio
President, Mountain Coal Company

EED:pd

cc: Allen Klein, Assistant Director of Field Operations, OSMRE
Pamela Grubaugh-Littig, Utah Division of Oil, Gas and Mining

FINAL TECHNICAL ANALYSIS

Beaver Creek Coal Company
Gordon Creek No. 3 and 6
INA/007/017
Carbon County, Utah

September 10, 1986

UMC 785.19 Alluvial Valley Floors - JW

Existing Environment and Applicant's Proposal

Coal Canyon encompasses very limited area for any streamlaid deposits. Further, Coal Canyon Creek is characterized by ephemeral flow and thus sufficient water is not available to support agricultural activities.

Compliance

The Division therefore determines that no alluvial floor exists in the area to be affected by reclamation activities.

The applicant is in compliance with this section.

Stipulations

None

UMC 817.11 SIGNS AND MARKERS - PGL

Existing Environment and Applicant's Proposal

Sign specifications and locations are described in Section 3.3.5.1 and Plate 3.1

Compliance

The applicant's plans for signs and markers are acceptable. It should be noted that the location of the perimeter markers shown on plate 3-1 do not coincide with the bonded area shown. The markers are used to delineate the extent of disturbance within the bonded area. The applicant complies with this section.

Stipulations

None.

Stipulations

None.

UMC 817.100 CONTEMPORANEOUS RECLAMATION - KMM

Since the mine has been idle since 1980, this section is no longer applicable.

UMC 817.101 BACKFILLING AND GRADING - DD, PGL

Existing Environment and Applicant's Proposal

The surface of the area was originally disturbed in 1975 (pre-law) by a previous owner. At that time, no major effort was made to save or store any soil material. Therefore, restoration to approximate original contour is impractical due to the lack of fill material. The surface of the site is privately owned and the postmining land use will be livestock grazing. A letter from the landowner (page 4-33, 4-34, MRP) approved the Beaver Creek Coal Company proposed backfilling and grading plan because it enhances the postmining land use for livestock grazing by providing level pad areas for loading pens, corrals and grazing.

The applicant states that the highwalls which will be left in place are similar in structural composition to the pre-existing cliffs in the surrounding area, and are compatible with the geomorphic processes of the area. The highwalls to be retained on Plate 3-1A are "stable" as stated on page 3-35a (#6). A stability analysis was performed on highwalls at the No. 3 and No. 6 Mine. Results given on page 3-35d and 3-35e show that the No. 3 mine highwall has a static safety factor of 5.01 for dry conditions and 4.62 for saturated conditions. The No. 6 Mine highwall has a static safety factor of 4.62 for dry conditions and 4.29 for saturated conditions. These are well above the 1.5 safety factor required.

Similar results on embankment stability analysis indicate a safety factor of 2.22 for dry conditions and 1.65 for saturated conditions. This meets the 1.30 safety factor requirement.

Compliance

The applicant submitted adequate backfilling and grading plans for the disturbed site in relation to the post mining land use. The applicant included calculations insuring a minimum static safety factor of 1.5 for all highwalls and 1.3 for embankment material. The applicant is in compliance with this section.

UNITED STATES DEPARTMENT OF THE INTERIOR
Office of Surface Mining
Reclamation and Enforcement
TEN-DAY NOTICE

Originating Office: CSM
575
Albuquerque NM
Telephone Number: 505-271-1111

Number: X-27-02-506-506 TV 1

Ten-Day Notice to the State of NM

You are notified that, as a result of an aerial inspection (e.g. a federal inspection, citizen information, etc.) the Secretary has reason to believe that the person described below is in violation of the Act or a permit condition required by the Act. If the State Regulatory Authority fails within ten days after receipt of this notice to take appropriate action to cause the violation(s) described herein to be corrected, or to show cause for such failure and transmit notice of your action to the Secretary through the originating office designated above, then a Federal inspection of the surface coal mining operation at which the alleged violation(s) is occurring will be conducted and appropriate enforcement action as required by Section 521(a)(1) of the Act will be taken.

Permittee: Berman Creek Coal Co. County: Garfield Surface
(Or Operator if No Permit)
Mailing Address: PO Box 1000 51451 Underground
Permit Number: 506100-1017 Mine Name: Frederick Sh 316 Other

NATURE OF VIOLATION AND LOCATION: Failure to post and maintain clear perimeter markers - entire disturbed area boundary

Section of State Law, Regulation or Permit Condition believed to have been violated: 317.11(b)(1)

NATURE OF VIOLATION AND LOCATION:

Section of State Law, Regulation or Permit Condition believed to have been violated:

NATURE OF VIOLATION AND LOCATION:

Section of State Law, Regulation or Permit Condition believed to have been violated:

Remarks or Recommendations:

Date of Notice: 08/01/81 Signature of Authorized Rep.: J. C. Field
Print Name and ID: J. C. Field 016

United States Department of the Interior
Office of Surface Mining
Mine Site Evaluation Inspection Report

For Office Use Only

1a
V Y M M

1b
Sectn

1c
Report

2. Name of Permittee

BEAVER CREEK COAL CO

3. Street Address

PO BOX 1378

4. City

ARIZONA

5. State

UT

6. Zip Code

84501

7. Area Code

801

8. Telephone Number

837-5050

9. MSHA Number

42-01254

10. Date of Inspection (Y M M O D)

920805

11. State Permit Number

UMA/007/017

12. Name of Mine

GORIDOW CREEK 3/6

13. County Code

007

14. State Code

UT

15. Strata

16. State Area Office

01

17. OSM Field Office No.

02

18. OSM Area Office No.

19. OSM Sample No.

0005

20. Type of Inspection (Code)

0

21. Joint Inspection

Yes No

22. Inspector's ID No.

006

23. Status

A

Type of Permit

B

Mine Status (Code)

C

Type of Facility (Code)

D

Number of Permitted Acres

E

Number of Disturbed Acres

24. Type of Activity (check applicable boxes).

A Steep Slope

E Anthracite

B Mountain Top Removal

F Federal Lands

C Prime Farmlands

G Indian Lands

D Alluvial Valley Floors

H Other

(New Facility)

25. Performance Standards (CoJesi)

Instructions: Indicate compliance code. For any standard marked 2 or 3 provide narrative to support this determination.

Standards That Limit the Effects to the Permit Area

- A Distance Prohibitions
- B Mining Within Permit Boundaries
- C Signs and Markers
- D Sediment Control Measures
- E Design and Certification Requirements—Sediment Control
- F Effluent Limits
- G Surface Water Monitoring
- H Ground Water Monitoring
- I Blasting Procedures
- J Haul/Access Road Design and Maintenance
- X Refuse Impoundments
- L Other: Specify _____

Standards That Assure Reclamation Quality and Timeliness

- M Topsoil Handling
- N Backfilling and Grading
- O Following Reclamation Schedule
- P Revegetation Requirements
- Q Disposal of Excess Spoil
- R Handling of Acid or Toxic Materials
- S Highway Elimination
- T Downslope Spoil Disposal
- U Post Mining Land Use
- V Cessation of Operations: Temporary
- W Other _____

MSEIR NARRATIVE

PERMIT NUMBER IND/007/017

INSPECTION DATE 08/05/87

General Summary:

The last Federal inspection was 03/26/87. This complete oversight inspection was conducted with Bill Malosik (DOEM), Harold Sandbeck (DOEM), and Don Gray (operator). Ground conditions were dry until the mid inspection rain.

Following is the operation's permitting status:

Permit IND/007/017, issued 09/19/86, expires 09/19/91 and:
668 acres remain permitted in T135, R8E, S9, 9, 16, 17, 21
29 acres are surface disturbed and bonded (all phase I released)
0 acres are Federal coal

Following is the operation's bonding status:

\$346,000 was posted with Federal Insurance Company, with \$207,600 released 06/26/87, leaving \$138,400 now posted for 29 ac

Following is the operation's permit stipulations status:

The 7 stipulations Sec 817.113(1), 817.114(1), 817.52(1) (2), 817.150-156(1), and 817.46(1), (2) are in approved by DOEM, and closed issues. The 8th stipulation Sec 817.45(1) is done but not officially closed by DOEM

Following is the post mining land use status:

Stock and Wildlife grazing is proposed, with 19 species of grasses, clovers, shrubs, and trees to be planted. Trees must specifically be planted along the permanent stream channel diversion. The entire section of class F road is approved to be left permanently, as are the highwalls. The reclaimed area must be fenced from grazing. Two reference areas exist for evaluations.

Following is the operation's water monitoring status:

The DOEM permit requires surface water sampling at 3-1-W and 3-4-W, quarterly (twice per yr after Fall 89), for flow, pH, spec cond, temp, dis O2, SS, TSS, TDS, hardness, acidity, carbonate, bicarbonate, calcium, chloride, iron, TMA, Mg, K, Na, sulfate, alg, and cation-anion bal. The permit also requires surface water sampling at 3-2-W as per the NPDES permit. All require quarterly reporting to DOEM. The NPDES permit also requires surface water sampling

MSEIR NARRATIVE

PERMIT NUMBER VT-0023010

INSPECTION DATE 02/05/97

at any discharge from the mine workings if it occurs, quarterly. The 209-01 permit requires no ground water monitoring. DDEES permit VT-0023010, approved 11/02/95, expiring 02/29/97 (but automatically extended according to EPA), requires sampling at the pond (the location just states section 16.2): For a discharge from no precip event, monthly, for flow, TSS, TFe, TDS, c/a, pH; for a discharge from a precip event ≤ 10 yr/24 hr, monthly, for flow, TSS, TFe, c/a, pH, and weekly for SS; for a discharge from a precip event > 10 yr/24 hr, just pH (frequency's not specified).

Following is the operation's drainage control status: Only 1 sediment pond is required - it's completed, certified, and approved to be left permanently. One overland flow diversion is required - actually, it's a stream channel diversion - it's completed and approved to be left permanently. The quarterly pond inspection reports are all done for 96 and for 1st and 2nd qtrs of 97.

Following is the operation's certificate of insurance status: The reclamation, inactiveness, phase of this operation requires no coverage.

Following is the field status: The entire length of class II road is in place, as is one pond. All structures have been removed and the surface disturbed area's reclaimed with mostly grasses and trees. The stream's required willows are planted; the entire area (including the sed pond emb) was seeded Fall 96; grass cover is still sparse but doing well. No topsoil piles remain; high walls remain in several areas; the second bench area (going up the HR) is not reclaimed but is prelaw disturbance mostly 85% of the permit.

Following is the operation's outstanding C&E action status:

Item 25(c) & 28

797-02-006-006, 1991, written 02/05/97, is

MSEIR NARRATIVE

PERMIT NUMBER 244/007/017

INSPECTION DATE 03/05/97

outstanding for violating this performance standard. The lower road section has no markers and the remaining permitted surface disturbance boundary has few markers. The entire 25 ac boundary should be clearly remarked.

Item 25(D) § 28

T87-02-116-003, 1st, written 04/07/97, remains outstanding for violating this performance standard. On 07/14/97, DORM requested more data concerning the pond's stability analysis. A response is due back to DORM by 08/31/97.

Item 25(D) § 28

State N87-26-6-1, issued 08/06/97 due 09/05/97, is outstanding for violating this performance standard. Three diversion outlet problems exist and need to be stabilized.

- 1) Just below the pond, south side of road, the haulroad's diversion outlet has eroded a 6' unprotected bank (the bottom is concreted but the sides are bare plus substantial piping under the concrete exists).

- 2) Just below the last silt fence (going down the HR), south side of road, the haulroad's diversion outlet has gullied 4' deep with no protection provided and sediment having washed into the adjacent creek bed.

- 3) Just below the pond, north side of road, the haulroad's diversion outlet has eroded a 4' deep gully with no protection provided.

None of these diversions go to a sed pond.

MSEIR NARRATIVE

PERMIT NUMBER INA/007/017

INSPECTION DATE 09/05/97

Item 25(A) § 23

State US7-26-5-1, issued 09/06/87, no due date, is outstanding for violating this performance standard. The 04/02/97 analyses for 3-1-W and 3-4-W did not include oil and grease and TSS as required. This ATF violation should be terminated next inspection.

Item 25(E) § 29

State US7-26-7-1, issued 09/06/87, due 09/05/97, is outstanding for violating this performance standard. Three bankroad culvert problems need to be corrected by cleaning, repairing, replacing, and for revision approval for design changes.

- 1) The 1st culvert (going up) is mostly crushed and partly filled at inlet - 18" culvert is only 6" open.
- 2) The 2nd culvert (going up) is partly filled with sediment and partly crushed inside in 2 places - 36" culvert is only 18" open due to sed through most of middle, the north end's joint is crushed leaving only about 4" open, the south end's crushed, leaving about 31" open.
- 3) The 3rd culvert (going up) is partly filled with sediment - 24" culvert's inlet is only 18" open with all of pipe having no more than 31" open.

Final Comment:

Numerous highwalls have been left by the operator but the DORM permit specifically allows them to remain.

Office of Surface Mining, Reclamation & Enforcement Presents

The First National "Excellence In Surface Mining" Awards

STORY BY HARMON MARKS

AN INTERESTING MIX of projects from 15 states made it difficult to select national winners of the first "Excellence in Surface Mining" awards.

The U.S. Department of Interior's Office of Surface Mining, Reclamation & Enforcement gave top billing to projects from Maryland, North Dakota, Ohio and Wyoming. Five honorable mention achievements were selected from Alabama, Illinois, Oklahoma, Pennsylvania, and West Virginia.

Award winners were announced at the annual meeting of the National Coal Association held June 21-23 in Chicago.

Top honors went to:

Buffalo Coal Co., Inc., of Bayard, WV, for reclamation accomplished on four Maryland projects — one in Allegheny County and three in Garrett County.

The Department of Natural Resources noted that Buffalo Coal began surface mining in Maryland in 1967. Nominated for a national award was made "for the company's continuing overall excellence in achieving reclamation and post mining land uses compatible with both the spirit and the intent of SMCRA prior to its enactment."

Falkirk Mining Co. of Bismarck, ND, a subsidiary of the North American Coal Corp., for innovative wetland reclamation near Underwood.

"The 2,000 to 3,000 geese and ducks which called the large wetland home during October, 1986," the North Dakota Public Service Commission submitted, "can attest to the success of Falkirk's efforts."

North Dakota authorities praised Falkirk for pioneering technologies which will make more than 10 million tons of lignite coal available for mining recovery, thus lending to some \$14.6 million in savings for electric consumers of the Coal Creek Station Power Plant. The prairie wetlands involved, the state agency emphasized, yields about half of the duck production in the continental United States.

North American Coal Co. of Cleveland, OH, for complete reclamation of 307 acres near Powhattan Point which included 139 acres of abandoned mine lands.

The work took only 120 days at a cost of \$6.5 million, with North American absorbing \$3.5 million of that total. Work began in 1984 on the underground mines and associated facilities, which included refuse disposal sites. The Powhattan Number One Mine originally opened in 1922.

A parcel of reclaimed land was donated to the Belmont County Commission on Aging, a local church received a reclaimed parcel of land adjacent to their location, and North American deeded a mine portal facility with buildings to the Ohio Department of Natural Resources for use as a training and operations facility.

Bridger Coal Co., a subsidiary of the NERCO Coal Corp., for successfully utilizing alternate sediment control techniques (SEDCO) to protect the natural environment northeast of Point of

Rocks in southwest Wyoming.

Working through the Wyoming Department of Environmental Quality upon approval in July, 1983, Bridger initiated an experimental system utilizing heavy mulching, deep ripping, and check dams, plus a computer program made up of seven surface water monitoring stations. Monitoring data collected subsequently documenting compliance was achieved without construction of costly sedimentation ponds which would disturb additional lands.

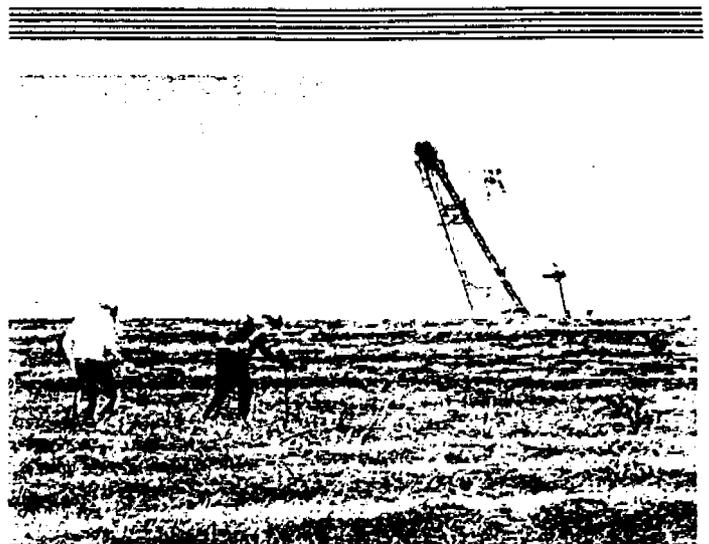
Honorable Mention:

Drummond Coal Co. of Jasper, AL, for demonstrating excellence in reclamation management at its Arkadelphia 5761 Mine. State-of-the-art techniques helped make the reclamation area a seed and hay production unit to support future projects. Drummond produced 12,000 pounds of cleaned, high quality *serala sericea iespedeza* seed in 1984 from Arkadelphia acreage, increased the harvest to 75,000 pounds in 1985 and to 100,000 pounds last year.

Freeman United Coal Mining Co. of Canton, IL, for outstanding prime farmland restoration at its Industry Mine using a cross-pit bucket wheel excavator for removal of overburden and assisting with reclamation. The Illinois Department of Mines and Minerals Land Reclamation Division wrote, "The use of this equipment is not unique; however, the innovations and results obtained by its use at the Industry Mine are."

K&R Coal Co. of Bethany, OK, for efforts complimented by a citizens group regarding the company's Ryan Strip Mine Number One south of Stigler. Only topsoil from the initial cuts were stock piled — otherwise, the company expeditiously backfilled as the mining

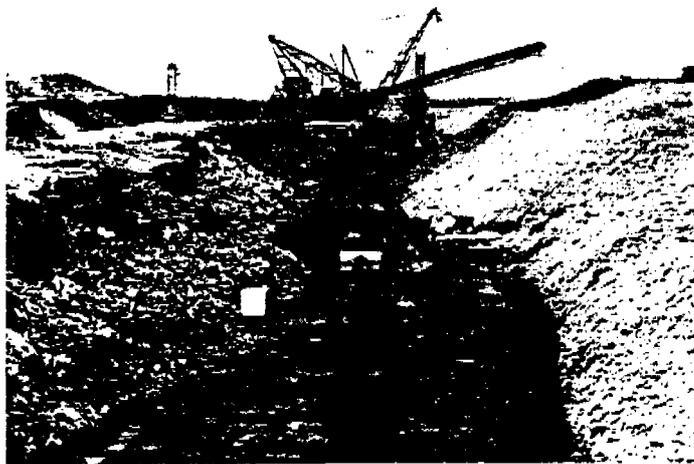
CONTINUED...



Outstanding reclamation surrounds surface mining at the AMAX Ayrshire Mine near Evansville, IN. A crew is shown planting seedlings in view of a big working dragline.



Three dozers are pushing a top soil stockpile through a narrow slot in the highwall to the wheel digging head at Freeman United's award winning Industry, IL. Mine. The wheel pick up the top soil and conveys it to the leveled spoil to make compact stockpiles.



Freeman United Coal Mining Co. operation at Industry, IL. surface mine. At left is the unmined highwall some 55 feet over the coal, with mined spoil ground shown at right.



AMAX Coal Co. was successful in developing wetlands for a wildlife habitat on a coal slurry disposal area at the Ayrshire Mine near Evansville, IN.

EXCELLENCE continued...

progressed and applied topsoil to promote rapid revegetation. Oklahoma's Department of Mines noted that a panel of the leading citizens selected K&R as the state's outstanding coal operator.

River Hill Coal Co., Inc., of Kylertown, PA, for successfully reclaiming most of 413 acres in one of the state's earliest surface mined areas. The site in West Keating Township, Clinton County, contained severe abandoned mine problems dating back more than 40 years.

Hobet Mining, Inc., of Huntington, WV, for executing an innovative 20-year mining plan calling for continuous reclamation behind the mining process. As mining at the Hobet 21 site near Madison is completed, spoil piles are leveled and outcrops are graded and benched. A regrading process restores original topography of mountains and valleys.

Coal People Magazine proudly salutes six other companies for exceptional work leading to nominations for OSMRE awards. These include:

Amax Coal Co. of Indianapolis, IN, for efforts in developing a wetlands wildlife habitat on a coal slurry disposal area at its Ayrshire Mine near Evansville.

Mountain Drive Coal Co. of Middlesboro, KY, for special emphasis on post-mining land uses that include such things as raising beef cattle, growing apple orchards and grape vineyards, and cultivating bee hives on mountaintop removal sites.

Spring Creek Coal Co. of Decker, MT, a subsidiary of the NERCO Coal Corp., for contributing to research designed to improve the methods of drill hole plugging in the northern Powder River Basin. (The Montana Department of State Lands is vitally concerned with regulating drill hole plugging because of the need to protect limited water supplies.



Beaver Creek Coal completed first steep-slope mine site reclamation in Utah under current federal regulations.

West Coal Corp. of Oneida, TN, for two years work in removing an old tippie at Pioneer and cleaning up Cove Creek, which empties into Cove Lake where LaFollette, TN, obtains its domestic water supply. Abandoned coal and refuse material was removed from the site and trucked almost 50 miles one way to a permitted disposal area.

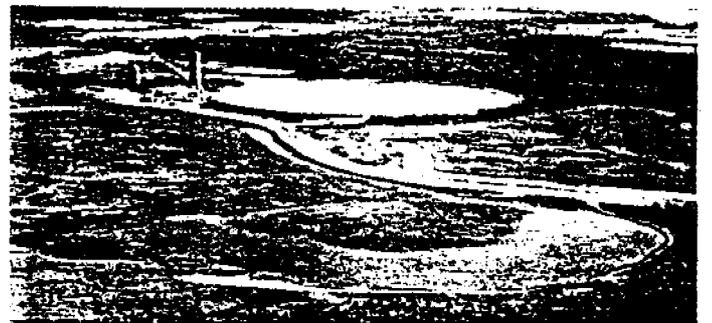
Beaver Creek Coal Co. of Price, UT, a subsidiary of Mountain Coal Operations, for cleaning up a heavily mined area about 12 miles northwest of Huntington, UT. Reclamation was completed late in 1985 at what became known as the Huntington Canyon Number 4 Mine. Steep, narrow canyons with sandstone cliffs are characteristic of the site. It was a unique project because it was the first complete steep-slope mine site reclamation performed in Utah under the Surface Mining Control and Reclamation Act of 1977.

Consolidation Coal Co. for its long running re-mining and revegetation success at an old refuse embankment in Pocahontas, VA, that resulted from hand sorting during operation of the original Pocahontas Mine. The Pocahontas Reclaim Operation began in 1971 and was essentially finished in spring of '83. The company recovered more than a million tons of coal and successfully revegetated the area without using topsoil.

CPM extends a personal congratulations to all the winners and nominees of the first 'Excellence in Surface Mining' awards.



North America's prize project got top honors for removing eyesores along the Ohio River and Ohio Route 7 near Powhattan, OH, plus donating improved land parcels for community services.



AMAX's Ayrshire Mine near Evansville, IN, is nestign place for Canadian geese, thanks to reclamation efforts. A "Goose Roundup" is held every summer in cooperation with the Indiana Department of Natural Resources.

for [unclear]

United States Department of the Interior
OFFICE OF SURFACE MINING
Reclamation and Enforcement
WASHINGTON, D.C. 20240



JUL 7

Mr. Dick Pick, President
Beaver Creek Coal Company
P.O. Box 1378
Price, Utah 84501

Dear Mr. Pick:

I am writing this letter to thank you for your company's efforts in making the first annual Excellence in Surface Mining Awards Program a success.

Your site or project was nominated for this competition by your State Regulatory Authority - a distinction which is highly commendable and for which I extend my heartiest congratulations. By your efforts and those of your dedicated employees, you have furthered the goals of the Surface Mining Control and Reclamation Act (SMCRA) and shown your spirit of commitment to restore the land.

Again thank you for your participation and demonstration of your pride in the restoration of America's natural resource base. We look forward to the continuation of this program next year when we will again recognize the outstanding achievements under SMCRA exemplified by this year's participants.

Sincerely,

Jed O. Christensen
Director



U. S. DEPARTMENT OF THE INTERIOR
 OFFICE OF SURFACE MINING
 RECLAMATION AND ENFORCEMENT
 DIRECTIVES SYSTEM

Subject Number:
 INE-26

Transmittal Number:
 208

Date: 8/26/87

Subject: Approximate Original Contour

Approval: *S. J. Christensen* Title: Director

1. Purpose. The purpose of this directive is to provide policy guidance and procedures for determining whether backfilling and grading have met the requirements of approximate original contour as defined in section 701(2) of the Act, sections 701.5 and 710.5 of the regulations and the corresponding definitions in approved State programs. This guidance may prove particularly important for: interim program sites where the permits lacked the detail and clarity on premining and postmining topography expressed in permanent program permits; isolated or fringe areas not represented by typical cross sections; or for any site where the postmining topography does not exactly match that anticipated in the approved permit.

2. Definitions.

Approximate Original Contour. As defined in section 701(2) of the Act and sections 701.5 and 710.5 of the regulations, approximate original contour (AOC) means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated. Water impoundments may be permitted where the regulatory authority determines that they are in compliance with the implementing regulations corresponding to section 515(b)(9) of the Act.

3. Policy/Procedures.

a. Background. In modifying the phrases 'original contour' and 'surface configuration', in the definition of AOC with the terms 'approximate' and 'general', respectively, Congress recognized and acknowledged that there would likely be differences between the premining and postmining topography. Furthermore, the reclamation of any minesite must take into consideration and accommodate site-specific and unique characteristics of the surrounding terrain and postmining land uses. Consequently, AOC determinations must necessarily retain a certain amount of subjectivity and often rely principally on the judgment of the regulatory authority, which has been given the primary responsibility for such decisions under the Act.

b. Policy. Before concluding that any AOC violation has occurred and respaping of already reclaimed areas is required, evaluations to determine whether AOC has been achieved shall be conducted in accordance with the considerations and procedures below. Site-specific cases where

AOC is difficult to assess within the context of these procedures shall be resolved through consultation with the regulatory authority and the appropriate Assistant Director for Field Operations.

c. Procedures.

(1) Role of Permitting. Because backfilling and grading represents the largest single cost in reclamation and, once completed, is followed by topsoil replacement and revegetation, both the permittee and the regulatory authority need a clear understanding of the final postmining topography prior to mining. The permittee needs this information so that he may determine if mining is profitable and know that once topsoil replacement and revegetation proceeds, additional regrading will not be required. The regulatory authority needs to know in order that the appropriate bond can be set, contemporaneous reclamation standards can be enforced, and environmental disruption and topsoil loss associated with a second regrading can be avoided. Therefore, the anticipated postmining topography must be determined in the permitting process with typical cross section or contour maps depicting both the premining and anticipated postmining slopes with sufficient clarity and detail to enable a comparison to determine if AOC has been achieved.

Where the postmining topography described in the approved permit lacks sufficient detail or does not closely resemble the general land configuration before mining, a permit modification is required in accordance with the State counterpart of 30 CFR 774.13.

(2) Inspection Criteria. AOC is achieved through a reasonable, but not necessarily exact, rendering of the approved postmining topography. Inspectors shall determine whether AOC requirements have been met by applying the following three elements contained in the definition of AOC.

(a) General surface configuration. The reclaimed area should closely resemble the general surface configuration of the land prior to mining. This should not be interpreted, however, as requiring that postmining contours exactly match the premining contours or that long uninterrupted premining slopes must result in the same. Rather, the general terrain should be comparable to the premined terrain; that is, if the area was basically level or gently rolling before mining, it should retain these general features after mining. Rills and dips need not be restored in their original locations and level areas may be increased or terraces created in accordance with the Federal regulations at 30 CFR 316.102(g) or 317.102(g) through formation of shorter, steeper slopes, provided that those slopes are capable of supporting the postmining land use and blend with the surrounding terrain.

(b) Drainage. The test applied to determine if the reclaimed area blends into and complements the drainage pattern of the surrounding area is whether water intercepted within or from the surrounding terrain flows through and from the reclaimed area in an unobstructed and controlled manner.

(c) Highwalls and spoil piles. All highwalls, spoil piles, and depressions, except small depressions needed to retain moisture, shall be eliminated in a manner which blends in with the surrounding terrain. This element should not be interpreted as necessarily requiring spoil from the first cut to be transported to fill the last cut in area mining, provided highwalls are eliminated and both cuts are graded to blend in with the surrounding terrain. (See 42 FR 62643, December 13, 1977; 44 FR 15227, March 13, 1979; and 48 FR 32911, July 19, 1983).

3) Oversight of State AOC Determinations. Where a permit contains little guidance depicting the postmining topography and backfilling and grading has been completed, as may often be the case with interim program minesites, any earlier guidance on or acceptance of the reclamation by the regulatory authority should be given considerable deference. This is because the regulatory authority has the primary responsibility for interpreting what constitutes AOC at a given minesite and, at the time, the permittee who received such guidance acted reasonably in construing the State's acceptance as assurance that AOC requirements had been met according to the State's counterpart to 30 CFR 715.14 or 815.100, as appropriate, or the permittee would not have proceeded with regrading and revegetation.

The purpose of oversight is to determine if a decision of the regulatory authority was reasonable and not an abuse of discretion. While a subsequent different AOC opinion of an OSTRF inspector demonstrates the subjectivity inherent in interpreting AOC, it nevertheless serves no useful purpose to substantially redisturb a stabilized and reclaimed minesite when the regulatory authority has exercised its discretion in good faith and remains satisfied that the applicable program standards, including restoration of AOC and postmining land use capability, have been met. Since environmental goals may be frustrated through the additional siltation and further degradation from a second topsoil removal and replacement, regrading, and revegetation, unless one or more of the three principles enumerated above have been clearly violated, the acceptance by the regulatory authority should stand.

4. Reporting Requirements. None.

5. References.

- a. 42 FR 62643, December 13, 1977.
- b. 44 FR 15227, March 13, 1979.
- c. 48 FR 32911, July 19, 1983.

6. Effect on Other Documents.

Supersedes the policy memorandum entitled "Approximate Original Contour" from the Acting Director, dated June 13, 1985.

7. Effective Date. Upon Issuance.

8. Contact. Chief, Branch of Inspection, (202) 343-5384.