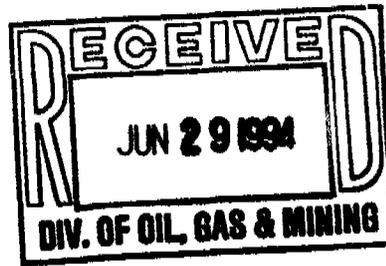


0009

Mountain Coal Company  
West Elk Mine  
Post Office Box 591  
Somerset, Colorado 81434  
Telephone 303 929-5015

Gene E. DiClaudio  
President



June 28, 1994

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

*File ACT/007/017 #2*  
*Copy Jim Swell, Fran, Joe*

Re: Ten-Day Notice: Gordon Creek Nos. 3 and 6 Mines

Dear Mr. Ehmett:

The Albuquerque Office of the United States Office of Surface Mining Reclamation and Enforcement ("OSMRE") recently issued a Ten-Day Notice to the State of Utah Division of Oil, Gas and Mining ("Division") alleging that a violation exists at Mountain Coal Company's Gordon Creek Nos. 3 and 6 Mines, located near Price, Utah. The Gordon Creek Nos. 3 and 6 Mines are reclaimed properties, yet the Ten-Day Notice claims that Mountain Coal Company has violated the Utah program implementing the Surface Mining Control and Reclamation Act (SMCRA) because small portions of the face-up areas at these Mines remained exposed after reclamation. As the Division will no doubt explain in its response to the Ten-Day Notice, leaving portions of these face-up areas is not a violation of the Utah program.<sup>1</sup> Mountain Coal Company nonetheless wishes to take this opportunity to review of the history of the reclamation of this site, and to discuss the inequitable implications of the Ten-Day Notice issued by the Albuquerque Office of OSMRE.

<sup>1</sup> The Ten-Day Notice alleges that Mountain Coal Company has violated Utah Program Rules R645-301 - 553.520; R645-301-553.521; R645-301-553.120. Mountain Coal does not believe that these regulations have been violated and will, if necessary, offer a defense to these allegations at the appropriate time.

**Mining and Reclamation at the Gordon Creek Nos. 3 and 6 Mines.**

The Gordon Creek Nos. 3 and 6 Mines were opened by Ura Swisher in 1975, and were in continuous operation until the mid-1980s. All major disturbance, including creation of portal face-up areas, occurred prior to the enactment of SMCRA. Mountain Coal Company's predecessor, Beaver Creek Coal Company, purchased these mines in 1980.

The Gordon Creek Nos. 3 and 6 Mines ceased operations in September 1983. The reclamation of the site on which both mines are located was completed in November of 1986. As described in the Division's Final Technical Analysis of the reclamation (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. Thus the reclamation of the site was conducted in complete compliance with the Utah program and the permit issued by the Division. The site qualified for Phase I bond release in June of 1987.

Consistent with OSMRE's oversight rule in Utah, OSMRE reviewed 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 Nos. 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).

Mountain Coal is justifiably proud of its reclamation of the Gordon Creek Nos. 3 and 6 Minesite. In 1988, the State of Utah designated the 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 Nos. 3 and 6 Mines 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 the Nos. 3 and 6 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 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.

**The Implications of the Ten-Day Notice**

The Ten-Day Notice from OSMRE's Albuquerque Office alleges that Mountain Coal Company improperly reclaimed the Gordon Creek Nos. 3 and 6 Minesite by leaving portions of portal face-ups in place. The Division approved leaving these vertical faces after reclamation for two reasons. First, because mine operations began before

Mr. Tom Ehmett

June 28, 1994

Page 3

the enactment of SMCRA, the early operators of the Gordon Creek Mines did not preserve spoil, and therefore insufficient spoil existed to backfill fully all vertical faces. Second, the vertical faces left behind are geomorphically similar to other outcrops in the vicinity. Under the Utah program, either rationale was sufficient justification for allowing these vertical faces to remain after reclamation. Mountain Coal Company reclaimed the site in 1987 in strict compliance with a permit issued by the Division and approved by OSMRE. The permit conditions are consistent with the OSMRE-approved Utah program, and thus the drafters of the Ten-Day Notice are mistaken in alleging that the reclamation of the site violates Utah regulations.

Further, the drafters of the Ten-Day Notice apparently want Mountain Coal to destroy the existing reclamation to allow additional backfilling of the site. Disturbing this minesite will have no environmental benefit and is likely to cause considerable environmental harm, at least on a short-term basis. The vegetation at the site 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 re-disturb 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 C). While OSMRE may now wish to second-guess the reclamation process at the Gordon Creek Nos. 3 and 6 Mines, the fact remains that 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

Mr. Tom Ehmett  
June 28, 1994  
Page 4

to reopen the settled issue of how the 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 recognizes that OSMRE considers the proper interpretation of the standard for reclamation to approximate original contour to be of great moment. Mountain Coal is not asking OSMRE to prejudge that important question. Rather, Mountain Coal asks only that OSMRE agree to meet with it and the Division prior to OSMRE's final decision on any enforcement action resulting from the Ten-Day Notice. Mountain Coal would welcome the opportunity to discuss a reasonable and fair resolution of all approximate original contour issues that affect Mountain Coal Company properties in Utah.

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,



Eugene E. DiClaudio  
President

EED:pd

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

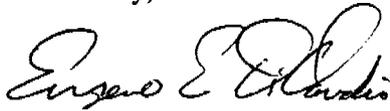
Mr. Tom Ehmett  
June 28, 1994  
Page 4

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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,



Eugene E. DiClaudio  
President

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:

OSM

625 Silver Spur

Albuquerque NM 87102

Number: X-27 - 02 - 526 - 006 TV 1

Telephone Number: (505) 761-1111

Ten-Day Notice to the State of Utah

You are notified that, as a result of a Federal 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: Beaver Creek Coal Co.  
(Or Operator if No Permit)

County: Corkin

Surface

Mailing Address: PO Box 1778 P.O. Box 1778 57501

Underground

Permit Number: JNA/007/017 Mine Name: Golden St. 316

Other

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

Section of State Law, Regulation or Permit Condition believed to have been violated: 817.11(b), (d)

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: 9/26/87

Signature of Authorized Rep.: J. C. Fink

Print Name and ID: J. C. Fink 016

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

For Office Use Only

1a	1b	1c
<input type="checkbox"/> Y	<input type="checkbox"/> Batch	<input type="checkbox"/> Report

2. Name of Permittee

BEAVER CREEK COAL CO

3. Street Address

PO BOX 1378

4. City

PRICE

5. State

UT

6. Zip Code

84501

7. Area Code

801

8. Telephone Number

637-5050

9. MSHA Number

42-01254-

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

970805

11. State Permit Number

TNA/007/017

12. Name of Mine

GORDON 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)

C

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
- B  Mountain Top Removal
- C  Prime Farmlands
- D  Alluvial Valley Floors
- E  Anthracite
- F  Federal Lands
- G  Indian Lands
- H  Other

(None-Federal)

25. Performance Standards (Codes)

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
- K  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  Highwall Elimination
- T  Downslope Spoil Disposal
- U  Post Mining Land Use
- V  Cessation of Operations: Temporary
- W  Other \_\_\_\_\_

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

26. State Permit Number

20071017

27. Date of Inspection  
(Y Y M M D D)

870805

28. Yes  No  Do mining and reclamation activities on the site comply with the plans in the permit?  
If no, provide narrative to support this determination.

29. Indicate number of complete and partial inspections conducted by the State to date for this annual review period:

29a.  Number of Completes

29b.  Number of Partial

30. Indicate number of complete and partial inspections required by the State during this annual review period:

30a.  Number of Completes

30b.  Number of Partial

31. Has inspection frequency been met?

Yes  No

31a.  Completes

Yes  No

31b.  Partial

32. FEDERAL ENFORCEMENT INFORMATION. (Enter violation number. Check appropriate box(es))

Ten-Day Notice No.

07-08-006-006

Notice of Violation No.

Cessation Order No.

Violation Codes

A <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Authorizations to Operate
B <input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Signs and Markers
C <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Backfilling and Grading
D <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Highwall Elimination
E <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Fills and Gullies
F <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Improper Fills
G <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Topsoil Handling
H <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sediment Ponds
I <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Effluent Limits
J <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Water Monitoring
K <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Buffer Zones
L <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Roads
M <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Dams
N <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Blasting
O <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Revegetation
P <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Spoil on the Downslope
Q <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Mining Without Permit
R <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Exceeding Permit Limits
S <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Distance Prohibitions
T <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Toxic Materials
U <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Other Violations

33. Name of Authorized Representative (print or type)

Joe C. Funk

Signature of Authorized Representative

*Joe C. Funk*

Date

08/05/87

Signature of Reviewing Official

*[Signature]*

Date

8/14/87

34. Administrative Information

- a  09.0 Permit Review (Hours)
- b  05.0 Travel Time (Hours)
- c  08.0 Inspection Time (Hours)
- d  03.0 Report Writing Time (Hours)

MSEIR NARRATIVE

PERMIT NUMBER JNA/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 Malenik (DOGM), Harold Sandbeck (DOGM), and Dan Guy (operator). Ground conditions were dry until the mid inspection rain.

Following, is the operation's permitting status:

Permit JNA/007/017, issued 09/19/86, expires 09/19/91 and: 668 acres remain permitted in T135, B8E, 59, 9, 16, 17, 21. 28 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 28 ac.

Following, is the operation's permit stipulations status:

The 7 stipulations for 817.113(1), 817.114(1), 817.52(1), (2), 817.150-156(1), and 817.46(1), (2) are in, approved by DOGM, and closed issues. The 8th stipulation for 817.48(1) is done, but not officially closed by DOGM.

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 II 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 DOGM permit requires surface water sampling at 3-1-W and 3-4-W, quarterly (twice per yr after fall 88), for flow, pH, spec. cond, temp, dis. O<sub>2</sub>, SS, TSS, TDS, hardness, acidity, carbonate, bicarbonate, calcium, chloride, iron, TMC, 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 DOGM. The DOGM permit also requires surface water sampling

MSEIR NARRATIVE

PERMIT NUMBER INS/007/017

INSPECTION DATE 09/05/97

at any discharge from the mine workings if it occurs, quarterly. The EORM permit requires no ground water monitoring. NPDES permit VT-0023060, approved 11/03/93, expiring 06/30/97 (but automatically extended according to E.O. 11651), requires sampling at the pond (the location just states section 16): For a discharge from no precip event, monthly, for flow, TSS, TFe, TDS, Cl<sub>2</sub>, pH; for a discharge from a precip event  $\leq 10$  yr/24 hr, monthly, for flow, TSS, TFe, Cl<sub>2</sub>, 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 - its completed, certified, and approved to be left permanently. One overland flow diversion is required - actually, its a stream channel diversion - its 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; highwalls remain in several areas; the second bench area (going up the HR) is not reclaimed but is pre-law disturbance mostly off of the permit.

Following, is the operation's outstanding action status:

Item 25(c) § 29

TS7-02-006-006, 1091, written 09/05/97, is

MSEIR NARRATIVE

PERMIT NUMBER FWA/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 28 ac boundary should be clearly remarked.

Item 25(D) § 28

TS7-02-116-003, left, 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 NB7-26-6-1, 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(G) § 28

State NS7-26-5-1, issued 08/06/87, 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(I) § 28

State NS7-26-7-1, issued 08/06/87 due 09/05/97, is outstanding for violating this performance standard. Three haulroad 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.



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

Subject Number:  
 INE-26

Transmittal Number:  
 338

Date: 5/26/87

Subject: Approximate Original Contour

Approval: *J. D. 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 315(b)(3) 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 reshaping 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. Rolls 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 816.102(g) or 817.102(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 stabilizing 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 115.14 or 316.102, as appropriate, or the permittee would not have proceeded with resoling 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 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 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.