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

Michael O. Leavitt
Governor

Ted Stewart
Executive Director

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August 29, 1994

Ed Kay, Deputy Director
Department of the Interior
Office of Surface Mining
1951 Constitution Avenue N.W.
Washington, D.C. 20240

Re: TDN X94-020-179-002 TV1, Mountain Coal Company, Gordon Creek #3 & #6 Mines, ACT/007/017, Carbon County, Utah

Dear Mr. Kay:

As provided at 30 CFR 842.11(b) (1) (iii) (A), I am requesting an informal review of the above-referenced Ten Day Notice ("TDN") including the August 18, 1994 finding by the Albuquerque Field Office ("AFO") that the Utah's July 28 TDN response was arbitrary, capricious and an abuse of discretion.

I have enclosed the material the Division of Oil, Gas and Mining ("DOGM") submitted to the AFO on July 28 and ask that you review that information, as well as the position established in this letter, in your informal review of this matter.

In finding Utah's July 28 response inappropriate, the AFO is relying on the September 17, 1993 Federal Register / Vol. 58, No. 179, which finds the presently approved Utah program less effective than the federal counterpart with respect to elimination of highwalls. I can readily agree that the present regulations are less effective than the federal counterpart, and offer the substantial efforts made by DOGM to amend its program in that regard as acknowledgement of our desire to rectify this situation.

I do not believe AFO's position in its August 18 letter regarding continuously mined areas and the need to demonstrate lack of available spoil is germane to this TDN. The reclamation of the Gordon Creek #3 and #6 mines was conducted under the then-approved Utah Program, supported by a Technical Analysis ("TA") dated September 10, 1986. Phase I bond release was approved by the Division June 27, 1987. Although not a requirement of the Utah program at the time, DOGM did address lack of available spoil and topsoil in the September 1986 TA. The AFO

Page 2
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ACT/007/017
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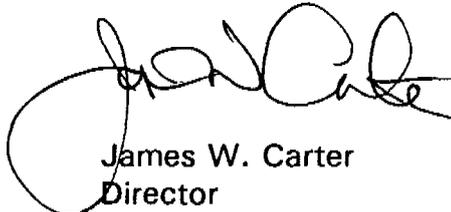
position is a clear attempt to retroactively apply soon to be promulgated regulations to areas reclaimed nearly eight years ago.

The documents attached to this letter demonstrate that OSM management was sensitive to this situation and that, after a meeting with DOGM on November 7, 1991, OSM concluded that complete elimination of highwalls approved under the Utah program would not be required for mines having undergone Phase I bond release.

DOGM has reasonably responded to OSM's direction to amend its program with regard to highwalls, and has reasonably relied on the statements and directives it received from OSM regarding retroactive application of its pending rules. All mines for which Phase I bond release has not been approved will be required to comply with the new highwall rules. Your finding of an appropriate response by Utah will acknowledge the record showing reclamation conducted at Gordon Creek #3 & #6 was in accordance with the Utah regulations in effect at the time the backfilling and grading was completed, and will affirm the position already established by the director of OSM that highwall elimination at this mine is not needed.

I have enclosed a rather lengthy package in support of my position. I would be pleased to answer any further questions you might have regarding the Gordon Creek #3 & #6 TDN or the regulatory history regarding highwall elimination in Utah.

Very truly yours,



James W. Carter
Director

jbe
Enclosures
cc: L. Braxton
J. Helfrich
H:TDN00701.LTR

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** TRANSMIT CONFIRMATION REPORT **

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UTAH DIVISION OF OIL, GAS AND MINING
 FACSIMILE COVER SHEET

DATE: 8-29-94
 FAX # (202) 208-2882
 ATTN: Ed Kay
 COMPANY: Osm
 FROM: Jim Carter
 DEPARTMENT: DOGm

NUMBER OF PAGES BEING SENT (INCLUDING THIS ONE): 3

If you do not receive all of the pages, or if they are illegible, please call (801) 538-5340.

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