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

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July 28, 1994

CERTIFIED RETURN RECEIPT REQUESTED
No. P 540 714 010

Thomas E. Ehmett, Acting Director
Office of Surface Mining
Reclamation and Enforcement
505 Marquette N.W., Suite 1200
Albuquerque, New Mexico 87102

Re: Response to Ten-Day Notice X94-020-179-002 TV1, Mountain Coal Company,
Gordon Creek #3 and #6, ACT/007/017, Folder #5, Carbon County, Utah

Dear Mr. Ehmett:

This letter responds to the above-referenced Ten-Day Notice (TDN), the certified copy of which was received at the Division Office on July 18, 1994. This TDN was issued as a result of TDN X-94-020-179-001TV3 being withdrawn.

Part 1 of 1 of the TDN reads: "Failed to eliminate all highwalls at Mine #3 and #6." Regulation cited: R645-301-553.120.

On June 26, 1987, the Division approved Phase I bond release for the Gordon Creek #3 and #6 mines. That approval was based on the requirements of both the approved plan and of the approved Utah program. The backfilling and grading rules of the Utah Coal Regulatory Program at the time, UMC 817.101, provided a window for retention of highwalls and highwall remnants which were geomorphologically similar to cliffs in the surrounding area. The Utah program has since been amended to eliminate the highwall retention window, and amendments to require the use of all reasonably available spoil to backfill highwalls in the cases of previously and continuously mined areas are pending.

In its technical analysis of September 10, 1986, the Division found that, since the areas were disturbed pre-law, no effort was made to salvage or protect soil materials, and that backfilling to AOC was impractical due to lack of fill materials. The Division also found that the remaining highwalls were "similar in structural composition

Mine file



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to the pre-existing cliffs in the surrounding area, and are compatible with the geomorphic processes of the area." Final Technical Analysis, September 10, 1986, at page 20.

Late in 1991, the Division and OSM had a series of communications regarding the highwall window and other issues. The culmination of those communications was a meeting between representatives of the Division and OSM including Dianne Nielson, Lowell Braxton, Tom Mitchell, W. Hord Tipton, Robert Hagen, John Heider, Albert Kashinski, and John Retrum. One issue of discussion was the compliance status of mines for which Phase I bond release had been approved in reliance on the highwall window. OSM confirmed the understanding reached at that meeting by letter from Robert Hagen dated November 20, 1991, stating, "OSM agreed that the existing Utah rule can be used for bond release until such time as the State program is amended, provided that the State program is properly interpreted."

The Division relied on its understanding of OSM's position that no actions needed to be taken with regard to already reclaimed sites which had achieved Phase I Bond Release before November 7, 1991. That understanding is based on a series of events and communications, a chronology of which is presented here:

| | |
|--------------------|--|
| December 13, 1982 | Utah AOC rules approved as part of the Utah Coal Regulatory Program. |
| September 11, 1986 | Gordon Creek #3 and #6 reclamation permit approved. |
| May 26, 1987 | OSM INE-26 Directive approved: Approximate Original Contour. Last paragraph states: "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 acceptancy of the regulatory authority should stand." |
| June 26, 1987 | Phase I Bond Release approved by Lowell Braxton. |
| August 5, 1987 | OSM Oversight inspection at Gordon Creek #3 and #6. |

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|--------------------|--|
| November 15, 1988 | OSM Oversight inspection at Gordon Creek #3 and #6. |
| April 12, 1990 | Major revisions to the Utah permanent regulatory program rules submitted to OSM on August 11, 1989 approved and effective this date, including R614-301-500, Engineering. (See 30 CFR 944.15 (n)). |
| November 6-7, 1991 | OSM and Division held a meeting in Salt Lake City to discuss issues including public roads, highwalls, AVS, and permit transfers. In attendance were: Dianne Nielson, Lowell Braxton, Tom Mitchell, W. Hord Tipton, Robert Hagen John Heider, Albert Kashinski, and John Retrum. |
| November 20, 1991 | OSM Oversight inspection at Gordon Creek #3 and #6. |
| November 20, 1991 | Letter from Robert Hagen to Dianne Nielson with an OSM summary of the November 6 and 7, 1991 meeting. Item #4 summary notes state: "OSM agreed that the existing Utah rule can be used for bond release until such time as the State program is amended, provided that the State program is properly interpreted. Upon approval of the amendment, all permits for mines that are not in the process of reclamation will be reviewed for compliance with the amended rule." |
| December 5, 1991 | Division response to Draft Summary of OSM/DOGM meeting of November 6 and 7, 1991. |
| December 5, 1991 | Division receives OSM Mine Site Evaluation Inspection Report. The report states: "The portal and stockpile areas had some highwall showing, but I told the DOGM inspectors that I would not address this issue until the Hidden Valley highwall issue was resolved." |
| December 11, 1991 | Letter to Dianne Nielson from Robert Hagen re: TDL 91-02-370-002, Hidden Valley Mine. Paragraph 2 states: ". . . the November 7, 1991 meeting between OSM and DOGM, Mr. Tipton modified OSM's position relative to |

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retroactive application of the proposed changes."
Paragraph 3 states: "At the November 7, 1991 meeting Mr. Tipton also outlined terms for the acceptance of highwalls already released under the existing State program. In accordance therewith, this highwall will not require additional reclamation."

December 17, 1991 Letter to Dianne Nielson from Robert Hagen re: TDL 91-02-370-001 and TDN 89-02-370-003, Trail Canyon Mine. Paragraph 4 states: "The WSC report identifies reclamation issues that should be addressed by DOGM prior to final reclamation of the site. However, consistent with the agreement reached at the November 7, 1991 meeting between OSM and DOGM regarding acceptance of highwalls where Phase I release has occurred"

September 17, 1993 Federal Register Notice re: Utah Program Amendment on Highwalls.

November 12, 1993 Division response to OSM with requested revised and clarified language set out in the September 17, 1993, Federal Register.

March 31, 1994 OSM response to Division's November 12, 1993, submittal.

May 9, 1994 OSM grants Division an extension to May 31, 1994, to respond to March 31, 1994 issue letter.

May 18, 1994 Phase II Bond Release Inspection at Gordon Creek #3 and #6, with Division and OSM in attendance.

May 27, 1994 OSM grants Division an extension to June 30, 1994, to respond to March 31, 1994, issue letter.

June 6, 1994 Decision by Administrative Law Judge Child that Federal NOV No. 93-020-190-03, issued for failure to use all reasonably available spoil to backfill highwalls, is invalid.

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June 20, 1994

TDN X94-020-179-001 TV3 was received at the Division.

June 28, 1994

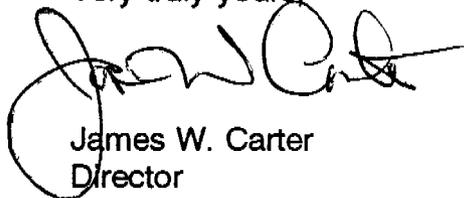
Response to highwall program amendment, UT-25-FOR.

July 18, 1994

The Division receives the letter from OSM-AFO that, "the Albuquerque Field Office has determined that the wrong regulation was cited in parts one and two of the TDN. Part three of the TDN is properly cited, but to avoid confusion, TDN X94-020-179-001 TV3 is being withdrawn and TDN X-94-020-179-002 is being issued. . . ."

In sum, the Division's position is that the mine sites at Gordon Creek #3 and #6 were properly reclaimed in accordance with the Utah regulatory program in effect at the time of performance of the reclamation work and Phase I bond release. In 1991, OSM and the Division jointly agreed to not pursue retroactive application of program amendments approved subsequently, in accordance with Directive INE-26. There have occurred no events since those decisions were made which would justify reversing the decisions made and ratified by OSM regarding the Gordon Creek #3 and #6 mines. I therefore request that OSM find this response to TDN X94-020-179-002 TV1 to be appropriate.

Very truly yours,

A handwritten signature in black ink, appearing to read "James W. Carter", written over a circular stamp or mark.

James W. Carter
Director

vb

Enclosures

cc: L. Braxton

P. Grubaugh-Littig

J. Helfrich

007017T2

2 For PMA's and CMA's the special compliance measures include:
3 ~~{the purposes of UNDERGROUND COAL MINING AND~~
4 ~~RECLAMATION ACTIVITIES, approval is obtained from the~~
5 ~~Division for retention of highwalls in accordance with~~
6 ~~R645-301-553.100; and}~~

7 ~~{553.652.} {The residual highwall is similar in structural composition to the~~
8 ~~preexisting cliffs in the surrounding area and is compatible with~~
9 ~~the visual attributes of the area; and}~~

10 553.610 The requirements of R645-301-553.110 and R645-301-
11 553.120, addressing the elimination of highwalls, will not apply
12 to PMA's or CMA's where the volume of all reasonably
13 available spoil is demonstrated in writing to the Division to be
14 insufficient to completely backfill the reaffected or enlarged
15 highwall. The highwall will be eliminated to the maximum
16 extent technically practical in accordance with the following
17 requirements:

18
19
20 553.611 All spoils generated by the remaining operation or underground
21 mining operation conducted before August 3, 1977, and
22 continued after that date and any other reasonably available
23 spoil will be used to backfill the area;

24 553.612 Reasonably available spoil in the immediate vicinity of the
25 remaining operation or underground mining operation conducted
26 before August 3, 1977, and continued after that date will be
27 included within the permit area.

28
29
30 553.650 Highwall Management Under the Approximate Original Contour
31 Provisions
32 Coal Mining and Reclamation Operations which are not located
33 on PMA's or CMA's and are located on areas which are subject
34 to the approximate original contour provisions which include:

35 553.651 For non-mountaintop removal mining on steep slopes, approval
36 under R645-302-553-270.

37
38 553.652 For situations where a permittee seeks approval for a remaining
39 highwall under the AOC provisions, the permittee will establish,
40 and the Division will find in writing that the remaining highwall

2 will achieve the stability requirements of R645-302-553.530,
3 that the remaining highwall will meet the approximate original
4 contour criteria of R645-301-553.510 and R645-301-553.520,
5 and that the proposal meets the following criteria:

6 ~~553.651.}~~ 553.652.100 The remaining "retained" highwall is not
7 significantly} will not be greater in height or length
8 than the dimensions of existing cliffs and the
9 surrounding area; cliff-like escarpments that were
10 replaced or disturbed by the mining operations;

11 ~~{553.652.}~~ 553.652.200 The {residual} remaining highwall {is} will replace a
12 preexisting cliff or similar {in structural composition
13 to the preexisting cliffs in the surrounding area and
14 is} natural premining feature and will resemble the
15 structure, composition, and function of the natural
16 cliff it replaces;

17 553.652.300 The remaining highwall will be modified, if necessary, as
18 determined by the Division to restore cliff-type habitats
19 used by the flora and fauna existing prior to mining;

20 553.652.400 The remaining highwall will be compatible with the post
21 mining land use and the visual attributes of the area; and

22 ~~{553.653.}~~ 553.652.500 The {residual} remaining highwall {is} will be
23 compatible with the geomorphic processes of the
24 area.

25 553.653 Applicability.
26 Any mining and reclamation plan approved or permit issued by
27 the Division after December 13, 1982 for the reclamation or
28 reduction of highwalls resultant from coal mining will be subject
29 to the curent R645-301-553 rules.

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SALT LAKE CITY, UTAH 84180-1203



VB DGM ACT/007/017 TDN X94-020-179-002 *Folded*

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| | |
|---|---|
| <p>3. Article Addressed to:</p> <p>THOMAS E EHMETT ACT DIR OFFICE OF SURFACE MINING ALBUQUERQUE FIELD OFFICE 505 MARQUETTE NW STE 1200 ALBUQUERQUE NM 87102</p> | <p>4. Article Number P 540 714 010</p> <p>Type of Service:</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Insured <input checked="" type="checkbox"/> Certified <input type="checkbox"/> COD <input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise</p> <p>Always obtain signature of addressee or agent and DATE DELIVERED.</p> |
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| <p>6. Signature - Agent X <i>[Signature]</i></p> | |
| <p>7. Date of Delivery <i>8/1/84</i></p> | |