

0012



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

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Mine Site

July 28, 1994

CERTIFIED RETURN RECEIPT REQUESTED

No. P 540 714 010

Thomas E. Ehmet, 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. Ehmet:

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 This TDN was issued as a result of TDN X-94-020-179-001TV3 being withdrawn.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



P 540 214-010

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

DOGEM VB ACT/007/017 TDN X94-020-179-002

U.S.G.P.O. 1989-234-555

THOMAS E EHMETT ACT DIR	
AFO OSM R&E Street and No.	
505 MARQUETTE NW STE 1200	
P.O., State and ZIP Code ALBUQUERQUE NM 87102	
Postage	\$ 290
Certified Fee	100
Special Delivery Fee	
Restricted Delivery Fee	13
Return Receipt showing to whom and Date Delivered	100
Return Receipt showing to whom, Date, and Address of Delivery	135
TOTAL Postage and Fees	\$ 490 35
Postmark or Date	525 #5

ALBUQUERQUE NM
DEC 1989
525
#5

PS Form 3800, June 1985

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Division also found that the remaining highwalls were "similar in structural composition 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:

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". . . the November 7, 1991 meeting between OSM and DOGM, Mr. Tipton modified OSM's position relative to 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	<u>Federal Register</u> 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, <u>Federal Register</u> .
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 20, 1994	TDN X94-020-179-001 TV3 was received at the Division.

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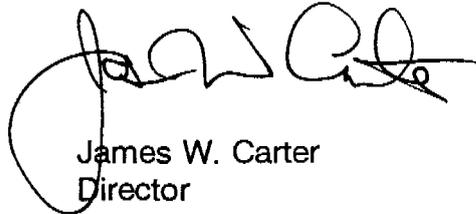
The Division receives the letter from OSM-AFO that, "the Albuquerque Field Office has determined that the wrong regulation was cited in parts one and two of the TDN. Part three of the TDN is properly cited, but to avoid confusion, TDN X94-020-179-001 TV3 is being withdrawn and TDN X-94-020-179-002 is being issued.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

June 28, 1994

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

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,



James W. Carter
Director

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Enclosures
cc: L. Braxton
P. Grubaugh-Littig
J. Helfrich
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