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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
James W. Carter
Division Director

355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340
801-359-3940 (Fax)
801-538-5319 (TDD)

H: OLD FAN

12/12/94

Copy to TA notebook

TO: Permit Supervisor

From: Tom Munson

RE: N.O.V. #94-45-1-1, Review of Old Fan Portal BTCA, Gordon Creek No. 2/7/8 Mines, Mountain Coal Co., INA/007/016-94E, Folder #5, Carbon County, Utah

Synopsis

On November 30, 1994 the Division received an abatement of N.O.V. #94-45-1-1. The portion of the review which this memo addresses is review of the submitted designs for the affected area, since it was felt that the operator's Sed Cad computer run failed to address all the areas identified in the Old Fan Portal Area.

Analysis

The operator has submitted plans to treat the area identified on Plate 3-2 with silt fence and the location of the silt fence is shown on this Plate. The operator has also calculated the amount of insignificant flow coming from this area, as well as, provided a SedCad coputer run on contributions of sediments leaving the area versus a comparison to undisturbed area sediments. The area is partially reclaimed according to the inspector and other Division personnel. This is the reasoning behind the need for treatment of additional contributions of suspended sediment leaving this small area.

Recommendation

The Nov be terminated based on the fact that the operator has provided all the neccessary items to abate the Violation and has provided sediment control and designs to treat the Old Fan Portal Area.

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** TRANSMIT CONFIRMATION REPORT **

Journal No.	:	001
Receiver	:	0000000000000000
Transmitter	:	DIV OIL GAS & MINING
Date	:	Nov 29,94 8:51
Document	:	02 pages
Time	:	01'21"
Mode	:	G3 NORMAL
Result	:	OK

Vernelle Davis
Deputy Kay's Assistant
Confirmed attached
timely filed because
1) it is 5 working
days
2) their fax was
down Monday,
11-28-94.
Per Jan Brown's
conversation w/
Mrs. Davis
11-28-94

Post-It™ brand fax transmittal memo 7671 | # of pages ▸ 2

To Ed Kay - Dpty Dir	From James Carter
Co. OSM	Co. UTAH - DOGM
Dept.	Phone # (801) 538-5340
Fax # (202) 208-2882	Fax # (801) 359-3940

to file
11/29/94
BJ

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7/16 #5

United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
Suite 1200
505 Marquette Avenue N.W.
Albuquerque, New Mexico 87102

November 21, 1994

CERTIFIED RETURN RECEIPT NO. P 079 749 502

RECEIVE
2 3 1994
DIV OF OIL, GAS & MINING

Mr. James W. Carter, Director
Department of Natural Resources
Division of Oil, Gas and Mining
355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203

Re: Division Response to Ten-Day Notice X94-020-352-003 TV2

Dear Mr. Carter:

The Albuquerque Field Office (AFO) received your response to Ten-Day Notice (TDN) X94-020-352-003 TV2 via fax on September 15, 1994. Your response was received within the 10-day period and is considered timely. The TDN was issued as a result of an oversight inspection conducted August 20-21, 1994, of the Gordon Creek 2, 7 and 8 mines. A State inspector was present throughout the inspection.

During AFO's review of your September 15 response, you submitted additional information on October 20, 1994, which was to amplify and clarify the initial response.

Part 1 of the TDN was issued for "Failure to provide in the mine plan, for the elimination of all highwalls. Highwalls at the #2 Mine." In your response, you state that the Division had recognized the inadequacies of the reclamation plan at the Gordon Creek 2, 7 and 8 mines during June of 1991. You further state that a Division Order and Notice of Violation were issued requiring the elimination of all highwalls and that a Settlement Agreement was entered into with the operator for the same purpose. You also provided an "abbreviated chronology" of these actions. Your October letter indicates that you are reviewing the August 6, 1993, response from Mountain Coal Company (MCC) and responses for subsequent deficiency letters.

AFO will agree that the elimination of highwalls at the "Old Fan Portal" and the #7 mine is discussed in the deficiency letter dated June 30, 1994, which you sent to MCC, permittee at the mines. However, the current approved mine plan states

that some highwall will be retained at the #2 mine. The revised mine plan, which was the subject of the deficiency letter, states the highwall at the #2 mine will be "reduced or eliminated based on the stability analysis for the site." This indicates that the operator has not made a firm commitment to eliminate the highwall at the #2 mine. In your response, you did not provide any documentation which clearly shows that the highwall at the #2 mine will be completely eliminated. A review of the June 30, 1994, deficiency letter does not find any reference to the elimination of the highwall at the #2 mine. You have not provided any other deficiency letters addressing the problem with the #2 mine highwall. The last open portal at the mine was sealed in 1990. Shortly after that, the Division became aware that the elimination of the highwalls at the mine would be an issue. After 4 years, there is no assurance that all the highwalls at the mines will be eliminated. Since the Division has not provided any documentation which clearly shows that the highwalls at the #2 mine will be completely eliminated or any documentation to indicate that MCC has been directed to submit a new plan that indicates this will be required, I find your response to violation 1 of 2 to be arbitrary and capricious and therefore inappropriate.

Part 2 of the TDN was issued for "Failure to reclaim the mine according to the schedule approved in the permit. Number 2, 7 and 8 Mine areas." In your response you state:

> The Division has prohibited MCC from following its originally approved reclamation schedule because the approved plan did not comport with Utah's changing regulatory requirement for elimination of highwalls.

In your October response, you indicate that a reclamation schedule will be established once a new reclamation plan is approved.

The reclamation schedule at pages 3-96 and 3-102 of the approved mine plan indicates that reclamation work would be initiated within 90 days of final abandonment of the mining operation and all reclamation work would be completed 17 weeks after it had begun.

The revised mine plan, which has been reviewed and deficiencies sent to the operator, has a reclamation schedule on page 3-61 which is titled "Schedule of Reclamation for the Gordon Creek No. 2 Mine." This schedule, which must apply to the #7 and #8 mine, too, since no other schedule is included in the plan, indicates all reclamation work would be done by October 1993. The June 30, 1994, deficiency letter which resulted from a review of the plan does not list the scheduling of reclamation as a deficiency.

The Utah Coal Mining Rules under 645-300-142 require:

> The permittee will conduct all coal mining and reclamation operations only as described in the approved application, except to the extent that the Division otherwise directs in the permit.

The Division has not provided any documentation which shows the approved reclamation schedule has been changed or that a new schedule is required. Rule 645-301-542.100 requires:

> A detailed schedule and timetable for the completion of each major step in the reclamation plan.

The Utah rules clearly require a detailed and accurate reclamation schedule and that the schedule be followed. The last mining to occur at the site was completed prior to November 1990, at which time the #8 mine was sealed. The #2 mine was sealed in October 1985 and the #7 mine was sealed in 1989. This indicates that the approved reclamation schedule has not been followed as required by the rules. Based on the above, I find your response to violation 2 of 2 to be arbitrary and capricious and therefore inappropriate.

If you disagree with the above finding, you may request an informal review in accordance with 30 CFR 842.11(b)(1)(ii)(A). The request may be filed with this office or with the Deputy Director, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, N.W., Washington, D.C., 20240. Your request must be received within 5 days of receipt of this letter. A Federal inspection may be conducted after the 5-day appeal time has elapsed unless an informal review is requested.

Sincerely,

for Thomas E. Ehmett, Acting Director
Albuquerque Field Office

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

Michael O. Leavitt
Governor
Ted Stewart
Executive Director
James W. Carter
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355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340
801-359-3940 (Fax)
801-538-5319 (TDD)

November 28, 1994

Facsimile Transmittal (letter only)
(202) 208-2882

Certified Return Receipt Requested
P 074 976 425

Ed Kay, Deputy Director
Office of Surface Mining
Reclamation and Enforcement
1951 Constitution Ave., N.W.
Washington, D.C. 20240

Re: Informal Appeal, Ten-Day Notice X94-020-352-003 TV2, Gordon Creek #2, #7 and #8 Mines, Mountain Coal Company, ACT/007/016, Folder #5, Carbon County, Utah

Dear Mr. Kay:

Pursuant to 30 C.F.R. § 842.11(b)(1)(ii)(A), I am writing to request an informal review of the decision of the Albuquerque Field Office ("AFO") that the responses of the Division of Oil, Gas and Mining ("DOGM") to the above-cited Ten-Day Notice ("TDN") are arbitrary and capricious. I am including copies of the TDN, DOGM's response (September 15, 1994), a supplemental response by DOGM (October 20, 1994), and AFO's determination (November 21, 1994) for your review.

Part 1 of the TDN was issued for "Failure to provide, in the mine plan, for the elimination of all highwalls. Highwalls at the #2 Mine." I was not aware that the Office of Surface Mining ("OSM") commonly writes TDNs for alleged permit defects, a troubling development which looks like second-guessing state permitting decisions. Be that as it may, DOGM has the situation well in hand as explained in both of DOGM's responses to the TDN. AFO's determination that DOGM has acted without any rational basis is apparently driven by AFO's review of DOGM's deficiency letters to the operator.

I am also attaching DOGM's most recent correspondence to the operator in the form of a November 21, 1994 deficiency letter which analyzes the site constraints and articulates DOGM's position on highwall elimination, among other

things. As Judge Penn pointed out in his NCA vs. Uram decision, issuance of a Notice of Violation is not the only appropriate response to a TDN. DOGM respectfully submits that technical examination of the site, data gathering and analysis, review of the applicable case and administrative law, and thoughtful application of the requirements of the regulatory program to achieve the most beneficial environmental result, all of which began prior to issuance of the TDN, also constitute a rational response.

Part 2 of the TDN was issued for "Failure to reclaim the mine according to the schedule approved in the permit. Number 2, 7 and 8 Mine areas." Here again, AFO concentrates its review on Division correspondence. Mountain Coal Company ("MCC") failed to complete reclamation by October 1993 because DOGM told them not to. As is evident by DOGM's November 21 letter, MCC still does not have final approval to complete earthwork. This delay has resulted, in no small part, because of OSM's unwillingness to even discuss the technical and regulatory problems of the site. To cite MCC now for following DOGM's instructions would be the arbitrary action.

As you know, the highwall and AOC issues are evolving in the Colorado Plateau because of the technical difficulties an absolutist application of the regulations creates. I have attached the recent opinions of Judges Child and Rampton which shed light on the functional, as well as visual, attributes of AOC and on the distinction between highwalls and other cutslopes associated with underground mining.

I respectfully request that you review the record in this matter and find that the Division's actions in correcting the problems of the Gordon Creek #2, #7 and #8 mine permit are appropriate.

Very truly yours,

James P Braxton
for
James W. Carter
Director

jbe
Enclosures
cc/enc: Lowell Braxton
Pam Grubaugh-Littig
Joe Helfrich
H:GC278.APP