File

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December 1, 1989

CERTIFIED RETURN RECEIPT REQUESTED
No. P 075 063 277

Mr. Robert H. Hagen, Director
Albuquerque Field Office
Office of Surface Mining
Reclamation and Enforcement
Suite 310, Silver Square
625 Silver Avenue, S.W.
Albuquerque, New Mexico 87102

Dear Mr. Hagen:

Re: TDN X89-02-116-2, TV3, Blazon #1 Mine, ACT/007/021, Carbon County, Utah

Pursuant to provisions enumerated in Section (3) (b) of OSM Directive INE 35, the Division disagrees with the findings made by OSM's Albuquerque Field Office (AFO) that the Division's response, parts 1 and 2 of the above-referenced TDN are inappropriate, arbitrary and capricious. The Division hereby requests a timely informal review and appeal of OSM's 11-21-89 finding in this matter.

Number 1 of 3 reads: "Failure to eliminate or reduce all highwalls to closely resemble the general surface configuration of the surrounding terrain. Includes highwalls remaining on backfilled portal slope; former access road cut; and highwall east of the concrete pad which also contains an exposed coal seam."

In the Division's response to the TDN, the Division acknowledged that total elimination of the highwall had not been accomplished by the operator's reclamation program. OSM's finding of an inappropriate response cites 1979 language from the Preamble of Rules and Regulations indicating a responsibility of an operator to return the land to its approximate original contour. I believe that when the topographic relief of the mine site and environs is considered, the reclaimed site does fit within the approximate original contour ("hence the general surface configuration of the surrounding terrain," as cited in the TDN). Nothing about the reclaimed configuration of the site precludes the post-mining land use of industrial for the pad area, and wildlife for the highwall (TDN subject area). The topographic relief in a quarter-mile surface profile commencing at the edge of the pad is approximately 200 feet. The topographic relief of the unreclaimed highwalls is approximately 18 feet. I believe the reclaimed site configuration is not in conflict with the surrounding terrain (817.101 (b)(1) with respect to those portions of this regulation cited in the TDN.

Clearly, approximate original contour has been achieved, and compliance with UMC 817.101 (b)(5)(ii) "...highwalls shall be reduced or eliminated as determined by the Division" (emphasis added) has been achieved. I have enclosed a photograph of the highwalls in question also showing the undisturbed slope that demonstrates that the topographic relief of the remaining highwalls does not remotely approach the topographic relief of the mine environs ("general surface configuration of surrounding terrain" as cited in the TDN). I believe this is also demonstrated by the topographic profile of which I have also enclosed a copy.

To summarize the Division's position on # 1 of 3, the Division acted within the language of 817.101(b)(1) and (5)(ii) by allowing reduction of highwalls, an action well within the discretionary language of these regulations. Since this discretion is allowed by the Coal Regulatory Program, the respective finding that the permitting action and the response to the TDN are in violation and are inappropriate, should be reversed.

Number 2 of 3 reads: "Failure to dispose of underground development waste as approved in the Mining and Reclamation Plan (MRP) for permit INA/007/021. Waste materials were used as backfill on the slope northeast and adjacent to the Little Snyder Canyon culvert inlet area."

The Division's response to number 2 of 3 was (to paraphrase) that prior to issuance of the TDN by OSM, the Division had identified the problem and asked the operator to take steps to cover the "underground development waste," to reseed the area, and amend the MRP accordingly. OSM's finding of an inappropriate response included a citation that the operator was in violation of UMC 817.103 and the Division's guidelines for topsoil and overburden management. I would establish from the outset, that guide lines per say, are not regulations, but rather serve to further the interpretation of regulations. As cited in OSM's inappropriate response, the Division correctly identified a material with very weak acid forming potential (-6 tons/1000 tons of material). Similar acid forming materials in an analogous topographic setting are approved for identical treatment on the opposite side of Little Snyder drainage. The Division ordered the materials to be covered and reseeded as per the requirements of UMC 817.103, although this regulation was not the cited regulation of the TDN. I would submit that by ordering the operator to correct the situation on the ground and amend the plan in advance of the TDN, that the operator was in compliance with the regulation cited in the TDN at or before issuance of the TDN. (The regulation allegedly violated and cited in the TDN was UMC 77l.19, Compliance with Terms and Conditions of a Permit.)

In finding the Division's response inappropriate, OSM chose to expand the sphere of the TDN issue to include UMC 817.103. I would submit that such expansion of issues begs the question of the original TDN, and is an example of OSM's providing a "moving target" to state regulatory authorities on field compliance issues.

There is a practical side to the overall issue, should the appeal officer wish to continue the expansion beyond the regulation cited, as in violation in the TDN. That issue includes the following considerations:

1. Based on data in the MRP, the material in question is very weakly acid forming.

2. The Division did cause the material in question to be buried as per the requirements in the regulation cited by OSM in their expanded response.

3. The material in question is well above the highwater zone of the Little Snyder drainage, as is demonstrated by the photo enclosed that shows location of the questionable materials, the drainage, and the rip rap designed to protect the areas adjacent to Little Snyder drainage. Backfilled materials of this nature were placed on the opposite side of Little Snyder drainage in accordance with the approved MRP.

4. All of the drainage from the area cited in the TDN reports to a sedimentation pond.

5. As a practical rather than a regulatory consideration, the estimated volume of the material in consideration is less than 20 cubic yards. Removal of this material would have jeopardized reclamation already completed, while the burial, reseeding and plan modification allowed by the Division fostered pragmatic, cost effective reclamation by the operator and is in concert with the approved MRP.

6. The Division considered the technical merits of the material in question, the potential hydrologic ramifications and allowed an amendment to the MRP.

I recommend that number 2 of 3 be vacated on the basis of proper amendment of the plan in advance of the TDN, and submit that the Division is applying correct professional judgment in evaluating the technical merits of MRPs.

Best regards,

Lawrence P Braxton
for

Dianne R. Nielson
Director

vb
Enclosures
cc: B. Prince, Holme, Roberts & Owen
L. Braxton
S. Linner
Price Field Office
MI78/65-67

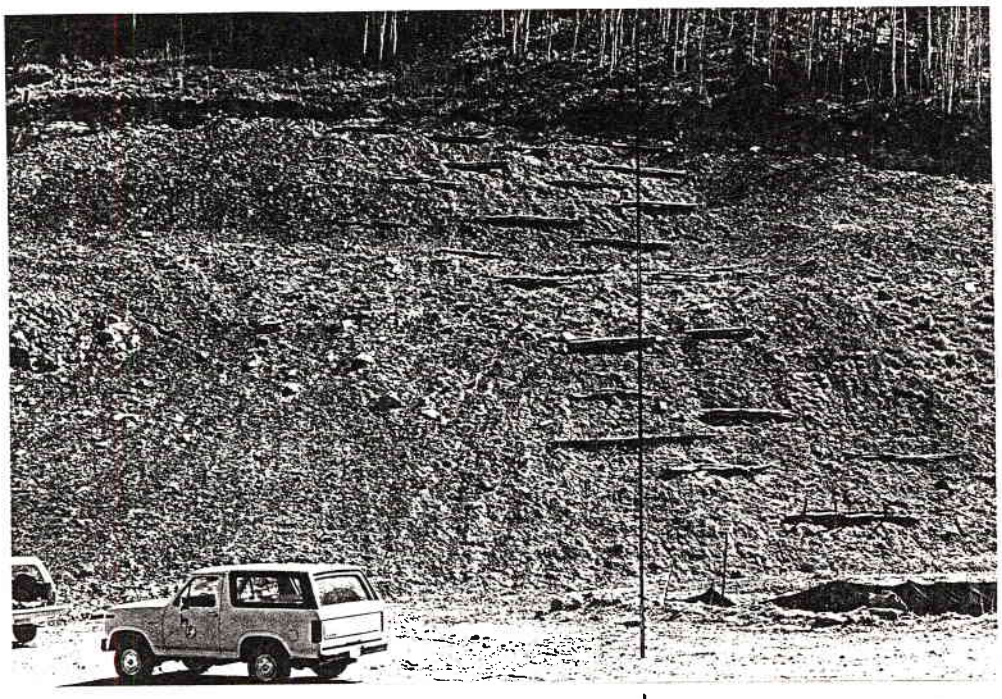

Photo illustrating a portion of the highwall in question, depicting the line of topographic profile drawn throuth the reclaimed area

Photo showing location of underground development waste being placed with respect to ripraped channel and Little Snyder culvert head (prior to covering). Note: these materials were approved for placement on the right side of the photo. The approx. 20 cubic yards that were the subject of the TDN are shown on the left side of the photo.

BLAZON - PROJECTED TOPOGRAPHIC PROFILE THROUGH PORTAL #2