



United States Department of the Interior

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DRR In Reply Refer To:

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DIVISION OF
OIL GAS & MINING

Dr. Dianne R. Nielson, Director
Division of Oil, Gas and Mining
Department of Natural Resources
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, UT 84180-1203

Re: Ten-Day Letter (TDL) 91-02-370-002, Hidden Valley Mine

Dear Dr. Nielson:

The following written finding constitutes the final disposition of the above-noted TDL. This finding is being rendered as a conclusion to the informal review decision of April 30, 1991, by Deputy Director, W. Hord Tipton.

The April 30, 1991, decision affirmed the Albuquerque Field Office's (AFO) determination that the permittee had failed to make a written demonstration addressing the criteria to eliminate highwalls to the maximum extent technically possible. This same letter gave the Division of Oil, Gas and Mining (DOGM) the chance to reevaluate the situation for compliance with the exemption contained in the State program at R614-301-553.650. However, because the Office of Surface Mining Reclamation and Enforcement (OSM) had ordered a revision of the State program pursuant to 30 CFR Part 732, AFO advised you on October 2, 1991, to review the eligibility for exemption according to the conditions outlined in the "732 letter." However, at the November 7, 1991, meeting between OSM and DOGM, Mr. Tipton modified OSM's position relative to retroactive application of the proposed changes. Accordingly, the DOGM response to the above-mentioned TDL addressing the retained highwall and out of pit spoil pad is found to be good cause for not taking further action.

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. DOGM should assure that all documentation regarding compliance with program provisions is retained in the file.

5. Stability Criteria for Retained Highwalls.

Utah Admin. R. 645-301-553.500 (3)	30 CFR 816.102(a)(1),
Utah Admin. R. 645-301-553.523 (3)	30 CFR 817.102(a)(1),
	30 CFR 816.106(b)(3)
	30 CFR 817.106(b)(3)

The introductory clause "[i]n applying the approximate original contour criteria of R645-301-553.650" to proposed Utah Admin. R. 645-301-553.523 effectively restricts the applicability of this rule, which concerns the stability of highwall remnants or retained highwalls, to those highwall remnants or retained highwalls left pursuant to the approved Utah "AOC alternative," which OSM discussed in its September 17, 1993, Federal Register notice (58 FR 48600, 48603-48607). To be consistent with 30 CFR 816.106(b)(3) and 817.106(b)(3), the stability requirements of this rule must also apply to highwall remnants and retained highwalls left pursuant to the exceptions to the requirement for complete elimination of all highwalls for previously mined areas and continuously mined areas.

6. AOC Variances.

Utah Admin. R. 645-301-553.620 816.102(k)(3)(iii)	30 CFR
	30 CFR 817.102(k)(2)

At proposed Utah Admin. R. 645-301-553.620, Utah proposes that postmining slopes may vary from AOC when "[a]pproximate original contour cannot be met" and approval is obtained for incomplete highwall elimination in previously mined areas and continuously mined areas.

Read literally, this proposed rule allows the retention of highwalls in previously mined areas and continuously mined areas only when AOC cannot be met. Utah may wish to reconsider this requirement, because even though it may be technically difficult from an engineering or cost perspective to achieve AOC in such areas, it is almost always physically possible to do so. Given this consideration, Utah could almost never allow the retention of highwalls in previously mined areas and continuously mined areas. Also, the proposal is inconsistent with the provisions at (1) Utah Admin. R. 645-301-553.520, which allows an exception to the requirement for the complete elimination of all highwalls for previously mined and continuously mined areas "where the volume of all reasonably available spoil is demonstrated in writing to the Division to be insufficient to completely backfill the

reaffected or enlarged highwall" and (2) Utah Admin. R. 645-301-553.521, which requires that highwalls on previously mined areas and continuously mined areas be eliminated only to the maximum extent technically practical using all reasonably available spoil. For these reasons, Utah should delete the phrase "Approximate original contour cannot be met and" from proposed Utah Admin. R. 645-301-553.620.

7. AOC and Stability Requirements for Highwall Retention.

Utah Admin. R. 645-301-553.650
816.102(k)(3)(ii)

30 CFR

30 CFR 817.102(k)(1)
SMCRA Section

515(b)(3)

Proposed Utah Admin. R. 645-301-553.650 requires an operator to establish, and the Division to find in writing prior to granting highwall retention approval, that all highwall remnants and retained highwalls meet the criteria of proposed Utah Admin. R. 645-301-553.651 through .655. Although the criteria of the cited provisions must apply to highwall remnants and retained highwalls left pursuant to the Utah AOC alternative, they do not necessarily have to apply to highwall remnants and retained highwalls that are left pursuant to the previously-approved State program exceptions to the requirement to completely eliminate all highwalls for previously mined areas or continuously mined areas.

Moreover, application of the criteria at proposed Utah Admin. R. 645-301-553.651 through .655 to highwall remnants or retained highwalls left pursuant to the exceptions to the requirement for complete elimination of highwalls for previously mined or continuously mined areas raises possible internal inconsistencies in the State program. That is, in accordance with proposed Utah Admin. R. 645-301-553.600 and .620, highwall remnants and retained highwalls left pursuant to those two exceptions to the requirement for complete elimination of highwalls are exceptions to the general AOC requirements of Utah Admin. R. 645-301-553.100. In contrast, highwall remnants and retained highwalls left pursuant to the Utah AOC alternative must actually achieve AOC.

For these reasons, OSM requests that Utah modify its rules to clarify whether the criteria of proposed Utah Admin. R. 645-301-553.651 through .655 apply to all highwall remnants and retained highwalls, or solely to those highwall remnants and retained highwalls left pursuant to the AOC alternative.

As discussed in item Nos. 3 and 4 of this letter, Utah must also revise proposed Utah Admin. R. 645-301-553.650 or

otherwise revise its rules to require that an operator must show, and the Division must find in writing, that the proposed highwall will satisfy the requirements of Utah Admin. R. 645-301-553.510 and .522 in addition to the other requirements specifically referred to in proposed Utah Admin. R. 645-301-553.650 (Utah Admin. R. 645-301-553.651 through .655).

8. Height and Length of Retained Highwalls.

Utah Admin. R. 645-301-553.651
515(b)(3)

SMCRA Section

At Utah Admin. R. 645-301-553.651, Utah proposes language requiring that a retained highwall cannot be "greater in height than the cliffs and cliff-like escarpments that were replaced or disturbed by the mining operations." Utah's proposed rule satisfies the required State Program amendment at 30 CFR 944.16(b) that OSM placed upon the Utah program in a final rule Federal Register notice dated September 17, 1993 (58 FR 48600, 48604; administrative record No. UT-872). However, in satisfying this required amendment, Utah has created another deficiency within the rule.

Specifically, Utah proposes to delete the length requirement for retained highwalls. By removing the length requirement, Utah has eliminated the allowable standard by which the length of retained highwalls are to be measured. Therefore, while proposed Utah Admin. R. 645-301-553.651 would limit the height of highwall remnants and retained highwalls to the height of cliffs and cliff-like escarpments that were replaced or disturbed by the mining operations, it would, at the same time, allow highwall remnants and retained highwalls to have lengths that were not necessarily comparable with those of cliffs or cliff-like escarpments that were replaced or disturbed by the mining operations.

Because proposed Utah Admin. R. 645-301-553.651 would allow for the retention of highwalls that are significantly greater in length than those replaced or disturbed by the mining operations, it would result in a condition that is not AOC. This is not in accordance with the approved Utah AOC alternative and is less stringent than section 515(b)(3) of SMCRA, which requires mining operations to restore the land to AOC.

For these reasons, Utah must revise proposed Utah Admin. R. 645-301-553.651 by restricting the length of retained highwalls by reference to the length of cliffs or cliff-like escarpments that were replaced or disturbed by the mining operations.

9. Applicability Date of Utah's AOC Alternative.

Utah Admin. R. 645-301-553.652
515(b)(3)

SMCRA Section

At Utah Admin. R. 645-301-553.652, Utah proposes to delete the requirement that "[t]he retained highwall [replace] a preexisting cliff or similar natural premining feature and [resemble] the structure, composition, and function of the natural cliff it replaces * * *," which Utah had proposed to OSM in its September 30, 1992, amendment (administrative record No. UT-788) and which OSM had approved in its September 17, 1993, Federal Register notice (58 FR 48600, 48604-6). In that notice, OSM found that highwalls may be retained pursuant to the Utah AOC alternative only when they replace natural features of a similar nature and closely resemble natural premining features in size, form, and function (finding No. 3(a), 58 FR 48600, 48605). By deleting the previously approved requirement, Utah has now effectively removed the underlying basis for allowing highwall retention in accordance with the Utah AOC alternative and section 515(b)(3) of SMCRA. In this respect, Utah's proposed deletion makes proposed Utah Admin. R. 645-301-553.652 less stringent than section 515(b)(3) of SMCRA.

At Utah Admin. R. 645-301-553.652, Utah also proposes to add the requirement that Utah's AOC alternative criteria at Utah Admin. R. 645-301-553.651 through .655 apply to any highwall created after December 13, 1982. In the September 17, 1993, Federal Register notice (finding No. 3(b), 58 FR 48600, 48605-6), OSM found that Utah Admin. R. 645-301-553.652 must apply to all highwall remnants and retained highwalls approved by the Division pursuant to the Utah AOC alternative to the requirement to completely eliminate all highwalls (the provisions at Utah Admin. R. 645-301-553.510, .522, .523, and .650 through .655), regardless of the date that the highwalls were created. In this respect, Utah's proposed addition makes proposed Utah Admin. R. 645-301-553.652 less stringent than section 515 of SMCRA.

10. Editorial Comments.

At Utah Admin. R. 645-301-553.120, on page 1, line 3, and page 2, line 1, the parenthetical description of Utah Admin. R. 645-301-553.620 should read "previously mined areas and continuously mined areas" instead of just "previously mined areas."

At Utah Admin. R. 645-301-553.631, on page 6, line 3, because of the sequential listing of the related rules at Utah Admin. R. 645-301-553.630, .631, and .632, Utah should end Utah

Admin. R. 645-301-553.631 with a comma rather than with a period.

At Utah Admin. R. 645-301-553.650, on page 6, line 8, Utah should for citation consistency, delete the phrase "Ut. Admin." On line 10, Utah needs to revise the citation "R645-553.651" to read "R645-301-553.651." On line 11, Utah needs to revise the citation "R645-303-553.655" to read "R645-301-553.655."

At Utah Admin. R. 645-301-553.655, on page 7, line 1, Utah should for grammatical consistency with the language in the related rules at Utah Admin. R. 645-301-553.653 and .654, use the phrase "will be" rather than the word "is" when discussing the applicable requirements.