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United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
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Albuquerque, New Mexico 87102

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SEP 21 1994

CERTIFIED RETURN RECEIPT: #P-293-288-861

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

SEP 23 1994

Re: Response to Ten-Day Notice (TDN) X94-020-179-003 TV1, Mountain Coal
Company Huntington #4 Mine, Permit ACT/015/004

Dear Mr. Carter:

In accordance with 30 CFR 842.11, the following is a written finding regarding the Division of Oil, Gas and Mining's (DOGM) response to the above referenced TDN. DOGM's response to the referenced TDN was received in this office via fax on July 28, 1994, within the 10-day period.

The TDN was issued for failure to eliminate all highwalls at the Huntington #4 Mine.

There are three specific exceptions to the Surface Mining Control and Reclamation Act's (SMCRA) requirement for elimination of all highwalls that have been recognized by the Office of Surface Mining Reclamation and Enforcement (OSM). One is the "Continuously Mined Area" exception. Given the information received by the Albuquerque Field Office (AFO), this mine site appears to be a "Continuously Mined Area." This term pertains only to underground mining operations which created highwalls prior to the effective date of SMCRA and continued operations thereafter.

Utah has proposed an amendment to their State program which would provide an exemption from complete highwall elimination on these continuously mined sites where the volume of all reasonably available material is demonstrated in writing to DOGM to be insufficient to completely backfill the highwall. At this time, OSM has approved the pertinent parts of the proposed amendment on September 17, 1993 (FR, Vol. 53, No. 179); i.e., the continuously mined provisions.

It is true at the time OSM, along with the Bureau of Land Management and U.S. Forest Service, concurred with DOGM on a Phase I bond release on October 31, 1986, that the continuously mined provisions were not part of the approved program.

Mr. James W. Carter

2

As of today, the remaining obstacle with the provision (continuously mined) is that it needs to be promulgated at the State level to be effective. However, based on the record (including subsequent inspection reports), it appears that all reasonably available material was used to backfill the highwalls at the Huntington #4 Mine and the operator appears to have made a demonstration in the approved reclamation plan that all reasonable available spoil would be utilized to reclaim the highwalls.

Given the above, AFO finds that the response of DOGM on TDN X-94-020-179-003 was appropriate.

Additional Concern:

AFO believes DOGM's position, as stated in its TDN response that the "Approximate Original Contour Window" in the current regulations allows for the creation of highwalls where none existed prior to mining, is without merit. An explanation of this is found in the Secretary's finding No. 3(A) in Federal Register Vol. 58, No. 179, Friday, September 17, 1993, Rules and Regulations. Since DOGM's interpretation of this rule does not meet the Federal requirements, the State must obtain approval for the continuously mined criteria or require that all highwalls effected or created by mining operations be eliminated.

Sincerely,



Thomas E. Ehmett, Acting Director
Albuquerque Field Office