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Mine file

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)

July 28, 1994

CERTIFIED RETURN RECEIPT REQUESTED
No. P 540 714 011

Thomas E. Ehmett, 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 X94-020-179-003 TV1, Mountain Coal Company, Huntington #4 Mine, ACT/015/004, Folder #5, Emery County, Utah

Dear Mr. Ehmett:

This letter is the Division's response to the above-referenced Ten-Day Notice (TDN), the certified copy of which was received at the Division Office on July 18, 1994.

Part 1 of 1 of the TDN reads: "Failed to eliminate all highwalls at Huntington #4 Mine." Regulation cited: R645-301-553.120. On June 12, 1986, the Division and OSM conducted a Phase I bond release inspection of the Huntington #4 Mine. On November 10, 1986, the Division approved Phase I bond release for the Huntington #4, with concurrence from OSM (see letter dated October 31, 1986, from Robert Hagen). This approval was based on the requirements of the approved plan and upon the requirements of the approved Utah program. OSM had reviewed and concurred with this approved plan.

With regard to highwalls, by letter to the Forest Service dated March 19, 1985, OSM stated that **"Beaver Creek Coal Company has committed on pages 3-61 and 3-62 to reduce the highwall heights along the pad and road using downslope material to backfill. Totally backfilling the road and pad to the original contour will not be feasible due to the steepness of the slopes in these areas. Instead, the applicant will achieve geomorphic and geotechnical stability at a reduced slope."**

At the time of Phase I bond release, the backfilling and grading rules of the Utah Coal Regulatory Program, UMC 817.101, provided a window for retention of highwalls which were geomorphologically similar to cliffs in the surrounding area. The Utah program is currently being 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. At the time of Phase I bond release, however, no such provisions existed in the state program. In short, part 1 of the TDN is without any regulatory basis.

The Division found, in its technical analysis of March 14, 1985 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 Division also found that "the 'retained' highwalls are compatible in height and length to existing cliffs in the area and have a Static Safety Factor (SSF) of 3.00 for dry conditions and 2.73 for saturated conditions. Further, the Division found that "Retained highwalls were located on the south-facing slope of the canyon. Cliffs and rock exposures are common for the south-facing slopes in this area. The structural composition is consistent with pre-existing cliffs in the surrounding terrain, the cliff units in the coal-bearing Blackhawk Formation." Final Technical Analysis, March 14, 1985, page 21.

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. At issue was the compliance status of mines for which Phase I bond release had been approved in reliance on the highwall window, among other issues. OSM stated its position 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 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.
February 5, 1985	Division submits final technical analysis and Decision Document to OSM for review and concurrence.
March 14, 1985	TA is finalized in concurrence with OSM.
March 19, 1985	OSM sent letter to FS documenting how their issues had been resolved in the permitting process. Notably, page 1 of the letter states that "Beaver Creek Coal Company has committed to reduce the highwall heights along the pad and road using downslope material to backfill. Totally backfilling the road and pad to the original contour will not be feasible due to the steepness of the slopes in the areas. Instead the applicant will achieve geomorphic and geotechnical stability at a reduced slope."
April 16, 1985	Division issues Huntington #4 Mine permit.
April 19, 1985	OSM issues Huntington #4 Mine permit.
September 24, 1985	Inspection of Huntington #4 Mine site by Tom Wright, Division inspector. The report states that "material was being pulled from the downslope side by a backhoe and placed against the highwall. The recontoured slopes for the section of the access road already reclaimed appeared to adequately match the approved plan requirements."
March 7, 1986	Division sends all correspondence to OSM-AFO regarding Huntington #4 Mine Phase I Bond Release.
June 12, 1986	Joint Division-OSM Phase I Bond Release Inspection at Huntington #4 Mine.

June 23, 1986	Letter to OSM-AFO from Lowell Braxton, transmits memo to file from Pamela Grubaugh-Littig, Phase I Bond Release inspection at Huntington #4 Mine.
July 24, 1986	Letter from Robert Hagen to Dianne Nielson concurs with the June 23, 1986 inspection report and requests further documentation.
September 24, 1986	Dianne Nielson letter to Robert Hagen with copies of information requested in July 24, 1986 letter.
October 31, 1986	Letter to Dianne Neilson from Robert Hagen states that, "Western Field Operations has reviewed the documentation provided and hereby concurs that the requirements at UMC 800.40 necessary to conclude a Phase I Bond release on Federal lands have been satisfied."
November 10, 1986	Division approved Phase I bond release at Huntington #4 Mine, with OSM concurrence.
May 26, 1987	OSM INE-26 Directive approved: Approximate Original Contour. Last paragraph states that: "While a subsequent different AOC opinion of an OSMRE inspector demonstrates the subjectivity inherent in interpreting AOC, it nevertheless serves no useful purpose to substantially redisturb a stabilized and reclaimed minesite when the regulatory authority has exercised its discretion in good faith and remains satisfied that the applicable program standards, including restoration of AOC and postmining land use capability, have been met. 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.

May 28, 1987	OSM Oversight inspection at Huntington #4 Mine.
March 9, 1988	OSM Oversight inspection at Huntington #4 Mine. The report (page 2 - Upper Bench) states that "At that point we continued to the upper bench switchback where we departed the road for the purpose of inspecting the reclaimed bench. Generally, the bench is in good repair."
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)).
March 28, 1991	OSM Oversight inspection at Huntington #4 Mine.
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	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."
November 20, 1991	OSM oversight inspection at Huntington #4 Mine. The report states that "the highwalls and road cut are not addressed in this inspection pending a decision in the Hidden Valley highwall issue."

December 5, 1991	Division response to Draft Summary of OSM/DOGM meeting of November 6 and 7, 1991.
December 11, 1991	Letter to Dianne Nielson from Robert Hagen re: TDL 91-02-370-002, Hidden Valley Mine. Paragraph 2 states: "...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	Federal Register 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 Federal Register.
March 31, 1994	OSM response to Division's November 12, 1993 submittal.
April 27, 1994	OSM oversight inspection at Huntington #4 Mine.
May 9, 1994	OSM grants Division an extension to May 31, 1994 to respond to March 31, 1994 issue letter.

May 18, 1994	Joint Division-OSM Phase II bond release Inspection at Huntington #4 Mine.
May 27, 1994	OSM grants Division an extension to June 30, 1994 to respond to March 31, 1994 issue letter.
June 6, 1994	Decision by Administrative Law Judge Child that Federal NOV No. 93-020-190-03, issued for failure to use all reasonably available spoil to backfill highwalls, is invalid.
July 6, 1994	Letter to Tom Ehmett from Lowell Braxton requesting OSM concurrence for Phase II bond release.
July 15, 1994	TDN #94-020-179-003 issued.

In sum, the Division's position is that the Huntington #4 Mine was 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 re-evaluating the circumstances. I therefore request that OSM find this response to TDN X94-020-179-003 TV1 to be appropriate.

Very truly yours,

James W. Carter
Director

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

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P 540 714 011

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