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United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
WASHINGTON, D.C. 20240

TAKE PRIDE IN AMERICA

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DIVISION OF
OIL, GAS & MINING

Dianne R. Nielson, Ph.D.
Director, Division of Oil, Gas
and Mining
3 Triad Center, Suite 350
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Salt Lake City, Utah 84180-1203

Dear Dr. Nielson:

This is in response to your September 11, 1991, letter requesting informal review of the Albuquerque Field Office (AFO) Director's determination that your agency did not take appropriate action with respect to ten-day letter (TDL) number 91-02-246-001, alleged violation two of two (Cal Mat Company, Hidden Valley Mine). The TDL alleges that the permittee failed to reshape all cut and fill slopes to be compatible ... or failed to meet the requirements for backfilling and grading. The violation is alleged to exist in connection with the internal access road and an out of bench spoil pad.

In your request for informal review, you explain that your agency ordered the operator to revise the reclamation plan to address the backfilling and grading deficiencies noted in the TDL and that the intent of the revision was to clarify the reclamation plan in order to authorize the existing field configuration. You maintain that since the alleged violation was cited through a TDL as a permit defect, a modification of the reclamation plan rather than a new field configuration was the evident solution to the problem.

I note in the record that another TDL (91-02-370-002) informal review involving this mine has not been brought to closure pending my request that our agencies jointly evaluate whether the highwall retention provisions at R614-301-553.650 apply. The part of the instant TDL that applies to the out of bench spoil pad appears at this time to be inextricably linked to this pending TDL because if a highwall exemption cannot be supported, the out of bench spoil pad would be needed as backfill to completely eliminate the existing highwalls. Under these circumstances, I will defer my review of the TDL as it relates to the spoil pad until I am informed of the disposition of TDL 91-02-370-002.

With respect to the part of the TDL that applies to the internal access road, I generally agree with the AFO Director's position that under both the Utah and Federal regulations, restoration of roads not retained for use under an approved postmining land use must include reshaping of cut and fill slopes as necessary to be compatible with the postmining land use and to complement the drainage pattern of the surrounding terrain. In discussing this requirement, the preamble to the 1979

Federal counterpart to Utah rule R614-301-762 (44 FR 15258) explains that while the road prism need not be replaced to achieve approximate original contour, the road should be blended into the topography. This position was maintained in a subsequent rulemaking pertaining to roads in 1988 (53 FR 45205).

However, in determining the extent to which cut and fill slopes need to be reshaped, I believe it is reasonable to consider the degree to which such slopes have, through the construction process, become compatible with the surrounding terrain, drainage patterns and postmining land use. As shown in photographic exhibits of the minesite, the natural terrain surrounding the road consists of rock cliff outcrops interspersed with areas of sparsely vegetated colluvial material which closely matches the cut and fill slopes of the roadway. Furthermore, the cut and fill slopes show no apparent signs of instability and do not interfere with the approved postmining land use.

Under these circumstances, I find that in this specific case, the action taken by your agency to revise the permit to allow the retention of the existing road features does not constitute an abuse of discretion under the Utah program. Accordingly, I reverse the determination of the AFO Director.

Sincerely,

W. Hord Tipton
Deputy Director
Operations and Technical Services

cc: Cal Mat Company
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