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5/6/91 cc L. Braxton
DRN

United States Department of the Interior

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

TAKE PRIDE IN AMERICA

APR 30 1991

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DIVISION OF
OIL GAS & MINING

Dianne R. Neilson, Ph.D.
Director, Division of Oil, Gas,
and Mining
3 Triad Center, Suite 300
355 West North Temple
Salt Lake City, Utah 84180-1203

Dear Dr. Nielson:

This is in response to your March 25, 1991, letter requesting an informal review of the Albuquerque Field Office Director's (AFOD) determination that your agency has not taken appropriate action with respect to the alleged violation reported in Ten-Day Letter (TDL) 91-02-370-002TV1. The TDL alleges that the California Material Company's Hidden Valley Mine, ACT/015/007, of Emery County, Utah, failed to make a written demonstration addressing the required criteria to eliminate highwalls to the maximum extent technically possible.

In your request for review, you explain that the highwall had been eliminated in the initial reclamation effort, but when faced with controlling erosion on the backfill after a storm event, the operator was permitted to modify the reclamation plan and install a diversion bench at the top of the fill to effectively divert overland flow. You maintain that this modification represents a sound technical solution to a documented field problem.

Under the approved Utah program at R614-301-553.520, all highwalls must be completely eliminated except if the site qualifies under the exemptions provided at R614-301-553.520 or R614-301-553.650. In this instance, the exemption at 553.520 does not apply since, as you acknowledge, there is sufficient material in the pad to eliminate the highwall. With respect to the exemption allowed under 553.650 of the Utah regulations, you provide no argument supporting its applicability at this site even though the photographs of the record indicate the possible qualification for such exemption.

Based on the arguments presented in your request for an informal review and your acknowledgement that sufficient spoil is reasonably available to completely eliminate the highwall, I find that your agency's decision not to require complete highwall elimination is inconsistent with the highwall elimination

requirements of the approved Utah program. Accordingly, the determination of the AFOD is affirmed and a Federal inspection is hereby ordered.

However, by this letter, I am also instructing the AFOD to invite your participation during the Federal inspection so that both our agencies can evaluate whether the backfilling and grading and extent of remaining highwall can qualify under the exemption provided under Utah rule 553.650. To the extent that the minesite is determined by both our agencies to fall within the exemption, I would hope your agency would provide a written finding to the AFOD for the record to avoid further Federal intervention in this case.

Sincerely,

FOR W. Hord Tipton
Deputy Director
Operations and Technical Services

cc: California Material Co.
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