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December 11, 1992

RECEIVED
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DIVISION OF
OIL, GAS & MINING

HAND DELIVERED

Dr. Dianne R. Nielson
Utah Division of Oil, Gas & Mining
355 West North Temple
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Salt Lake City, Utah 84180

RE: Revegetation Standards - Hidden Valley Mine

Dear Dr. Nielson:

At the request of Hidden Valley Coal Company ("HVCC"), we have reviewed the application of revegetation standards to the road and stream buffer area at the Hidden Valley Mine ("Mine"). As a result of the settlement discussions on December 3, 1992 between the Division of Oil, Gas & Mining ("Division") and HVCC, the parties are reviewing alternatives for the abatement of NOV 91-21-8-2 which is currently in litigation and resolution of the conditions of the May 2, 1980 stream buffer zone variance. HVCC is anxious to resolve these matters to assure the certainty as to its remaining reclamation obligations at the Mine. HVCC seeks to determine applicable revegetation standards, the specific areas of abatement to which these standards apply and the long-term obligations incurred by undertaking revegetation under the abatement plan. HVCC seeks to achieve a written consent decree or stipulation to avoid the cost and delay of litigation.

I. DO THE REVEGETATION STANDARDS APPLY TO THE AREAS CITED?

A. The Road As An Approved Post-Mining Land Use

The Division approves the road to the Mine as a post-mining land use under HVCC's 1986 reclamation plan. The Division's revegetation requirements provide a clear exception for roads which are approved as a post-mining land use.

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R645-301-353. Revegetation: General Requirements. The permittee will establish on regraded areas and on all other disturbed areas, except water areas and surface areas of roads that are approved as part of the postmining land use, a vegetative cover that is in accordance with the approved permit and reclamation plan [emphasis added].

Under these regulations, the surface of the Mine road is not subject to revegetation standards.

B. Road as a Previously Disturbed Area

The road to the Mine was constructed in 1980, was not reclaimed to the requirements of the permanent program and may have been redisturbed by reclamation operations. Pursuant to the Division's regulations, revegetation standards applicable to the Mine road outcrops may be only those necessary to control erosion. R645-301-356.250 provides:

For areas previously disturbed by mining that were not reclaimed to the requirements of R645-200 to R645-203 and R645-301 to R645-302 and are remined or otherwise redisturbed by coal mining and reclamation operations, at a minimum, the vegetative ground cover will be not less than the ground cover existing before redisturbance and will be adequate to control erosion.

C. Vegetation and Erosion Control Standards

The erosion control standards applicable to roads specifically include "vegetating or otherwise stabilizing all exposed surface in accordance with current, prudent engineering practices." R645-301-752.210. In addition, cut and fill slopes of roads not approved as a post-mining land use must be reshaped to complement the drainage pattern of surrounding terrain. R645-301-762. However, this requirement is not applicable to the Mine road which has been approved as a post-mining land use. Id.

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D. The Road as an Exception to a Disturbed Area

The Division's revegetation standards apply to "disturbed areas." R645-301-353. The term "disturbed area" is defined at R645-100-200 to exclude "roads that are designed, constructed and maintained in accordance with R645-301 and R645-302." Although the Mine road was designed and constructed in 1980 prior to adoption of the permanent standards, it may still qualify as an "existing structure." Under the definitions at R645-100-200, an "existing structure" is defined to include those built prior to January 21, 1981. The variance which was granted to HVCC's road under the terms of the 1986 permit may constitute an "existing structure exemption" under R645-100-420. If the Mine road is an "existing structure," it only needs to meet performance standards, not design standards. As indicated above, the surface of roads approved as a post-mining land use are specifically excluded from revegetation performance standards. In addition, cut and fill slopes may not be "disturbed areas" if the road otherwise meets the requirements of R645-301. Under R645-301, the only applicable standards appear to be use of revegetation or other engineering practices as erosion control.

In sum, this circular argument leads HVCC back to erosion control of outcrops by revegetation or other engineering practices. The reference area of the outcrops would appear to be the vegetation growing on the outcrops prior to redisturbance or that needed to control erosion. It seems unlikely that vegetation adequate to control erosion will succeed. Therefore, alternate engineering practices may be required.

II. APPLICATION OF REVEGETATION STANDARDS TO STREAM BUFFER ZONE

On May 2, 1980, the Division granted a variance to the stream buffer zone requirements at the Mine with the stipulation that the outslope of the fill of a pad area be stabilized and that runoff from the outslope meet the effluent limitations. HVCC believed that the terms of this variance were met long ago, however, the Division further required that the operator treat the outslope of the "A" seam. August 5, 1992 Division Memorandum. HVCC initially agreed to revegetate a small area on the outslope of the A-seam pad. However, the Division concluded that revegetation of this small area would restart the ten-year bond clock for reclamation liability. Therefore, by letter dated September 25, 1992, HVCC withdrew the seeding from its plan of

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compliance. Under the terms of the settlement proposal, the Division has asked that this seeding take place.

A. A-Seam Pad as a Previously Disturbed Area.

The standard of revegetation applicable to the A-Seam pad as an area previously disturbed by mining is set forth at R645-301-356.250. Under this provision:

the vegetative ground cover will be not less than the ground cover existing before redisturbance and will be adequate to control erosion.

The pad was constructed prior to adoption of permanent program standards and would appear to be a previously disturbed area.

B. The A-Seam Pad as an "Existing Structure."

Under the definitions of R645-100-200 an "existing structure" is defined to include structures built prior to January 21, 1981. The A-Seam Pad was built prior to this date and a variance was granted to the structure in 1980. Therefore, the pad would appear to be an "existing structure exemption" under R645-100-420 which only must meet performance standards, not design standards.

III. DOES REVEGETATION RESTART THE BOND CLOCK?

The Division requires a period of ten years of extended responsibility for successful vegetation. R645-301-357.220. Pursuant to R645-301-357.100, this ten year period commences:

after the last year of augmented seeding, fertilization, irrigation or other work, excluding husbandry practices that are approved by the Division in accordance with R645-301-357.300.

Under this regulation, if seeding of the stream buffer zone and or the road out slopes is considered to be revegetation, this work would appear to restart the bond clock.

Certain exceptions to extending this period of liability appear to be available. If seeding is not undertaken for the