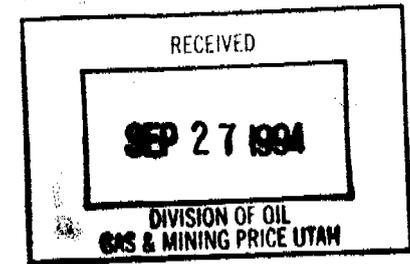




The CalMat Companies



September 20, 1994

VIA FACSIMILE
No. 801/359-3940

James Carter, Director
UTAH DIVISION OF OIL, GAS & MINING
3 Triad Center, Suite 350
Salt Lake City, Utah 84180

Re: **Hidden Valley Mine - ACT/015/007**

Dear Director Carter:

We appreciated the opportunity to meet with you and the Division staff at the Hidden Valley Mine on August 31, 1994. We also appreciated your timely response to questions raised in the field by letter of September 14, 1994 (the "letter"). Hidden Valley Coal Company ("HVCC") would like to clarify certain issues raised in that letter.

You suggest at page 2 of the letter that there is no basis upon which to request a variance from the requirement to post signs and markers. However, HVCC already obtained a stream buffer zone variance on May 2, 1980, to allow construction of a road within 100 feet of a stream. In addition, this road has been approved as a post-mining land use. Therefore, it would appear that the need for marking the 100-foot buffer zone to prevent surface disturbance is obviated by the Division's own variance which allowed road construction within this zone. Any further requirement to mark the remaining buffer zone appears to apply exclusively to mining operations rather than reclamation.

Under the Utah Coal Program, stream buffer zone markers and perimeter markers are only required for surface mining operations as distinguished from the reclamation activities at the Hidden Valley Mine. Your letter identifies signs and marker regulations at R645-301-521.200-521.270 as authority for potential enforcement action. These regulations clearly relate to the section 520 "operation plan" requirements. R645-301-520. HVCC does not have an operation plan and is permitted only for reclamation activities. R645-301-521.250 requires that signs be maintained only during the activities to which they pertain. The stream buffer zone and perimeter markers relate to active surface operations rather than Phase II reclamation activities.

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As you are aware, Phase II reclamation relates primarily to establishment of revegetation which does not include active surface operations. See R645-880.300, 310, 320.

The purpose of buffer zone markers are to protect buffer zones from active operations. The buffer zone marker regulations at R645-301-521.261 provide that:

For the purposes of underground coal mining and reclamation activities, signs will be erected to mark buffer zones as required under R645-301-731.600 and will be clearly marked to prevent disturbance by surface operations and facilities.

The term "surface operations" is found within the broader definition of "surface coal mining operations" at Utah Code Ann. §40-10-4(20)(a): "Surface operations and surface impacts incident to an underground coal mine . . ." These definitions apply to active surface operations as opposed to Phase II reclamation activities. Indeed, logically, stream buffers should be marked to protect buffer zones from active mining operations. However, because the HVCC site is currently in Phase II reclamation, there does not appear to be a need to mark the buffer zone where there are no active operations to disturb the area.

Similarly, the perimeters of "disturbed areas" must only be marked under R645-301-521.250 for "areas affected by surface operations or facilities before beginning mining activities." Once again, this requirement does not appear to apply to HVCC's "reclamation only" permit. Consistent with R645-301-521.250, signs must be maintained only during the activities to which they pertain. In this case, the road is not being used for mining and is an approved post-mining land use.

As a separate matter, and one not raised in your letter, any future requirements for vegetation of the outcrops of the HVCC road are questionable. The Division approved the road as a post-mining land use under HVCC's reclamation plan. R645-301-353 provides that "surface areas of roads that are approved as part of the post-mining land use" are excepted from revegetation requirements. By definition, the term "road" means:

A "surface right of way for purposes of travel by land vehicles used in coal exploration or coal mining and reclamation operation. A road consists of the entire area within the right of way, including the road bed, shoulders, parking and side areas, approaches, structures, ditches, and surface (emphasis added).

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Roads are further excluded from the term "disturbed area" with respect to revegetation standards of success for siltation structures. R645-100-200.

We appreciate the opportunity to review these issues with you.

Sincerely,
HIDDEN VALLEY COAL COMPANY



Lee Edmonson

LE/cn
Enclosures

cc: Bill Malencik (Via Facsimile 801/637-8603)
Joe Jarvis, JBR Salt Lake Office
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