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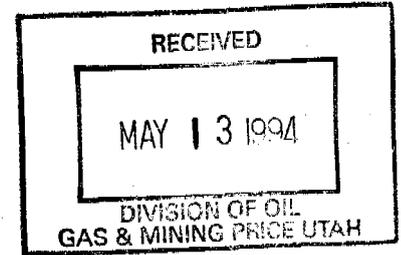
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HAND DELIVERED

May 12, 1994

James W. Carter
 Director
 Utah Division of Oil, Gas & Mining
 3 Triad Center, Suite 350
 355 West North Temple
 Salt Lake City, Utah 84180-1203



RE: TDN X-94-020-190-001 TV1, Hidden Valley Coal Company,
 Permit No. ACT/015/007

Dear Director Carter:

On behalf of Hidden Valley Coal Company ("HVCC"), we have reviewed the above-entitled TDN concerning the HVCC Permit No. ACT/015/007. At the outset, it appears that the TDN is invalid in that it cites a regulatory provision which is not applicable to the Hidden Valley Mine. As you are aware, this site has been reclaimed and is not operational. The Office of Surface Mining Reclamation & Enforcement ("OSM") cites the nature of violation as "failure to control or prevent erosion on the reclaimed access road." OSM inappropriately cites operational design criteria at R645-301-534.150 as the state regulation believed to have been violated. The regulatory standards set forth at R645-301-530 relate to "operational design criteria and plans." Operation design criteria is distinguished from the reclamation criteria set forth under R645-301-540. The former access road at the Hidden Valley Mine site has been scarified and reclaimed and revegetated. Perennial plants have become established on the roadbed and the A- and B-seam fillslopes. Now that this area has been reclaimed, it no longer meets the definition of the term "road." This term is defined at R645-100-200 as "a surface right of way for purposes of travel by land vehicles used in coal exploration or coal mining and reclamation operations" [emphasis added].

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In addition, by letter dated May 12, 1994, HVCC has notified the Utah Division of Oil, Gas & Mining (the "Division") of its intent to implement the erosion control portion of its plan for abatement of NOV N91-26-8-2, dated December 8, 1992. The Division approved this plan on December 15, 1992. However, implementation was stayed by order of the court pending a final determination in *Hidden Valley Coal Company v. Utah Board of Oil, Gas & Mining*, Case No. 930073-CA. On December 1, 1993, the Utah Court of Appeals ruled that the Board had made no findings with regard to HVCC's alleged failure to "minimize erosion to the extent possible" and therefore had erred in upholding the NOV. Although the NOV has been vacated, HVCC has agreed to proceed in good faith with the erosion control portion of its plan for abatement, as approved by the Division. Now that the stay has been lifted and environmental conditions are acceptable at the site, HVCC is implementing its erosion control plan. Under the circumstances, HVCC is taking timely and adequate steps to control or prevent erosion at the site and there appears to be no basis for the TDN.

We appreciate your consideration of this matter.

Very truly yours,



Denise A. Dragoo

DAD:jmc:34210

Enclosure

cc: Lee Edmonson
Thomas E. Ehmett, Acting Director, OSM-AFO
William Malencik
Thomas A. Mitchell, Esq.

**The CalMat Companies**

May 12, 1994

VIA FACSIMILE
(801) 359-3940

James W. Carter
Director
Utah Division of Oil, Gas & Mining
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180-1203

Re: **Hidden Valley Coal Company, Permit No. ACT/015/007**
Erosion Control Plan

Dear Director Carter:

Hidden Valley Coal Company ("HVCC") hereby notifies the Utah Division of Oil, Gas & Mining (the "Division") of its intent to implement the erosion control portion of its plan for abatement of NOV N91-26-8-2, dated December 8, 1992. By letter dated December 15, 1992, the Division approved this plan and instructed HVCC to notify the Division prior to undertaking abatement measures. The erosion control portion of the plan is set forth at pages 2 through 6. HVCC agrees to proceed with this abatement as soon as practicable after approval, once materials are received and environmental conditions are acceptable. Conditions necessary for work to proceed are: (1) no snow cover; (2) the ground has thawed to allow digging to proceed; and (3) the moisture content of the soil is such that fill slope materials are workable without forming clods. HVCC believes that environmental conditions at the site are now acceptable and proposes to commence work under the approved plan during the week of May 16, 1994. The work will involve a two-person labor crew supervised by JBR Consultants Group, Inc. It is anticipated that the work will take approximately one month to complete.

HVCC is implementing the erosion control portion of the abatement plan, although the Division has vacated NOV N91-26-8-2. As you are aware, the Division vacated this NOV in response to the December 1, 1993 ruling of the Utah Court of Appeals in *Hidden Valley Coal Company v. Utah Board of Oil, Gas & Mining*, Case No. 930073-CA. Pending the court's ruling in that matter, HVCC had obtained a stay from the Court of Appeals dated March 8, 1993, preventing the Division from "issuing, enforcing, implementing or acting upon in any way any notice of violation or cessation order

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requiring HVCC to effect or implement its abatement plan for NOV N91-26-8-2." Although the NOV has been vacated and the abatement plan is no longer required, HVCC is proceeding in accordance with the plan as a good faith effort to control erosion on the site to the extent possible.

We appreciate your cooperation in this matter.

Sincerely,



Lee Edmonson
Manager
Planning & Regulatory Affairs

LE/cn
Enclosures

cc: Karla Knoop
Denise A. Drago, Esq.
William Malencik