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SECRETARY OF STATE FOR ENERGY
[illegible] HOUSE SOUTH
[illegible] SW1E 6RJ
01 211 6402

The Rt Hon Patrick Jenkin MP
Secretary of State for the Environment
2 Marsham Street
LONDON
SW1P 3EB

17 September 1984

OPENCAST COAL SITE AT SPRINGHILL STAFFORDSHIRE

Thank you for your letter of 6 September and for Ian Gow's of 28 August, to which this also replies. You are of course aware that a heating has occurred in the coal stocked at the Springhill Disposal Point, as a result of which NCB have now started to move some coal from the site.

However, I feel we must pursue urgently the further options for action open to the NCB in two situations - Springhill itself and other coal stocking sites from which coal cannot currently be moved because planning consent is limited to rail transport. The possibility of enforcement action by Staffordshire in relation to Springhill seems relatively unlikely while the hot coals are being removed, but the Board must be in a position to remove coal from the site whether or not there is a continuing emergency from heating. I would also emphasise that in all cases the Board is seeking permission to remove coal by road only on a temporary basis, ie there is no question of disregarding previous planning conditions for all time.

Ian's letter raised again the question of seeking a declaratory order from the Courts. The latest circumstances have however enabled the NCB to act directly, in line with the reference to emergency in the particular planning condition. I understand that there is no similar reference to emergency in planning conditions affecting other sites from which the Board may wish to move coal. This option need not therefore be considered further.

Your letter of 6 September took up Michael Havers' view that you could simply determine the disagreement between Staffordshire and the NCB within the terms of the planning consent. I note however that your position has shifted in that you are now requiring a further exchange of letters between NCB and Staffordshire to establish that there is indeed disagreement over the proposed removal of 15,000 tonnes per week. Clearly if Staffordshire disagreed with the original proposition for moving 1,000 tonnes per week they could not be expected to agree with the latest suggestion for the greater quantity. I would strongly suggest that any further exchange of letters is superfluous.

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I raise this point because it does seem to me that, in parallel with NCB's removal of the hot coals under the emergency clause of the planning consent, the Board should now seek your determination of the disagreement between themselves and Staffordshire on the wider question of removal of coal by road from Springhill for as long as the dispute continues. Before inviting the Board to write to you, however, I would like your urgent agreement that you will now entertain an application for such a determination from the Board and that no further exchange of letters is required between the Board and the Council.

You commented on the likely outcome of any hearing and the possibly good planning reasons for having restricted transport to rail originally. These comments can however only be speculative. Removal by rail may indeed be a far preferable method but it does not follow that removal by road would be totally unbearable. I am not therefore convinced that any inspector, bearing in mind that the Board would be seeking only a temporary waiver in a particular situation, would necessarily find against them.

I am also concerned that there has been no follow up to the recent Ministerial meeting which invited the Attorney in consultation with us to reconsider ways in which coal could be moved in such circumstances without need for public inquiry. We need to pursue this issue since Springhill is not the only site affected by the lack of rail transport, though it is the only one to which the particular planning condition applies. My legal advisers would for example take the view that where a planning consent simply states "that transport shall be by rail", the only way of changing that condition rapidly would be by use of section 49(4) of the Opencast Coal Act. As I understand Michael Havers' advice, this was that use of that power in controversial cases carried too high a risk of challenge to be attempted. By implication however, where a local authority agreed the change and clearly would not challenge the use of the power, use of Section 49(4) powers could still be acceptable. Since 8-10 sites could be affected by our decision on this point, I should be glad to know if you agree.

Another option would of course be for the NCB simply to contravene the planning condition and to go in and get the coal. The Board would have to be prepared to appeal against any enforcement notice on grounds that the condition should be discharged or modified - in which case the usual appeals procedure would come into force. It is also quite likely that a stop notice would be issued, since the authorities would not face the risk of paying compensation in these cases. The principal objective, ie removal of the coal, could thus easily be thwarted.

I must repeat that the heating at Springhill should not hold up our consideration of the complex legal issues arising in cases of this kind. There are others we may need to consider in the near future.

I am copying this letter to the Prime Minister, Michael Havers and Ian Gow.

Yours ever

PETER WALKER

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