



State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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TO: Lowell Braxton, Associate Director
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FROM: Hugh Klein, Geologist/Hydrologist *HK*

RE: Program Deficiency R645-301-742.224

ANALYSIS

Deficiencies with R645-301-742.222 were outlined in a 2 July 1992 memorandum along with a solution. Once this has been done it will also be necessary to revise R645-301-742.224. The reason being that in its present form this rule does not reference MSHA ponds for "in lieu of" requirements. R645-301-742.224 states, "In lieu of meeting the requirements of R645-301-742.223.1 and 742.223.2 the Division may approve a sedimentation pond that..." (MSHA ponds are found at R645-301-742.222). Under section 817.46 of the CFR's, it is clear that MSHA ponds may also be approved under the same criteria for non-MSHA ponds as spelled out in R645-301-742.224.

Section 817.46, part c, sub-part iii states, "In lieu of meeting the requirements in paragraph (c)(2)(i) of this section, the regulatory authority may approve a sedimentation pond that relies primarily on storage to control the runoff from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer or qualified registered professional land surveyor in accordance with Sec. 780.25(a) of this chapter that the sedimentation pond will safely control the design precipitation event..." and is applicable to both MSHA and non-MSHA ponds. In fact, the CFR's make no distinction between pond sizes for this particular "in lieu of" requirement.

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RECOMMENDATION

In order to solve this problem, I propose that if the recommendations made in the 2 July 1992 memorandum are adopted, the first sentence of R645-301-742.224 be revised to read, "In lieu of meeting the requirements of R645-301-742.222.1 and 742.222.2 or R645-301-742.223.1 and 742.223.2 the Division may approve a sedimentation pond that..."

c: A & B Team Hydros