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#2 and #5

CYPRUS
Plateau Mining

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April 24, 1989

Mr. Lowell Braxton
Department of Natural Resources
Division of Oil, Gas and Mining
355 West North Temple
III Triad Center, Suite 350
Salt Lake City, Utah 84180-1203

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DIVISION OF
OIL, GAS & MINING

RE: Information Pertaining to Violation N89-25-1-1

Dear Mr. Braxton:

The following is presented to respond to violation N89-25-1-1 issued by Tom Munson on April 18, 1989.

The violation cited regulation R-614-301-746.330 as having been violated. The TDN's issued to the DGOM by the OSM cited regulations UMC 771.19, UMC 817.72(d) and UMC 817.83.

It is unclear to us what regulation R-614-301-746.330 is. If it is the proposed rule which has been rewritten during the recent rewriting of the coal rules, it is not an approved rule. If it is the old existing rule with a re-codified number, it is the same as UMC 817.72(d). We can only assume it is the latter.

Rule UMC 771.19 is a general requirement to operate under a permit, by conditions of the approved permit, the requirements of the act, and the regulatory program.

Rule UMC 817.83 refers back to UMC 817.72(d) which applies to valley fills.

Rule UMC 817.72(d) applies to valley fills, and requires: "Surface water runoff from the area above the fill shall be diverted away from the fill and into stabilized diversion channels disigned to pass safely the runoff from the 100-year, 24-hour precipitation event." The DOGM and OSM have agreed the proper event is the 100-year, 6-hour duration storm.

The subject ditches surround the coal processing waste pile which is not a valley fill. A valley fill structure (UMC 700.5) is one that exists in a valley with side slopes measured at the steepest point of more than 20 degrees or with an average of more than 10 degrees from the toe of the fill to the top of the fill. Even at its maximum size, our waste pile does not exist in an area where the slopes in any direction meet or exceed the slope restrictions. Refer to the topographic map attached and cross sections A-A and B-B.

As can be seen on the topographic map, the area to be covered by the pile is on a ridge between two canyons. As can be seen on the two cross sections, profiles indicate the area is a sloping bench. The definition of valley fill precludes coal processing waste from being placed in a valley fill.

The coal processing waste pile, or refuse pile as it is sometimes referred to in the Mining and Reclamation Permit (MRP) has never been considered to be a valley fill. The pile has been the subject of extensive permitting efforts, having been addressed in the 1982 MRP and in the 1987 permit renewal. The Division approved the MRP on January 27, 1982 and again on August 7, 1987. The OSM approved the MRP on January 20, 1982 and again on January 17, 1989. Diversion ditch design criteria were included in both MRP actions, and were approved by the Division and the OSM.

With approvals, the Division and the OSM agreed with CPMC in its handling of the ditch designs, which is evidence that the Division and the OSM did not, on four separate reviews, classify the pile as a valley fill. It is very puzzling to us now that the OSM would try to make an issue of the ditches, and doubly puzzling that the Division issued a violation on them.

The valley fill and head-of-hollow fill requirements clearly are intended to prevent saturation and failure of coal processing waste piles due to large ("greater than one (1) square mile") geographic areas draining onto or contributing water to an impoundment behind a pile, See UMC 817.71(j) and UMC 817.71(j) (1).

In our situation, there is no impounding of water behind or on top of the pile, and the drainage area contributing runoff toward the final post mining pile from the west is only twelve acres. Drainage on all other faces and sides will drain away from the pile.

Since UMC 817.72(d) does not apply, UMC 817.43(a) does, and requires temporary diversions to be designed to "... pass safely the peak runoff from a precipitation event with a two-year recurrence interval, or a larger event as specified by the Division." On November 19, 1980, our Hydrologist, Mr. Marvin Allen, communicated with Mr. Thomas Suchoski, Division Hydrologist, regarding which storm events to use in designing diversion ditches. Mr. Suchoski told Mr. Allen to use a 25-year, 24-hour event for ditches draining to sediment ponds. Since this event was a direct suggestion from the Division and since CPMC desired to be conservative in ditch designs, the 25-year, 24-hour event criteria was used.

According to UMC 843.12, violations must be written when there is "... a violation of the Act, this chapter, the state program, or any condition of a permit." CPMC contends that no violation exists because the ditches were properly designed. This position is based on:

1. No violation of UMC 817.72(d) exists because the coal processing waste pile is not a valley fill.

2. The area of the pile is a bench, not a valley, as evidenced by the topography of the natural ground surface.

3. DOGM Hydrologist (Thomas Suchoski) recommended use of 25-year, 24-hour event for ditch designs.

4. DOGM and OSM have approved the designs on four occasions - DOGM, 01-27-82 & 08-07-87. OSM, 01-20-82 & 01-17-89.

5. The pile is not an impounding structure, and no eminent danger to the public or to the environment exists.

6. Drainage flows and will flow away from the pile upon reclamation.

It is very unfortunate the Division resorted to writing a violation over this alleged issue, since no issue exists. The Division and CPMC now have to spend valuable time and money resolving the violation.

CPMC was following an approved plan with the ditches. The ditches should have been inspected against this plan and not against the performance standards. Decisions made by the Division in the permitting process have basis and merrit; to come back later and arbitrarily write a violation is unfair to the operator, and causes undue efforts on both sides.

If changes were necessary, due to some oversight, we would prefer to handle the situation by an administrative correction, without a violation.

We request the Division to review this information as soon as possible since the time clock is running on the violation.

Please let us know if we can be of assistance in this matter.

Sincerely Yours,

Ben Grimes
Sr. Environmental Engineer

pm

ATTACHMENTS:
File: ENV 2-5-2-5, N89-75-1-1

cc;
Gregory Williams w/o attachments
Alan Bachman w/o attachments
Bill Malencik w/o attachments

Chrono No. BG890401