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United States Department of the Interior

OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
SUITE 310
625 SILVER AVENUE, S.W.
ALBUQUERQUE, NEW MEXICO 87102



In Reply Refer To:

March 8, 1991

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
P 965 799 364

Mr. Lowell P. Braxton
Associate Director, Mining
Division of Oil, Gas and Mining
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, UT 84180-1203

Re: Ten-Day Letter (TDL) 91-02-246-2, Hiawatha Mine

Dear Mr. Braxton:

In accordance with 30 CFR 842.11, the following is a written finding regarding the Division of Oil, Gas and Mining's (DOGM) response to the above-noted TDL.

The Albuquerque Field Office (AFO) received DOGM's response to the TDL on March 1, 1991. The response was due on March 4, 1991. Therefore, the response was timely.

The TDL contained the following violation:

Failure to provide complete designs documenting that the requirements of R614-301-742.110 through 742.113 have been met.

Your response states that sediment control measures such as silt fences, straw bales, etc., are approved using professional judgment as the best technology currently available (BTCA) for areas not reporting to a sedimentation pond. The response continues by saying "the drainage from this type of area is not considered a point source and designs for meeting effluent limitations do not apply." You also state that if the Utah Division of Environmental Health requires attainment of effluent limits for non-point source discharge, the Division will require conformance with the regulations at that time. It is erroneous to conclude that the types of alternate sediment control measures identified are all non-point sources, and thus, not subject to regulation.

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DIVISION OF
OIL GAS & MINING

Mr. Lowell P. Braxton

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According to 742.110 through 742.113, the permittee must address the following:

"Appropriate sediment control measures will be designed, constructed, and maintained using the Best Technology Currently Available to: (1) Prevent, to the extent possible, additional contributions of sediment to streamflow or to runoff outside the permit area; (2) Meet the effluent limitations under R614-301-751; and (3) Minimize erosion to the extent possible."

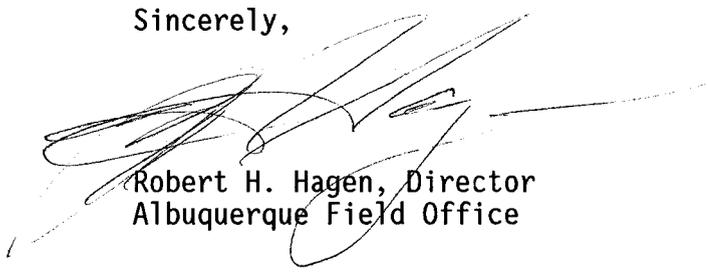
The problem lies in what DOGM approved in the Hiawatha mining and reclamation plan (MRP). While the MRP describes the locations of the BTCA's and the professionally considered treatments that will be used, it does not address how the alternative sediment control measures will be designed, constructed, or maintained to meet the three standards for compliance with Rule 742.110.

Regarding your reference to not regulating non-point source discharges, OSM has been advised by the Environmental Protection Agency (EPA) that any discharge from a coal mining operation must meet the effluent limitations of 40 CFR Part 434. In response to OSM's question concerning alternative sediment control measures, EPA has stated that it does not rely on a formal point source designation process in determining what is regulated under a NPDES permit. Rather, it is up to the operator to ensure that any discharge from coal mines meet the NPDES (or UPDES) effluent standards and that the operator must take whatever measures are necessary to meet these limitations.

Therefore, DOGM's failure to require complete designs showing that the requirements for BTCA have been met constitutes an abuse of discretion under the State program and is an inappropriate response.

If you disagree with these findings, you may request an informal review in accordance with 30 CFR 842.11(b)(1)(iii)(a). If you have any questions concerning the matters discussed above, please contact me or Stephen Rathbun at (505) 766-1486.

Sincerely,



Robert H. Hagen, Director
Albuquerque Field Office

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 ALBUQUERQUE FIELD OFFICE
 OFFICE OF SURFACE MINING R & E
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 625 SILVER AVE SW
 ALBUQUERQUE NM 87102

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P 540 714 129

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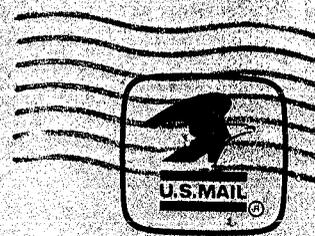
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* U.S.G.P.O. 1989-234-555

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DOGM VB TDL 91-02-246-2 ACT/007/011

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