



United States Department of the Interior

OFFICE OF SURFACE MINING

Reclamation and Enforcement

WASHINGTON, D.C. 20240

MAR 26 1991

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MAR 28 1991

DIVISION OF
 OIL GAS & MINING

Dear Dr. Nielson:

This is in response to your February 22, 1991, request for informal review of the Albuquerque Field Office Director's (AFOD) determination that your office did not take appropriate action with regard to the two alleged violations reported in Ten-Day Letter (TDL) 91-02-246-1. The TDL alleges that Hidden Valley Coal Company (California Materials Company and California Portland Cement Company) (permit number ACT/015/007; Hidden Valley Mine) failed to provide a demonstration that the effluent limits of R614-301-751 will be met on the approved alternative sediment control areas and that the company has failed to reshape all cut and fill slopes to be compatible with the postmining land use.

With respect to the first alleged violation, the issues raised by the AFOD and your position are essentially the same as those raised in the recently-decided Southern Utah Fuel Company case. In both cases, the issue is whether the phrase "designed, constructed and maintained" in Utah regulation R614-301-742-110 means that an applicant must demonstrate that specific best technology currently available (BTCA) techniques proposed will meet the applicable effluent limits before an application can be approved, or whether it is sufficient to describe a BTCA plan in an application and rely on the regulatory authority's professional judgement that the proposed techniques will work. The AFOD's position is the former, while your position is the latter.

As I found in the Convulsion Canyon case, neither the Federal rule at 30 CFR 817.45 nor its supporting preamble indicate that a permittee must demonstrate up-front in the permitting process that the BTCA will meet effluent limits. Thus, although an applicant must certainly provide a description of what BTCA methods will be employed and any other supporting information which may be required by the regulatory authority, a specific demonstration that effluent limits will be met is not mandatory.

Dianne R. Neilson, Ph.D

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With respect to the second alleged violation concerning the reshaping of cut and fill slopes to be compatible with post-mining land use, you believe that the reclamation completed at the Hidden Valley Mine was conducted appropriately, but that additional information is required to support this position in the permit. You explain that in accordance with Utah regulation R614-303-212 your agency has ordered the permittee to provide additional information by March 15, 1991, relating to post-mining land use requirements. Since you require information from the permittee which you are confident will demonstrate that a violation of the Utah program does not exist, I will consider your action as a showing of good cause under 30 CFR 842.11(b)(1)(ii)(B)(4)(ii). Upon receipt and review of the additional information you have requested, please forward your final response to the TDL to the AFOD.

Sincerely,



W. Hord Tipton
Deputy Director
Operations and Technical Services

cc: Hidden Valley Coal Company
c/o California Materials Company
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