


 United States Department of the Interior

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In Reply Refer To:

February 14, 1991

 CERTIFIED MAIL - RETURN RECEIPT REQUESTED
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 DIVISION OF
 OIL, GAS & MINING

 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) 91-02-246-1, ~~Hidden Valley~~

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 January 23, 1991. The response was due on January 17, 1991. Therefore, the response was late.

The TDL contains two violations as follows:

No. 1: Violation No. 1 concerns the failure to provide a demonstration that the effluent limitations of R614-301-751 will be met on the approved alternative sediment control areas. R614-301-742.231 was cited as the rule believed to have been violated.

Your response states that sediment control measures such as silt fences, straw bales, etc., are approved as the best technology currently available (BTCA) for areas not reporting to a sedimentation pond. The response continues by saying the BTCA drainage is not considered a point source and does not, therefore, need a demonstration to show that effluent limits will be met. 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.

AFO's TDL cites 742.231, but as your response states, these measures have been approved as BTCA for these areas. Therefore, Rule 742.110 would also apply. The use of 742.110, "Sediment Control Facilities," is explained in the November 20, 1986, Federal Register notice at Volume 51, pages 41957 through 41958 and stipulates that the "Sediment Control Measures" of 30 CFR 817.45 (742.110) will control designs using BTCA.

According to 742.110, 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 Hidden Valley mining and reclamation plan (MRP). While the MRP described the peak flows resulting from a 10-year, 24-hour precipitation event, 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. It is also important to remember that no other sediment controls, other than silt fences and mulch, exist at the Hidden Valley Mine.

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 a coal mine meets effluent standards and that the operator must take whatever measures are necessary to meet the limitations.

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

OSM is concerned with DOGM's classification of alternative sediment controls as BTCA while automatically excluding them from regulation. This appears to be another variation on the longstanding issue involving inadequacies in the approval of sediment control practices that has previously been faced with small area exemptions and alternative sediment control areas. The basic problem remains; DOGM is not following the approved State program in authorizing alternative sediment control practices.

No. 2: Violation No. 2 concerns the "failure to reshape all cut-and-fill slopes to be compatible * * * or failure to meet the requirements for backfilling and grading." R614-301-762.200 or R614-301-553.400 through .420 were the rules believed to have been violated.

Your response states that a DOGM order was sent to the permittee requiring a demonstration that the road cuts and fills are compatible with the postmining land use. The response also stated that the issue will be addressed by March 15, 1991.

Postmining land use is not an issue, in and of itself, for the haul road and associated out-of-bench spoil pad at Hidden Valley. The only area where the postmining land use is involved is regarding the application of Rules 553.400 through .420 to the internal haul road. Cal Mat Company also has the prerogative to regrade the haul road and the out-of-bench spoil pad as required by 762.200. Your response did not address regrading as a possible abatement measure for violation No. 2.

In addition to the above discussion, OSM Directive INE-35 requires that DOGM, in addressing a permit defect, notify the permittee in writing, setting forth a schedule; whereas, a permit revision will be submitted to DOGM within 30 days. DOGM's response to the Hidden Valley TDL does not meet this INE-35 requirement. Therefore, DOGM's failure to take appropriate action to cause the violation to be corrected constitutes an abuse of discretion under the approved State program and an inappropriate response.

During the Random Sample Inspection of December 14, 1990, the unreclaimed highwall above seam "A" was observed and noted in the inspection report. AFO deferred taking action at that time due to the on-going process to resolve the Blazon Highwall issue. On January 9, 1991, the Deputy Director, Operations and Technical Services of OSM, informed DOGM that the State must require that all highwalls created or affected by a mining operation be eliminated except to the extent that they qualify for the remaining exemption.

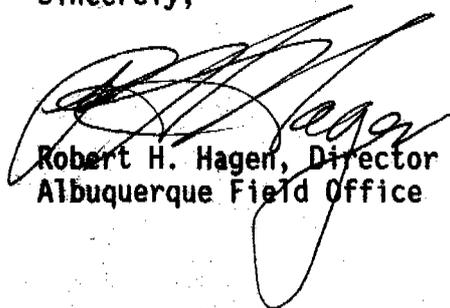
The Hidden Valley MRP allows for the retention of the "A" seam highwalls while allowing an out-of-bench spoil pad to remain in place. Field observations indicate ample material in the pad area to completely eliminate all highwalls. AFO considers the MRP approval for highwall retention to be a permit defect. A TDL, therefore, will be issued to DOGM.

Mr. Lowell P. Braxton

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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