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DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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February 22, 1991

CERTIFIED RETURN RECEIPT REQUESTED
No. P 540 714 126

Mr. Robert H. Hagen, Director
Albuquerque Field Office
Office of Surface Mining
Reclamation and Enforcement
Suite 310, Silver Square
625 Silver Avenue, S.W.
Albuquerque, New Mexico 87102

Dear Mr. Hagen:

#5

Re: TDL 91-02-246-1, Hidden Valley Mine, ACT/015/007, Hidden Valley Coal
Company, Emery County, Utah

In accordance with the provisions of 30 CFR 842.11(b)(1)(iii)(A), the following constitutes a request for an informal review of OSM's findings dated January 17, 1991, and received by certified mail February 19, 1991, that the Division's response to the above-cited Ten-Day Letter (TDL) was arbitrary and capricious with respect to issue no. 1.

I object to the Albuquerque Field Office changing the regulation cited in the TDL from R614-301-742.231 to R614-301-742.110. In evaluating DOGM's response to a TDN or TDL, it is not reasonable for the AFO to consider the Division's response to an alleged violation under a regulation different from the one cited in the TDL. The regulation cited dealt with "other treatment facilities." There are no structures qualifying as "other treatment facilities" at the Hidden Valley site. This portion of the TDL should be vacated on the basis of an improper citation by OSM.

The issue of demonstration of the applicability of BTCA practices is an issue involving more than the above-referenced TDL.

Rule R614-301-742.110, 111 reads: "appropriate sediment control structures will be designed, maintained and constructed using the best technology currently available to prevent to the extent possible additional contributions of sediment to stream flow or to runoff outside the permit area."

It is important to note that OSM is not questioning the effectiveness of the structures that are in place at the Hidden Valley site. And secondly, maintenance or failure to pass disturbed area runoff through an appropriate sediment control measure is not the issue. When the Hidden Valley site was proposed as an operational site, there was a sedimentation pond constructed as part of the operational phase. However, when it was determined that the mine would not be operated, a reclamation only plan was approved. The approved reclamation only plan allowed removal of the sedimentation pond.

OSM contends that the permit lacks designs documenting the ability of the sediment control structures to meet effluent limits of the 10-year 24-hour design storm. The Division agrees that if a sedimentation pond had been required in the reclamation only plan, such a structure would have constituted a point source discharge point, and would have been required to perform in accordance with regulations governing point source discharges.

The sedimentation pond at Hidden Valley was removed during Phase I reclamation because access to the pond location for future reclamation would have been precluded after the conclusion of phase one activity. The decision to remove the sediment pond during Phase I reclamation still carries an obligation on the part of the operator to comply with effluent limitations, the question is which limitations apply? The Utah Bureau of Water Pollution Control has not required a point source discharge permit at this site because the sediment pond was reclaimed. The operator is responsible to ensure that the quality of Ivey Creek, an intermittent stream is maintained. But water quality and off site sedimentation are not at issue in this TDL, rather, the issue is failure to demonstrate ability to comply in the permit.

The approval to implement straw bales and silt fences to this mine site is an acknowledgement of the functionality of these designs by professional hydrologists. In other words, they constitute a best management practice or the application of best technology currently available. Furthermore, the straw bales and silt fences in place provide compliance with performance standards. OSM has inspected this site on numerous previous occasions, and has never questioned the lack of design in the permit.

As I noted initially, the underlying problem goes beyond this TDL. It is an issue with other states and within OSM. It is an issue of OSM/EPA regulatory authority.

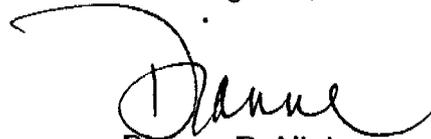
The Facts that should be considered here are:

1. The decision to remove the sediment pond during Phase I reclamation left the operator and the Division few alternatives beyond application of the sediment control in the approved reclamation plan.
2. Alternate sediment control structures are not designed, they are by definition alternates to designed structures.
3. Approval of the use of an alternative to a sediment pond by Division hydrologists connotes acceptance of the structure as best technology currently available.
4. When the alternative sediment control structures have failed to meet performance standards at Hidden Valley, the Division has taken appropriate enforcement action.
5. The last paragraph on page 2 of your TDL response states: "OSM is concerned with DOGM's classification of alternative sediment controls as BTCA while automatically excluding them from regulation...." The basic problem remains: DOGM is not following the approved state program in

authorizing alternative sediment control practices." These statements are unfounded and inappropriate. The fact is that the Division considers the best sediment control to be a designed sedimentation pond, and that the ability to judge the technological capability of these ponds is beyond the professional capability of staff in the AFO. Pond design has not been a problem that has been raised in oversight to date. Performance standard violations of alternate sediment control structures has not been a long standing issue with the Utah program.

6. OSM's draft 30 CFR Part 701, 816 and 817 suggests that the interpretation of BTCA is more than a Utah issue, it is a national issue. The fact that the proposed rule fails to provide specific guidance on what will constitute appropriate application of BTCA suggests that OSM does not have guidance to offer state RA's. AFO's response to BTCA issues to date has been to second guess the state and berate the program, while failing to resolve the underlying conflicts between OSM/RA and EPA/RA programs.
7. Alternate sediment control structures frequently control runoff areas that are so small that application of conventional hydrologic models may be statistically invalid. What counts is the performance of the structure, and selection of the proper structure is key to performance. Since the mathematical models may be invalid due to small size, professional judgment in selection of alternate sediment control methodology is the key to attainment of performance standards.
8. Performance standard attainment is not at issue in this TDL, as failure to comply with performance and maintenance requirements of 742.110 has resulted in past enforcement action by the Division.
9. This portion of the TDL is an attempt to require a paper solution to a field problem, when in fact the field problem is successfully treated or has been addressed in the compliance theater when demonstrated failures have occurred.

Best regards,



Dianne R. Nielson
Director

vb
cc: L. Braxton
MI54/15-17

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DOGM VB TDL 91-02-246-1 ACT/015/007

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