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Mime file: ACT015-025 #5

D. R. Nielsen
R. U. Smith
J. Helfrich
PFA



United States Department of the Interior
OFFICE OF SURFACE MINING
Reclamation and Enforcement
WASHINGTON, D.C. 20240

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DIVISION OF
OIL, GAS & MINING

Mr. Lowell P. Braxton
Administrator, Mineral Resource Development
and Reclamation Program
Division of Oil, Gas and Mining
Utah Department of Natural Resources
355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203

Dear Mr. Braxton:

This is in response to your February 2 and 13, 1989, requests for informal review under 30 CFR 842.11(b)(1)(iii) of ten-day notices X88-02-107-12 and X88-02-107-11 (CO-OP Mining Company, permit No. ACT/015/025, Bear Canyon Mine).

In the first case (TDN X88-02-107-12), the Federal inspector alleged that a violation of the Utah program existed because the permittee was failing to comply with State and Federal water quality statutes and regulations (UMC 817.41). Specifically, it was alleged that the permittee had violated a condition of the Utah Pollutant Discharge Elimination System (UPDES) permit by failing to notify the Utah Division of Environmental Health of a culinary discharge not previously approved in the UPDES permit.

In your request for informal review, you indicated that the Utah Department of Environmental Health's informal position is that issuance of a UPDES discharge permit for culinary water quality does not serve a useful purpose. You also indicate that pending resolution of a new UPDES permit for which the permittee has applied, the culinary discharge is being temporarily diverted through an approved sediment pond.

Without considering the issue of whether a violation of the UPDES permit existed at the time of the Federal inspection, it is clear that the alleged violation related to an UPDES permitting issue rather than a violation of water quality standards. Effluent standards established under State or Federal laws or regulations for discharges from surface coal mining and reclamation operations are subject to enforcement under approved State programs and oversight by the Office of Surface Mining

Reclamation and Enforcement (OSMRE). However, decisions regarding whether or not effluent standards apply to any particular discharge rest solely with the UPDES permitting authority and are not appropriate for review under OSMRE oversight.

Accordingly, I find that your agency has shown good cause under 30 CFR 842.11(b)(1)(ii)(B)(4)(i) in this matter and therefore the written decision of the Albuquerque Field Office Director is hereby reversed.

With respect to the second case (TDN X88-02-107-11), the Federal inspector alleges that the permittee failed to pass all disturbed drainage through a sedimentation pond before leaving the permit area (UMC 817.42). In your request for informal review, you acknowledge that a compliance problem existed and as a result, your agency directed the permittee to increase the height of the berm designed to ensure that the drainage in question would pass through a sediment pond before leaving the permit area. You also indicate that the Albuquerque Field Office Director has previously agreed that identification of maintenance issues by your agency is an appropriate means of directing the operator to rectify a compliance problem in lieu of issuing an enforcement action.

While it may be appropriate to point out a potential maintenance problem to a permittee before it progresses into a violation, I find that the record in this case provides ample and un rebutted evidence that the maintenance problem had already progressed to the violation stage at the time the Federal inspection was conducted. I further find, that since a State enforcement action was not issued for this violation as required under the Utah program, the actions of your agency were arbitrary and constituted an abuse of discretion under the State program. Accordingly, by this letter I am hereby ordering an immediate Federal inspection of permit ACT/015/025.

Sincerely,



Assistant Director
Program Policy

cc: Albuquerque Field Office Director
Assistant Director, Western Field Operations