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United States Department of the Interior

OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
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Oreg mine file
cc L. Brantley
DRA
TAKE PRIDE IN AMERICA
[Redacted]

In Reply Refer To:

January 17, 1991

RECEIVED
JAN 22 1991

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
P 965 799 354

**DIVISION OF
OIL, GAS & MINING**

Dr. Dianne R. Nielson, Director
Division of Oil, Gas and Mining
Department of Natural Resources
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, UT 84180-1203

Re: Ten-Day Letter 90-02-246-1, Convulsion Canyon Mine

Dear Dr. Nielson:

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 Ten-Day Letter (TDL).

The Albuquerque Field Office (AFO) received DOGM's response to the TDL on January 4, 1991. Therefore, your response is considered to be timely.

The TDL contains two violations as follows:

- No. 1: Violation No. 1 concerns the failure to provide a demonstration that the effluent limits 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 be violated.

DOGM's response states that compliance with R614-301-742.231 is not an issue at the Convulsion Canyon Mine because Rule 742.231 addresses "other treatment facilities" which by definition (R614-100-200) means any chemical treatments, such as flocculation or mechanical structures such as clarifiers, that have a point source discharge and that are used to prevent additional contributions of suspended solids to stream flow or runoff outside the permit area. The response went on to say that SUFCO's Convulsion Canyon Mine does "not typically fit this situation." The response also stated that

R614-301-742.110 and R614-301-742.211 are the rules that apply to the alternative sediment control areas at the Convulsion Canyon Mine, and "that a demonstration is only required when a design event less than the 10-year, 24-hour precipitation event is used to design chemical or mechanical treatment facilities with a point source discharge."

AFO agrees that Rule 742.110 applies because, when 30 CFR 817.46(b)(2) was remanded, OSM published the November 20, 1986, Federal Register Notice at Volume 51, pages 41957-41958, stipulating that the Sediment Control Measures of 30 CFR 817.45 (R614-301-742.110) will control designs using the Best Technology Currently Available (BTCA). AFO also agrees with DOGM that, "The Division (via permitting and inspection avenues) has approved the use of a varied group of methods as BTCA for each of the areas that do not report to a sediment pond."

However, R614-301-742.110 through 742.113 states that, "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 stream flow 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 Convulsion Canyon, Mining and Reclamation Plan (MRP), does not include a "design" showing that the "varied group" of sediment control measures (BTCA) were designed to meet the three criteria in 742.110 through 742.113.

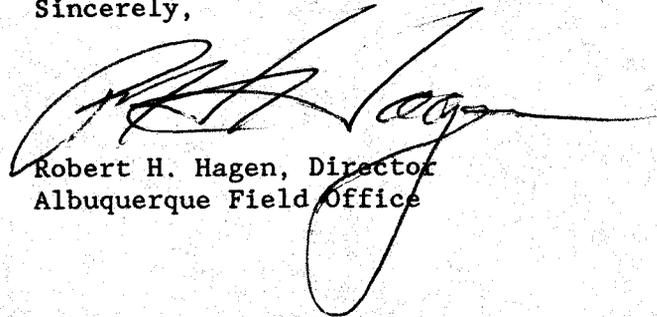
So, regardless of whether a demonstration is required by 742.231, or whether BTCA will be designed to meet the three criteria as required by 742.110, the Convulsion Canyon MRP does not include either.

Therefore, DOGM's failure to require complete designs documenting that the requirements for BTCA have been met in SUFCO's MRP constitutes an abuse of discretion under the State program and is an inappropriate response according to 30 CFR 842.11.

No. 2: Violation No. 2 concerns the failure to provide public liability insurance in accordance with the State program, as follows: (1) use of a self-insured retainer; (2) the statement on the certificate that the insuring company "will endeavor to" inform DOGM of cancellation or expiration but has no obligation to do so; and (3) use of a generic insurance certificate that covers "the Coastal Corporation and affiliated or subsidiary companies including SUFCO," whereas, DOGM regulations require each operation to be covered by the minimum liability limits. DOGM's January 4, 1991, response did not address the three problems mentioned above. Mr. Braxton's supplemental response of January 7, 1991 (received in AFO on January 11, 1991), included an insurance certificate that is underwritten by the Flat Top Insurance Agency of Bluefield, West Virginia. The Flat Top Insurance Agency is not authorized to do business in Utah as required by R614-301-890.100. The Utah Insurance Department reports that the underwriting agency along with the insuring company must be licensed to do business in the State. Therefore, DOGM's response to Violation No. 2 is arbitrary and capricious in accordance with 30 CFR 842.11.

If you disagree with these findings, you may request an informal review in accordance with 30 CFR 842.11(b)(1)(iii)(A).

Sincerely,



Robert H. Hagen, Director
Albuquerque Field Office