



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

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Dianne R. Nielson, Ph.D
Director, Division of Oil, Gas,
and Mining
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180-1203

DIVISION OF
OIL GAS & MINING

T. Munson
R. Summers

Dear Dr. Nielson:

This is in response to your January 28, 1991, letter requesting an informal review of the Albuquerque Field Office Director's (AFOD) determination that your agency has not taken appropriate action with respect to two alleged violations contained in Ten-Day Letter (TDL) 91-02-246-1. The TDL alleges that Southern Utah Fuel Company (SUFCO) (permit number ACT/~~007/004~~^{007/002}) at Convulsion *041/002* Canyon failed to provide a demonstration that the effluent limits at Utah regulation R614-301-751 will be met on the approved alternative sediment control areas, and that SUFCO failed to provide public liability insurance in accordance with the State program.

With respect to the first alleged violation, you raise several arguments in both your request for review and your initial response to the TDL. Your principal argument, however, is that the Utah program gives your agency the discretion on a case-by-case basis to determine the best technology currently available (BTCA) for sediment control. You maintain that such determinations need only be based on your agency's professional engineering and hydrologic judgement of the BTCA techniques proposed by an applicant during the permitting process.

Utah regulation R614-301-742.110 requires that sediment control measures be designed, constructed and maintained using BTCA to prevent additional contributions of suspended solids to stream flow and to meet the effluent limits under R614-301-751. The issue in this case is whether the phrase "designed, constructed and maintained" in this regulation means that an applicant must demonstrate that the specific 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 techniques proposed will work.

A review of the Federal rule at 30 CFR 817.45 (counterpart to R614-301-742.110) and its preamble show that while clearly establishing performance standards which a permittee must meet when applying BTCA techniques, it does not explicitly require that a permittee demonstrate up-front in the permitting process that the performance standards will be met. Likewise, neither the hydrologic permitting requirements nor the written findings required for permit approval explicitly or implicitly require such demonstration when in the professional judgement of the regulatory authority the controls seem reasonable in relation to the standard. 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 applicable standards will be met is not mandatory. Accordingly, I find that a violation of the Utah program does not exist and therefore, I am reversing the determination of the AFOD.

With regard to the second alleged violation of the TDL that Southern Utah Fuel Company did not provide public liability insurance in accordance with the State program, I have reviewed your response and the supporting documentation you provide to demonstrate the adequacy of SUFCO's insurance for surface coal mining and reclamation. A review of the record does not show any information that contradicts that which you have presented. Therefore I find that Utah has shown good cause for taking no further action and grant your appeal because no violation exists.

Sincerely,



W. Hord Tipton
Deputy Director
Operations and Technical Services

cc: Southern Utah Fuel Company
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