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State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Norman H. Bangertter
Governor
Dee C. Hansen
Executive Director
Dianne R. Nielson, Ph.D.
Division Director

355 West North Temple
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Salt Lake City, Utah 84180-1203
801-538-5340

Mine File

January 28, 1991

CERTIFIED RETURN RECEIPT REQUESTED
No. P 540 714 088

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:

Re: Ten-Day Letter X90-02-246-1 TV2, Southern Utah Fuel Company, Convulsion Canyon Mine, ACT/041/002, Sevier 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 January 22, 1991, that the Division's response to the above-cited Ten-Day Letter (TDL) was arbitrary and capricious with respect to issues #1 of 2 and #2 of 2, respectively.

In introducing the subject, let me state that the state regulatory authorities discussed the difference between Ten-Day Notices (TDNs) and TDLs in light of the October 19, 1990 version of INE-35, and the distinction established appears to be that a TDL covers alleged permit defects, while the TDN addresses an alleged violation. Both processes may ultimately reveal a violation of the state's program, but until either OSM or the state regulatory authorities have issued a Notice of Violation, I believe accurate characterization for a TDN would be "alleged violation," and "alleged permit defect" for a TDL. Thus, at the outset, I take exception to your characterization of there being two violations in the above TDL (reference page 1 of your January 17, 1991 letter).

Number 1 of 2 was written for, "Failure to provide a demonstration that the effluent limits of R614-301-751 will be met on the approved alternative sediment control areas."

The Division's response to #1 of 2 (attached) is not an abuse of discretion. OSM agreed in its January 17, 1991 response, that the regulation cited in the TDL was the wrong regulation, and that that regulation does not require a demonstration as

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alleged in the TDL. At this juncture, the alleged permit defect is inappropriate, and should be stricken. Instead, OSM has chosen to cite another set of regulations that it alleges are being violated, and has applied its own arbitrary requirements for what constitutes a design.

Best Technology Currently Available (BTCA) is being utilized, with the Division's approval, at the Southern Utah Fuel Company's (SUFCO) Convulsion Canyon Mine. There is no violation of the Utah program as alleged in #1 of the TDL. In approving the use of BTCA at SUFCO, the design decision for the alternate sediment control facilities is basically a question of professional engineering and hydrologic judgment. This is clearly allowed under the definition of BTCA, as found in R614-100-200. Furthermore, the structures cited are functioning to prevent additional contributions of sediment to runoff outside the permit area, while minimizing erosion.

The underlying problem is really one of jurisdiction. OSM believes this area should be permitted as a point source discharge. However, rule R614-301-751 and 30 CFR 816.42 and 817.42 require that: "...discharges of water from areas disturbed by surface mining activities and underground mining activities to be made in compliance with all applicable State and Federal water quality laws and regulations, and with the effluent limitations for coal mining promulgated by the U. S. Environmental Protection Agency at 40 CFR part 434." (55 FR 47431)

The Utah Bureau of Water Pollution Control (EPA Primacy Agency) has stated that this area need not be permitted as a point source discharge. Furthermore, the Forest Service has established a policy of "no new point source discharges" on these Forest Service lands.

The Division cannot require permitting as a point source discharge if the EPA's primacy agency with authority indicates no permit is needed. In the MOU between OSM and Utah, OSM agreed to resolve problems of coordinating regulation with EPA. Until OSM resolves its problems with EPA, the state has no choice but to implement plans in accordance with the EPA primacy agency.

Number 2 of 2 was written for " 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; (3) use of a generic insurance certificate that covers "the Coastal Corporation and all affiliated or subsidiary companies including SUFCO," whereas the DOGM regulations require each operation to be covered by the minimum liability limits."

The Division's position, as established in the original response (attached) remains unchanged: SUFCO was in compliance with the insurance requirements of the Utah program at the time of the inspection. The Division's March 6, 1990, file memo (attached) establishes the adequacy of coverage.

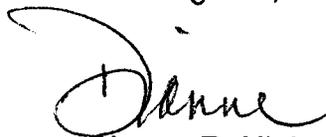
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Mr. Robert H. Hagen
January 28, 1991

Secondly, OSM's evaluation of the supplemental Flat Top Insurance held by SUFCO appears to be superficial. The record is as follows:

1. SUFCO's insurance policy is held by Old Republic Insurance who is authorized to do business in Utah.
2. Flat Top is authorized by Old Republic to issue a policy to SUFCO.
3. Sidney Nash (who signed the policy for Flat Top is authorized to do business in Utah under non-resident license no. 68129, valid through March 1992.

There is no violation or permit defect regarding the Utah program. Number 2 of 2 of TDL X90-02-246-1 was arbitrarily issued and should be stricken.

Best regards,



Dianne R. Nielson
Director

vb
Enclosures
cc: Kerry Frame, SUFCO
L. Braxton
D. Haddock
T. Mitchell
J. Helfrich
MI54/6-8

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P 540 714 088

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DOMESTIC RETURN RECEIPT



State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Norman H. Bangert
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Executive Director

Dianne R. Nielson, Ph.D.
Division Director

355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340

January 4, 1991

CERTIFIED RETURN RECEIPT REQUESTED
P 755 090 794

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

Dear Mr. Hagen:

Re: TDL X90-02-246-1, Coastal States Energy, Convulsion Canyon Mine,
ACT/041/002, Folder #5, Carbon County, Utah

This letter responds to the above referenced Ten-Day Letter, the certified copy of which was received at the Division's offices on December 21, 1990. A phone exchange between Daron Haddock (DOGM) and Jeff Zingo (OSM) on December 31, 1990, extended the period for response to January 4, 1991.

Number 1 of 2 was issued for "failure to provide a demonstration that the effluent limits of R614-301-751 will be met on the approved alternative sediment control areas. R614-742.231 was cited as the regulation being violated.

I. The Division feels that compliance with R614-301-742.231 is not an issue at the Convulsion Canyon mine.

Regulation 742.231 reads:

"Other treatment facilities will be designed to treat the 10 yr. - 24 hr. precipitation event unless a lesser design event is approved by the Division based on terrain, climate, other site-specific conditions and a

demonstration by the operator that the effluent limitations of R614-301-751 will be met."

By definition (R614-100-200):

"Other treatment facilities means, for the purposes of....R614-301-742.231 and 240..., any chemical treatments, such as flocculation or mechanical

structures such as clarifiers, that have a point source discharge and that are utilized to prevent additional contributions of suspended solids to stream flow or runoff outside the permit area."

Essentially, this means that a demonstration is only required when a design event less than the 10 yr. - 24 hr. precipitation event is used to design chemical or mechanical treatment facilities with a point source discharge. The drainage from areas frequently in question in Utah (i.e. SUFCO's Convulsion Canyon Mine) do not typically fit this situation. It is important to note that the definition of "other treatment facilities" does not include sediment control measures that are defined in R614-301-742.120 (e.g. silt fences, straw bales, vegetative filters, etc.).

The alternate sediment control areas at the Convulsion Canyon Mine are being treated using the best technology currently available as allowed for in R 614-301-742.110 and R614-301-742.211.

The definition for best technology currently available contained in R614-301-100-200 gives the Division discretion to "...determine the best technology currently available on a case-by-case basis...". The Division (via permitting and inspection avenues) has approved the use of a varied group of methods as best technology currently available for each of the areas that do not report to a sedimentation pond.

In summary, the Division feels the areas in question are in compliance with R614-301-742.211 and that R614-301-742.231 does not apply.

Number 2 of 2 was written for failure to provide public liability insurance in accordance with the State program.

Response: It is DOGM's opinion that insurance coverage for the Convulsion Canyon Mine was adequate at the time of the oversight inspection. Certificate of Insurance #588 (copy enclosed), shows adequate coverage exclusive of the self-

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TDL X90-02-246-1
Convulsion Canyon Mine
January 4, 1991

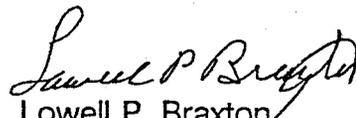
insurance retainer. SUFCO is covered by The Insurance Company of North America for \$500,000 combined single limit any one occurrence and \$750,000 aggregate, well above the limits required by the regulations.

Further discussions with Kerry Frame (SUFCO) indicate that another policy is held with Flat Top Insurance Company of Virginia, which also meets the minimum requirements of the regulations. This policy is specific to the coal mining operations of the Coastal Corporation and requires the insurance company to notify the Division in the event of any change in coverage. A copy of this certificate is being obtained and will be forwarded to AFO when it is received.

To further resolve any confusion regarding this issue, the Division of Oil, Gas and Mining has asked SUFCO to complete the Division's Certificate of Liability Insurance form (copy enclosed).

Based on the above information DOGM feels the issues raised in the Ten-Day Letter are adequately addressed and should not be counted against the Division's program in any way.

Sincerely,


Lowell P. Braxton
Associate Director, Mining

mbm
Attachments
cc: D. Haddock
J. Helfrich
P.F.O.
Ken Payne, SUFCO
BT041002.CCM