

Editor's note: 95 I.D. 16; modified by 102 IBLA 299, 95 I.D. 75, (May 31, 1988); appeal filed, Civ.No. 88-116-C (E.D. Ok. Mar. 9, 1988), dismissed upon application by Alpine, June 8, 1988.

ALPINE CONSTRUCTION CORP.

v.

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

IBLA 85-847

Decided February 8, 1988

[95 I.D. 16; Alpine Construction Co. v. OSMRE, 88-116-C (E.D. Ok. Mar. 9, 1988), dismissed upon application by Alpine, June 8, 1988.]

Appeal from a decision of Administrative Law Judge Frederick A. Miller, affirming the issuance of Notice of Violation No. 84-03-023-3. TU 4-29-R.

Affirmed.

1. Surface Mining Control and Reclamation Act of 1977: Hydrologic System Protection: Generally--Surface Mining Control and Reclamation Act of 1977: Water Quality Standards and Effluent Limitations: Sedimentation Ponds

The requirement of 30 CFR 715.17(a)(1) that all surface drainage from the disturbed area be passed through a sedimentation pond before it leaves the permit area is a preventive measure; a showing of the occurrence of the harm it is intended to prevent is not necessary to establish a violation of the regulation.

[95 I.D. 17]

2. Surface Mining Control and Reclamation Act of 1977: Hydrologic System Protection: Generally--Surface Mining Control and Reclamation Act of 1977: Water Quality Standards and Effluent Limitations: Sedimentation Ponds

The elements of proof of a violation of the sedimentation pond requirement are: (1) the existence of surface drainage from areas disturbed in the course of mining and reclamation operations; (2) that such drainage was not passed through a sedimentation pond; and (3) that the drainage left or will leave the permit area.

3. Surface Mining Control and Reclamation Act of 1977: Hydrologic System Protection: Generally--Surface Mining Control and Reclamation Act of 1977: Water Quality Standards and Effluent Limitations: Sedimentation Ponds

Under 30 CFR 715.17(a), the regulatory authority may grant exemptions from the requirement that drainage from disturbed areas be passed through a sedimentation pond, but only on the basis of a permittee's showings (1) that the disturbed drainage area within the total disturbed area is small, and (2) that a sedimentation pond is not necessary to meet effluent limitations and to maintain water quality in downstream receiving waters.

Avanti Mining Co., 4 IBSMA 101, 89 I.D. 378 (1982); Consolidation Coal Co., 4 IBSMA 227, 89 I.D. 632 (1982); and Turner Brothers, Inc. v. OSMRE, 98 IBLA 395 (1987), overruled to extent inconsistent.

APPEARANCES: Ed Edmondson, Esq., Muskogee, Oklahoma, for appellant; Nell Fickie, Esq., Office of the Regional Solicitor, Tulsa, Oklahoma, and Glenda H. Owens, Esq., Office of the Solicitor, Washington, D.C., for Office of Surface Mining Reclamation and Enforcement.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Alpine Construction Corporation (Alpine) has appealed the decision of Administrative Law Judge Frederick A. Miller, dated July 17, 1985, Docket No. TU 4-29-R, affirming the issuance of Notice of violation (NOV) No. 84-03-023-3 for " failing to pass all drainage from the disturbed area through a sedimentation pond prior to leaving the permit area" in violation of 30 CFR 715.17(a).

On July 13, 1984, Reclamation Specialist David Agnor of the Office of Surface Mining Reclamation and Enforcement (OSMRE) inspected the Rose Hill Mine No. 11 in Haskell County, Oklahoma. This mine was originally permitted by Garland Coal Company (Garland) under State permit Nos. 78/79-063, 79/81-2059, and 80/81-3070. Alpine had agreed to reclaim this site in consideration of mining rights to other Garland property. ^{1/} As a result of his July 13, 1984, inspection, Agnor issued [95 I.D. 17] NOV 84-03-023-3 because he discovered that surface drainage from four separate areas of the reclamation site would flow off the permit area without passing through a sedimentation pond. Alpine filed an application for review of the NOV on August 10, 1984, and requested an evidentiary hearing pursuant to 43 CFR 4.1164. A hearing was held in Tulsa, Oklahoma, on March 28, 1985, following which Judge Miller issued the decision appealed herein.

The basic facts giving rise to the NOV are not in dispute in this case. A gas well is located on the first area of concern. Inspector Agnor stated that the "drainage was designed to flow north from the gas well area and enter what is known on the map as existing pond number 7" (Tr. 19). This gas well, constructed by SPEC, Inc., after Garland had obtained an approved permit and had started mining, altered the flow of the surface drainage so that it now

^{1/} Alpine and OSMRE stipulated before the hearing that Garland completed its surface mining activities on these three permit areas before Oklahoma's permanent program was approved by OSMRE. Accordingly, Inspector Agnor cited Alpine with a violation of 30 CFR 715.17(a), an initial program regulation. His action was consistent with Citizens for the Preservation of Knox County, 81 IBLA 209 (1984), in which the Board ruled that an operator who has ceased all coal mining operations prior to the approval of a state's permanent program is not required to obtain a permanent program permit to conduct only reclamation activities, and that such reclamation activities are subject to the Department's initial program regulations.

the east of the well "and off the permit and into the Sans Bois Creek" (Tr. 20). This drainage pattern is evidenced by the "rills and gullies forming in this area, flowing--or running east-west towards the edge of the permit" (Tr. 20).

The second area encompassed land east of the county road on the 9-10 section line near proposed pond 5 and west of the road down to the Owl Creek diversion. The drainage from the area near proposed pond 5 would flow to the south and west, go through culverts underneath the road, continuing west and into the Owl Creek diversion (Tr. 26). Inspector Agnor stated that some of the drainage would enter sedimentation pond 6 which is west of the road, but that all drainage would not flow into the Owl Creek diversion (Tr. 27). Ronald Neafus, an expert witness for Alpine, stated that "there was no sediment control to the west of the road" in September 1984 (Tr. 73). Shannon Craig, Director of Environmental Quality Control for Alpine, testified that surface drainage would leave the second area without passing through a sedimentation pond (Tr. 82-83).

The third area involves the region where a dike once been had located, but which was removed in 1982 (Tr. 84). Inspector Agnor testified that without the dike the surface drainage flowed to the southeast into a grassy field and off the permit area without passing through a sediment pond (Tr. 32). The testimony of Alpine's witnesses, Neafus and Craig, was that the surface drainage would flow to the southeast of where the dike was located and off the permit without first going through an approved sediment pond or series of ponds (Tr. 71, 92).

The fourth area involved two topsoil stockpiles in the S 1/2 of sec. 3. Inspector Agnor testified that the part of surface drainage from the stockpile in the SW 1/4 of sec. 3 would "leave the permit without first passing through a sedimentation pond" (Tr. 42). He also testified that [95 I.D. 18] the surface drainage from the stockpile in the SE 1/4 of sec. 3 would flow off the permit area without passing through a sedimentation pond (Tr. 45). Neafus and Craig essentially corroborated Inspector Agnor's testimony (Tr. 71, 72, 92).

Alpine emphasized before Judge Miller, and now on appeal to the Board, that it did not mine the subject permit area, but was engaged in reclaiming an area already mined by Garland. The issuance of the NOV, in Alpine's view, is an "over-zealous and unreasonable application of technical rules on reclamation procedures" (Alpine's Posthearing Brief at 2). Further, Alpine argued before Judge Miller that it has been caught "in the middle" of differences between OSMRE and the Oklahoma Department of Mines (ODOM) on the subject of sediment control. Alpine's major contention is that the third area, where the dike had been located, was the "major area" cited in the NOV, and that Inspector Agnor's requirement that Alpine replace the dike, while the mine plan approved by ODOM required the dike's removal, invalidates the NOV. Alpine's reasoning in this regard is set forth below:

The flat slopes in the area where the dike was removed required sediment control measures other than a pond * * * and the fact that OSM personnel later approved the alternative, filter fence approach supports [Alpine's] position that the NOV from the outset was defective. It arbitrarily demanded dike replacement when the dike's mission from the first had been to prevent Sans Bois flooding of the mine area, rather than sediment control * * * .

(Alpine's Posthearing Brief at 3). As to the other three areas cited in Inspector Agnor's NOV, Alpine simply asserts that "only 'minor rills and gullies' were found in an otherwise remarkable 600-acre reclamation program that had been deferred more than two years through no fault of [Alpine]." Id. at 4.

The fact that Alpine did not mine the permit area is irrelevant to the question of whether Inspector Agnor properly issued the NOV. Alpine undertook to reclaim the Rose Hill mine in exchange for the right to mine other coal property owned by Garland. Section 701(27) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1291(27) (1982), defines "surface coal mining and reclamation operations" as "surface mining operations and all activities necessary and incident to the reclamation of such operations after August 3, 1977." (Emphasis added.) Regulation 30 CFR 715-11 provides that "[a]ll surface coal mining and reclamation operations conducted on lands where any element of the operations is regulated by a State shall comply with the initial performance standards of this part * * *." (Emphasis added.) Those initial performance standards, which are set forth at 30 CFR Part 715, require the permittee to "plan and conduct coal mining and reclamation rations to minimize disturbance to the prevailing hydrologic balance in order to prevent long-term adverse changes in the hydrologic balance that could result from surface coal [95 I.D. 19] mining and reclamation operations, both on- and off-site." 30 CFR 715-17 (emphasis added). Regulation 30 CFR 715-17(a) specifically requires all surface drainage to pass through a sedimentation pond before leaving the permit area.

[1] We will first consider whether Inspector Agnor properly cited the third area, described supra, as violating 30 CFR 715-17 (a). In previous cases, the Board has enunciated clear standards to be applied in determining whether there has been a violation of the sedimentation pond requirement embodied in 30 CFR 715-17(a). The requirement that a permittee pass surface drainage from areas disturbed in the course of mining and reclamation operations through a sedimentation pond is a preventive measure, and OSMRE need not make a showing of the harm the requirement is intended to prevent in order to establish a violation of that requirement. E.g., Consolidation Coal Co., 4 IBSMA 227, 237, 89 I.D. 632, 637 (1982); Avanti Mining Co., 4 IBSMA 101, 106-07, 89 I.D. 378, 380-81 (1982). Accordingly, a violation of the requirement can be proven independently of a violation of the effluent limitations prescribed for discharges of drainage from the disturbed area. E.g., Consolidation Coal Co., 4 IBSMA at 237, 89 I.D. at 637.

[2] The elements of proof of a violation of the sedimentation pond requirement have been characterized by the Board as straightforward: (1) the existence of surface drainage from areas disturbed in the course of mining and reclamation operations; (2) that such drainage was not passed through a sedimentation pond; and (3) that such drainage left the permit area. Consolidation Coal Co., 4 IBSMA at 237, 89 I.D. at 637; Avanti Mining Co., 4 IBSMA at 107, 89 I.D. at 381. Based upon the facts before us, we conclude that OSMRE established a prima facie case that the third area cited by Inspector Agnor in the subject NOV evidenced a violation of 30 CFR 715.17(a). Thus, Alpine had the ultimate burden of persuasion that the NOV was invalidly issued. 43 CFR 4.1171. Alpine fell short of meeting this burden.

Alpine's principal argument with regard to the third area is that the NOV resulted from a

breakdown in cooperation between the Secretary of Interior and the states * * * in the fact that NOV No. 84-03-023-3 seeks to penalize and punish [Alpine] for the removal of a dike when the mining plan approved by the State of Oklahoma required its removal, and the landowner had made formal demand that it be removed.

(Statement of Reasons at 1).

At the hearing, Alpine introduced into evidence the section of the mine plan which is entitled "Plan to Minimize the Hydrologic Impact." The purpose of this plan was stated as follows:

This plan * * * provides for temporary diversions to control upland stream run-off; construction of flood protection dikes for protection of the mine area and containment of run-off within the mining area; sedimentation basins to control run-off water quality after reclamation; and other specific techniques to assure that no hydrologic impacts occur during or after the area is mined. [Emphasis added.]

(Mine Plan at 57). Alpine asserts in its posthearing brief that the purpose of the dike "from the first had been to prevent Sans Bois [95 I.D. 20] flooding of the mine area, rather than sediment control" (Alpine's Posthearing Brief at 3). One of the stated purposes of the mine plan was to "minimize the hydrologic impact" of the mining operation. Construction of a system of dikes was proposed for at least two purposes: (1) to protect the mine area from flooding, and (2) to contain "run-off within the mining area." Under the section of the mine plan entitled "Flood Protection," measures were prescribed to control

erosion of the outslope of the dikes, including "[s]wales * * * located on the foot of the dike * * * to catch any sediment eroding from the face of the dike" (Mine Plan at 65). In addition, Figure No. 21 of the mine plan depicted the "excavated sediment channel" which would control surface runoff and sediment for the series of 8 "subwatersheds" embraced by the mine area. The "excavated sediment channel" was to be "located on the downslope perimeter of the proposed mine area." Id. at 68. A pump system to remove excess water from the sediment channel was proposed, with "[a] detention period of 24 hours after the storm * * * to insure that quality of pumped water will be within the limits set by the Office of Surface Mining." Id. The proposed excavated sediment channel, extending the length of the mine area, was bordered by the system of dikes. Those dikes, planned for construction "to a top elevation of 500 feet, [would] increase the amount of sediment storage possible within the isolated mine area." Id. at 65. The dike itself was one feature of the plan, the purposes of which were to protect the mine area from flooding and to contain sedimentation within the permit area. We therefore reject Alpine's argument that the dike system was not intended for sediment control. Inspector Agnor discovered that the dike had been removed when he visited the Rose Hill mine area. There were no sedimentation ponds to control the surface drainage from this disturbed area. Inspector Agnor testified at the hearing that the surface drainage "will flow off into either the slough [just east of the area where the dike was removed] or into Sans Bois Creek" (Tr. 35). The Sans Bois Creek is located off the permit area (Tr. 35). Both Alpine's witnesses, Neafus and Craig, testified that the surface drainage would flow to the southeast of the dike and off the permit without first passing through a sedimentation pond (Tr. 71, 92).

Such evidence satisfies OSMRE's burden of establishing a prima facie case that this area was in violation of 30 CFR 715-17(a). In Consolidation Coal Co., 4 IBSMA at 237, 89 I.D. at 637, the Board stated that OSMRE must establish, as the third element of a prima facie case, that surface drainage "left the permit area." See Avanti Mining Co., 4 IBSMA at 106-07, 89 I.D. at 380-81. The inspector testified in Consolidation Coal that he did not actually see water flowing through the breach in a berm and then off the permit area. However, the Board concluded that [95 I.D. 21]

the conditions shown in the photograph, in combination with the topographic features of the area shown in applicant's exhibit A and with the inspector's testimony, amply constitute a prima facie showing that surface drainage from the disturbed area of the refuse pile had flowed over the southwestern slope of the refuse pile and off the permit area.

4 IBSMA at 238, 89 I.D. at 638.

In Turner Brothers, Inc. v. Office of Surface Mining Reclamation and Enforcement, 98 IBLA 395, 400 (1987), the Board interpreted Consolidation Coal to require "proof that drainage has in fact not been passed or is not passing through a sedimentation pond before leaving the permit area," and concluded that "[p]roof that drainage might at some future time flow off the permit area would not suffice." We now reject that interpretation for the following reasons.

On reflection, we find that the Board's ruling in Consolidation Coal, followed by the Board in Turner Brothers, Inc., that OSMRE must prove that surface drainage has actually left the permit area, is inconsistent with 30 CFR 715.17, which was promulgated to prevent disturbances to the hydro-

logic balance resulting from drainage flowing from lands subject to mining and reclamation operations. Requiring an OSMRE inspector to prove that surface drainage has, in fact, left the permit area, would amount to requiring him to wait until adverse impacts resulting from the absence of sedimentation ponds have taken place. This case underscores the dilemma. Inspector Agnor inspected the Rose Hill mine during a dry season. To invalidate his NOV on the basis that he did not see surface drainage leave the permit area would effectively require him to wait for a rain before conducting an inspection for sedimentation pond compliance. We reject that approach. Avanti Mining Co., Consolidation Coal Co., and Turner Brothers, Inc. are hereby overruled to the extent inconsistent herewith. 2/ [95 I.D. 22]

2/ In these cases, the Board followed Black Fox Mining & Development Corp. v. Andrus, Civ. No. 80-913 (W.D. Pa., Jan. 21, 1981), in which the U.S. District Court for the Western District of Pennsylvania ruled that because OSMRE had failed to establish that surface drainage had actually left the permit area, OSMRE had improperly issued an NOV for failure to pass all surface drainage from the disturbed area through a sedimentation pond or ponds before allowing it to leave the permit area. With the exception of these efforts to comply with Black Fox Mining & Development Corp. v. Andrus, *supra*, the Department has from the beginning consistently interpreted 30 CFR 715.17, and its counterpart 717.17, so as to avoid the necessity of prescribing the cure for the dangers they were designed to prevent. Island Creek Coal Co., 1 IBSMA 285, 86 I.D. 623 (1979); Kaiser Steel Corp., 2 IBSMA 158, 87 I.D. 324 (1980); Black Fox Mining & Development Corp., 2 IBSMA 277, 87 I.D. 437 (1980); Belva Coal Co., Inc., 3 IBSMA 83, 88 I.D. 448 (1981); Amax Coal Co., 74 IBLA 48 (1983).

In Oregon Portland Cement Co. (On Judicial Remand), 84 IBLA 186, 190 (1984), in expressly declining to follow the decision of the U.S. District Court for Alaska in Oregon Portland Cement Co. v. United States Department of the Interior, 590 F. Supp. 52 (De Alaska 1984), the Board stated:

"The Board has declined to follow Federal court decisions primarily in those situations where the effect of the decision could be extremely disruptive to existing Departmental policies and programs and where, in addition, a reasonable prospect exists that other Federal courts might arrive at a differing conclusion. In our view, both conditions obtain."

The logical result of Turner Brothers, Inc. is to require an OSMRE inspector to reinspect certain minesites after a rain in order to show that surface drainage has actually left the permit area. The purpose of the sedimentation pond requirement is to prevent environmental harm. Turner Brothers, Inc., requires an OSMRE inspector to wait until the harm has taken place before issuing as NOV under 30 CFR 715.17(a). Such an approach is disruptive to OSMRE's inspection responsibilities and inconsistent with the

Alpine does not argue in this case that surface drainage had not left the permit area. In fact, Alpine's witnesses conceded that surface drainage "would flow" or "flows" off the permit area, given its elevation (Tr. 71, 92). The obvious and critical question in these cases is what constitutes a violation of 30 CFR 715.17(a). We do not think a showing that surface drainage actually left the permit area is necessary to establish a violation of 30 CFR 715.17(a). The proper emphasis must be placed upon whether, given the topography, a sedimentation pond is necessary to prevent surface drainage from leaving the permit area. When the evidence establishes that there are no sedimentation ponds, and that surface drainage has left or will leave the permit area, a violation of 30 CFR 715.17(a) is established.

In the NOV, Inspector Agnor required the following corrective action: "(1) pass all drainage through a sedimentation pond, and (2) rebuild the central dike in section 3 in the approved location." Subsequently, on October 31, 1984, Steven L. Colvert of OSMRE modified the NOV to require the following corrective action: "Pass all drainage through a sedimentation pond. Rebuild the control dike in sections 3 and 10 in the approved location or submit proper information for alternative sediment control to the Oklahoma Dept. of Mines and secure approval from ODOM for these controls and implement them."

fn. 2 (continued)

purpose of the regulation. For such reasons, we believe other Federal courts might disagree with the court in Black Fox.

Accordingly, we now respectfully decline to follow the ruling in Black Fox. See Bernos Coal Co. v. OSMRE, 97 IBLA 285, 297 n.2, 94 I.D. 181, 188-89 n.2 (1987).

We observe that the modified NOV did not relieve Alpine of the obligation to meet the sedimentation pond requirement; instead, it specifically reiterates Alpine's obligation to "[p]ass all drainage through a sedimentation pond." This directive applies not only to the third area, but also to the other three areas cited in Inspector Agnor's NOV as well. Moreover, the sedimentation pond requirement is independent of the remedial steps ordered in connection with the dike. In the modified NOV, Inspector Colvert leaves Alpine with two options for correcting the drainage control problems resulting from removal of the dike: either (1) rebuild the dike; or (2) submit proper information for alternative sediment control to ODOM, secure ODOM's approval of such controls, and implement them. The construction of sedimentation ponds might qualify as "alternative sediment control" measures, in lieu of replacing the dike. This "alternative sediment control" language was not intended to exempt Alpine from the general requirement of 30 CFR 715.17(a). In our opinion, the modified NOV affirms rather than invalidates the propriety of the NOV issued by Inspector Agnor. 3/ [95 I.D. 23]

3/ By letter dated Sept. 11, 1984, Neafus confirmed findings which he and Shannon reached during an inspection of the Rose Hill mines on Sept. 9, 1984. This letter recommends "alternative sediment control" measures with regard to "the topsoiled areas in Sections 3 and 10 and the area in Section 10 where the dike has been removed. These areas are characterized by extremely flat slopes and will require sediment control measures other than a pond." Neafus confirms their "plan for controlling sediment from these areas utilizing berms." Alpine constructed a berm using "a siltation fabric fencing * * * in conjunction with * * * straw in the areas that were named in the NOV." The file does not indicate whether this alternative control measure was submitted to ODOM, as directed in the modified NOV, and if so, whether ODOM approved.

The relevance of the modified NOV to this discussion was placed into perspective by counsel for OSMRE at the hearing before Judge Miller. Fickie emphasized that the Sept. 11, 1984, letter from Neafus to Shannon, and Alpine's actions in accordance with that letter, relate to abatement of the violation specified in the NOV. She properly phrased the issue as whether "there [was] a violation of the regulation 30 CFR 715.17(a) on the date July 13, 1984, not how [Alpine] tried to or abated the violation" (Tr. 80). She pointed out that evidence of such abatement efforts "would be more appropriate in a penalty hearing, but that is not what we have before you today" (Tr. 80).

[3] Alpine argued that the remaining three areas cited in the NOV were "small," with "[t]he area of the dike's removal * * * admittedly the only major area involved in the NOV" (Tr. 50; Posthearing Brief at 2). These three "drainage areas * * * were small acreage -- under 5 acres or 6 to 7 acres in one instance (Tr. 64, 66, 82) -- on which ponds were not required or appropriate on uncontradicted testimony" (Posthearing Brief at 4). Again, Alpine does not argue that surface drainage from the remaining three areas had not left the permit area. As with the third area cited in the NOV, OSMRE did not establish with regard to these small areas that surface drainage had left the permit area. However, the photographs and testimony establish that surface drainage from these three areas will leave the permit area. Given the preventive purposes of 30 CFR 715.17(a), as discussed supra, we rule that OSMRE established a prima facie case with regard to these remaining areas.

Judge Miller construed Alpine's assertions to be an argument that these areas were exempt from the requirements of 30 CFR 715.17(a). That regulation provides in part:

The regulatory authority may grant exemptions from [the sedimentation pond] requirement only when the disturbed drainage area within the total disturbed area is small and if the permittee shows that sedimentation ponds are [not] necessary to meet the effluent limitations of this paragraph and to maintain waters quality in downstream receiving waters.

30 CFR 715.17 (a). Judge Miller's application of this provision is set forth below:

However the applicant has not presented any testimony, evidence or even argument that the sedimentation ponds are not necessary

to maintain water quality of downstream receiving waters. [4/] OSM has approved alternative sedimentation control but has not exempted the applicant from all sediment control. The applicant has the ultimate burden of persuasion with respect to review of the notice of violation under 43 C.F.R. § 4.1171(b). In order to qualify for an exemption the applicant has to prove that the affected area is small and the downstream water quality is protected. The applicant has carried its burden for the first part but has failed to carry its burden for the second part of this exemption. Therefore the notice of violation is upheld as properly issued.

(Decision at 4). [95 I.D. 24]

We conclude that Judge Miller correctly found that appellant was not entitled to an exemption under 30 CFR 715.17(a). See Avanti Mining Co., 4 IBSMA at 108, 89 I.D. at 381.

We therefore conclude Judge Miller correctly found that OSMRE established a prime facie case that each of the four areas cited in the NOV were in violation of 30 CFR 715.17(a), and that Alpine failed to meet its ultimate burden of persuasion that the violations did not occur.

^{4/} We note that by letter to ODOM dated Aug. 11, 1983, Alpine requested a "small area exemption" with regard to two areas cited in the NOV: (1) the gas well area, and (2) an area located in the SE 1/4 NE 1/4, sec. 9 on the outside of the haul road/berm. This request appears to relate to what we have designated earlier as areas one and two, cited by Inspector Agnor in the NOV. In this letter, Alpine explains that "[t]here are two small areas which do not drain so that runoff passes through a sediment pond."

By letter dated July 13, 1984, ODOM responded to Alpine's request, stating that "[t]o date, a total of 108 revisions need to be reviewed." ODOM requested numerous items of information to complete its evaluation of the requested exemption. July 13, 1984, was the date on which Inspector Agnor visited the Rose Hill minesite and issued the subject NOV. The file contains no indication that Alpine submitted the information requested by ODOM.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

John H. Kelly
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Will A. Irwin
Administrative Judge

