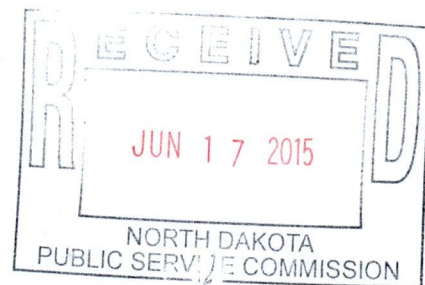


Public Service Commission

Memorandum

To: Casey Furey
From: Jim Deutsch, Director – Reclamation Division
Date: May 29, 2015
Subject: Status of OSM's regulation under 30 CFR 780.15(a)



The Dakota Resource Council's request for informal conference on Revision No. 1 to Permit NACC-1302 for the Coyote Creek Mine refers to OSM's permitting requirements in 30 CFR 780.15(a) pertaining to air pollution control plans for western mines that produce more than 1,000,000 tons per year. Since PSC rules do not contain a provision that is similar to 780.15(a), I checked into the history of this regulation and found that it had not been modified since OSM originally adopted it on March 13, 1979, but OSM did not require that we have a counterpart provision to 780.15(a) before they approved our state regulatory program. However, the December 15, 1980 Federal Register notice approving our state program referred to the May 16, 1980 court decision that remanded some of OSM's 1979 regulations when OSM responded to a question about our rules not having a counterpart to 780.15(a).

Finding no further explanation, I then contacted OSM for clarification on status of 30 CFR 780.15(a). I was directed to Mr. Dennis Rice, Regulatory Analyst, at OSM Headquarters. Mr. Rice e-mailed me with the attached History of OSMRE Air Quality Regulations. In May 1980, the court remanded OSM's 1979 performance standards under 30 CFR 816.95 pertaining to fugitive dust and air monitoring since the legislative history of SMCRA indicated that Congress only intended to regulate air pollution related to erosion. However, the court did not address the permitting requirements at 30 CFR 780.15; but the concluding statement in the attached document states: "However, the 1983 removal of the performance standards for fugitive dust control practices and air quality monitoring effectively rendered the corresponding Federal permitting regulations at 30 CFR 780.15 and 784.26 meaningless."

The air quality standards under the PSC's mining and reclamation rules that apply to the mining activities proposed by Revision No. 1 to Permit NACC-1302 are North Dakota Administrative Code Sections 69-05.2-09-05 and 69-05.2-13-07, as well as provisions in North Dakota Century Code Sections 38-14.1-14(2)(j) and 38-14.1-24(4).

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Exhibit 1