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To	Lowell Stratton	From Robert H. Hagen
Co.	DOGM	Co. AFO
Dept.		Phone #
Fax #		Fax #

Dianne:

Here's an "appropriate" response in the Second Sunny side TAN. ~~It's appropriate~~ In reading this response, it is apparent that our concern of a +60 on top of a stab action (Division order) has not been considered. I suggest we appeal that to OSM.



## United States Department of the Interior

OFFICE OF SURFACE MINING  
RECLAMATION AND ENFORCEMENT  
SUITE 310  
625 SILVER AVENUE, S.W.  
ALBUQUERQUE, NEW MEXICO 87102



In Reply Refer To:

June 3, 1992

Mr. Lowell P. Braxton  
Associate Director, Mining  
Division of Oil, Gas and Mining  
3 Triad Center, Suite 350  
355 West North Temple  
Salt Lake City, Utah 84180

Re: Division of Oil, Gas and Mining Response to Ten-Day Notice (TDN)  
92-02-370-02 TV 11, Sunnyside Mine

Dear Mr. Braxton:

The Albuquerque Field Office (AFO) received the Division of Oil, Gas and Mining (DOGM) response to the above referenced TDN on May 18, 1992. DOGM's response was addressed to Mr. Hord Tipton, Deputy Director, Office of Surface Mining, Washington, D.C. Because AFO is the Field Office that conducts the oversight of the Utah approved program, and in accordance with direction from OSM Headquarters to respond directly to you, AFO renders the following written finding:

The TDN contains one alleged violation as follows:

"Failure to properly design and construct sedimentation ponds.  
Regarding principal and emergency spillways."

The regulations believed to have been violated are R645-301-742.223 and 743.130. Six constructed ponds were identified as not being in compliance.

DOGM's response asserts that the violation alleged in the TDN had been, previous to the Random Sample Inspection (RSI), addressed by DOGM through a Division Order dated September 9, 1991. DOGM maintains that because of the outstanding Division Order AFO should "vacate" the TDN.

The TDN process, as outlined in 30 CFR 842.11 and OSM Directive INE-35, has been discussed in the past with DOGM by AFO. As has been relayed to DOGM in the past, the standard of review regarding a regulatory authority's (RA) response to

a TDN does not include "vacating" the TDN. OSM is required to determine, in writing, if the RA has taken the "appropriate action" to cause the violation to be corrected, shown "good cause" for failure to do so, has acted in an arbitrary and capricious manner, or abused its discretion under the State program.

The alleged violation contained in the TDN is what can be considered an "inspectable violation." In other words, this is not a conceptual situation in which one is dealing only with a defective permit that would not or has not yet turned into a field problem. The structures identified in the TDN have been constructed and are receiving disturbed area drainage but do not meet the regulatory standards for ponds. Based on that finding, the TDN was issued.

The AFO was fully aware of the outstanding Division Order at the time of the issuance of the TDN. As stated above, the Order was issued on September 9, 1991. However, neither the permittee nor DOGM fulfilled their respective obligations under the terms of the Order. The permittee did not submit a complete application within 30 days of receipt of the Order and DOGM did not take action at that time to compel compliance. New deadlines for submittal of a complete application were set by DOGM with the final one being March 31, 1992. On April 16, 1992, at the completion of the RSI, it was the AFO inspector who voluntarily delivered the permittee's latest submittal from DOGM's Price Field Office to your Salt Lake City office.

DOGM has subsequently found the permittee's latest submittal to be complete and is currently conducting a technical review. AFO has been informed by DOGM staff that June 19, 1992, has been set as the date by which DOGM will render a final decision on the revision application. Although this "inspectable violation" was identified by DOGM in September of 1991, and has yet to be corrected, the AFO will, based on the June 19, 1992, decision deadline, find DOGM's response to the TDN to be appropriate. However, as provided for in OSM Directive INE-35, AFO will monitor DOGM's implementation of the required action within the specified timeframe.

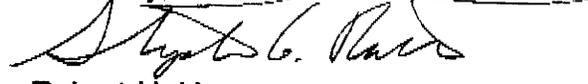
As a final note, DOGM, in the response to TDN 92-02-370-002, requested that TDN 92-02-370-001, violation 2 of 2, also be vacated based on the grounds that the alleged violation involving the active slurry impoundments had been addressed in the outstanding Division Order of September 1991. For the reasons outlined above, AFO will not "vacate" the TDN addressing the "inspectable violation" relative to the slurry impoundments but has, under separate cover, found DOGM's response to be appropriate. As stated above, AFO will monitor DOGM's implementation of the required action regarding the slurry impoundments within the specified timeframe.

Mr. Lowell P. Braxton

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If you have any questions regarding these matters, please contact  
Stephen G. Rathbun at (505) 766-1486.

Sincerely,



*Rathbun*

Robert H. Hagen, Director  
Albuquerque Field Office