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Orig mine file
cc L Braxton

United States Department of the Interior

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

TAKE PRIDE IN AMERICA

015/017

In Reply Refer To:

February 7, 1991

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
P 965 799 360

FEB 11 1991

Dr. Dianne R. Nielson, Director
Division of Oil, Gas and Mining
Department of Natural Resources
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, UT 84180-1203

Re: Ten-Day Notice (TDN) 91-02-244-2 (TV-1)

Dear Dr. Nielson:

The following is a written finding, in accordance with 30 CFR 842.11, regarding the Division of Oil, Gas and Mining's (DOGM) response to the above-referenced TDN.

On January 22, 1991, the Albuquerque Field Office (AFO) conducted an administrative review of DOGM's permitting action for the Des-Bee-Dove Mine.

The review was based on an earlier finding by this office on a random sample inspection of the Deer Creek Mine, TDN No. 90-02-244-6 (TV-1). Following an informal review of an arbitrary and capricious finding by AFO for that TDN, the Deputy Director for Operations and Technical Services of OSM, W. Hord Tipton, affirmed the earlier review. A subsequent re-inspection for that violation was ordered by the Deputy Director on January 14, 1991. AFO then conducted an administrative review of the other mining and reclamation permits held by Utah Power & Light Company (UP&L) in the State of Utah on January 1, 1991. At that time, like violations were noted regarding the permit transfer for each of the mines. This TDN was issued for that violation.

The TDN was sent certified mail through the U.S. Postal Service and was received on January 25, 1991, thereby setting the response due date as February 4, 1991. Gary Fritz, the issuing officer for the TDN, called your office for an oral response on that date. The written response dated January 30, 1991, was received by fax in AFO on February 5, 1991. Regular mail delivery of the originals was received a day later. AFO will, therefore, consider this a timely response.

The TDN was issued for "Failure to obtain prior written approval in accordance with R614-303-310 before transferring, assigning, or sale of rights granted by permit," Section R614-303-310. The TDN references the transfer, assignment, and sale of rights from UP&L to PacifiCorp for the Des-Bee-Dove Mine.

DOGM has indicated that the permit transfer is being undertaken as of the writing of its response to this TDN. Notification was sent on October 16, 1990, to DOGM indicating that the Des-Bee-Dove Mine would be operated by PacifiCorp on October 1, 1990. Following that, a transfer application was submitted to DOGM on November 20, 1990, from PacifiCorp. Deficiencies noted in the application were identified and sent to the applicant on November 28, 1990. In addition, a 510(c) check of UP&L, PacifiCorp, and Energy West was processed by DOGM on January 25, 1991, with an "issue" response being noted for the operators of and applicants for the permit transfer.

AFO recognizes the present attempt to transfer the rights of UP&L to PacifiCorp but would also note that DOGM became aware of the merger on January 9, 1989. At that time, all outstanding shares of capital stock of PacifiCorp, Maine, and UP&L were converted into shares of capital stock of PacifiCorp, Oregon. Notwithstanding the dates of the merger or the present effort by UP&L to transfer its mining permit to PacifiCorp, AFO cannot agree with DOGM's position on this matter. PacifiCorp is obligated to notify DOGM of its intent to assume those rights and to have them approved in full prior to the transfer, assignment, or sale of the rights granted by the permit. This requirement is also included in the permit as a condition of approval. In addition, Energy West Mining Company replaced UP&L on October 1, 1990, as the operator of the Des-Bee-Dove Mine.

Therefore, in consideration of the above, OSM finds that DOGM has failed to take appropriate action to cause the violation to be corrected or show good cause for such failure. A violation of Utah's program exists. DOGM is aware of the violation through the OSM's informal hearing findings for the Deer Creek TDN No. 90-02-244-6 (TV-1) and subsequent issuance of a Federal enforcement action for that violation. DOGM's failure to address the violation in accordance with the requirements of Utah's program constitutes an arbitrary and capricious action. Therefore, OSM finds DOGM's response to violation 1 of 1 of the TDN to be inappropriate.

If you disagree with this finding, you may request an informal review in accordance with 30 CFR 842.11(b)(1)(iii)(A). The request may be filed at this office or with the Deputy Director for Operations and Technical Services; Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW, Washington, DC 20240. Your request must be received within 5 days of receipt of this letter. A Federal inspection may be conducted after the 5-day appeal time has elapsed, unless an informal review is requested.

If you wish to discuss the matter further, please contact Steve Rathbun or me at (505) 766-1486.

Sincerely,

Robert H. Hagen, Director
Albuquerque Field Office