



# United States Department of the Interior

OFFICE OF SURFACE MINING  
Reclamation and Enforcement  
Suite 1200  
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Albuquerque, New Mexico 87102

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IN REPLY REFER TO:

December 20, 1993

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

RECEIVED  
DEC 22 1993

DIVISION OF  
OIL, GAS & MINING

Re: Notice of Violation (NOV) 93-020-190-005 (TV 1),  
Des-Bee-Dove Mine, ACT-015-017

Dear Mr. Braxton:

On December 17, 1993, you telephoned the Albuquerque Field Office (AFO) and requested an explanation of the AFO's recent issuance of the above noted NOV. Please find below a short summary of the events leading up to the issuance of the enforcement action:

Ten-Day Notice (TDN) 91-02-370-4 received by Division of Oil, Gas and Mining (DOGM) on July 8, 1991.

AFO receives DOGM's response to TDN and finds same inappropriate on July 26, 1991. DOGM receives the inappropriate finding on July 29, 1991.

DOGM does not file a request for an informal review within the required timeframe. Instead, on August 5, 1991, DOGM sends a letter to the Deputy Director, OSM indicating that a State NOV has been issued subsequent to the AFO finding of inappropriate and requests the Deputy Director to vacate the TDN.

On September 5, 1991, the Deputy Director responded to DOGM by indicating that TDN's are not "vacated." In addition, he stated that DOGM's reluctance to take any action until after the statutory TDN response period does not invalidate either the TDN or the AFO determination that DOGM did not take appropriate action.

Pursuant to the NOV issued by DOGM on August 8, 1991, AFO deferred the required Federal follow-up inspection pending appropriate abatement of the State enforcement action.

A joint Random Sample Inspection was conducted at the Des-Bee-Dove mine on December 2, 1993. That inspection revealed that the erosion cited in the above noted TDN and State NOV still existed. The State NOV had been terminated on November 8, 1991, without the repairs being made to the erosion on the slopes.

A violation of Utah's approved program was found to exist. The State action that had stayed the required Federal follow-up inspection noted above had been terminated. The State inspector, during the joint inspection, did not take action to cite the observed violation. Therefore, AFO issued the Federal Notice of Violation.

If the State's response to TDN 92-020-370-04 would have been found appropriate by AFO based on the State taking enforcement action, AFO would have been required to issue a new finding of inappropriate pursuant to OSM Policy Directive INE-35. However, AFO found DOGM's response to be inappropriate and that response remained in effect. At the time of the December 2, 1993 inspection, AFO found that the violation still existed and that the State NOV had been terminated. Subsequently, OSM issued a Federal NOV.

If you should have any further questions regarding this matter, please contact Stephen G. Rathbun or me at (505) 766-1486.

Sincerely,



Robert H. Hagen, Director  
Albuquerque Field Office