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# United States Department of the Interior

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

October 16, 1989

In Reply Refer To:

**RECEIVED**  
OCT 18 1989

DIVISION OF  
OIL, GAS & MINING

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 89-02-107-8

Dear Dr. Nielson:

In accordance with 30 CFR 842.11, the following is a written finding regarding the Division of Oil, Gas and Mining's (DOGM) response to the above Ten-Day Notice (TDN):

On September 12, 1989, the Albuquerque Field Office (AFO) conducted a random sample oversight inspection of the Utah Power and Light Company's Deer Creek Mine; the AFO inspector was accompanied by a DOGM inspector. The inspection resulted in the issuance of TDN 89-02-107-8 dated September 20, 1989, which DOGM received on September 25, 1989. DOGM's response to the TDN was dated September 28, 1989, and AFO received it on October 5, 1989.

The TDN cites UMC 771.19 as the regulation believed to have been violated. The regulation requires that all persons conduct surface coal mining and reclamation activities under permits \* \* \* and shall comply with the terms and conditions of the permit and the requirements of the Act, this chapter and the regulatory program. Page 2-10.1 of the approved Deer Creek Mine mining and reclamation plan specifically states that "water impoundments and dams will be examined four times per year and reports will be sent to the Division quarterly beginning in the fall of 1988. Structural weakness, erosion, and other hazardous conditions, if identified, will be reported."

DOGM's September 28, 1989, response confirms the above commitment to inspect the impoundment/sediment pond at the waste rock facility. The response also states that the language contained on page 2-10.1 of the MRP meets the requirements of UMC 817.46(t). AFO agrees that the language contained on page 2-10.1 meets the requirements of UMC 817.46(t); however, the TDN was issued for the operator's alleged failure to inspect the impoundment in accordance with a permit term or

ACT/015/018 #5 → orig mine file  
L. P. Braft  
cc: R. V. Smith  
J. C. Helfrich, P.F.O.  
route to L. Parson  
W.B.  
TAKE  
MINE  
IN  
AMERICA

Dr. Dianne R. Nielson

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condition as specified by UMC 771.19 and not for failure to meet the requirements of UMC 817.46(t).

The September 28, 1989, response also states that, since the fall of 1988, the operator has conducted quarterly inspections of the Deer Creek Waste Rock Facility. The response goes on to state that it is readily evident that the quarterly inspection of the waste rock facility includes the inspection of the pond and meets the requirements of UMC 817.46(t). Your response includes Attachment's A, B, and C which describe quarterly inspections of the Waste Rock Disposal Site for the fourth quarter of 1988 and the first and second quarters of 1989, and Attachment D, a September 26, 1989, letter from a representative of the permittee commenting on the second quarter 1989 inspection. The DOGM response concludes that the TDN was inappropriately issued and should be withdrawn.

AFO agrees that the operator has conducted quarterly inspections of the Waste Rock Facility and that the reports were on file at the time of the RSI. The Waste Rock Disposal Site reports reviewed at the time of the inspection and included in your response do not specifically state that "Detention Basin Number One" was inspected. In fact, there is no evidence, whatsoever, contained in the first two quarterly reports (Attachments A and B) that would indicate that quarterly inspections for structural, hazardous, or erosional conditions were ever conducted. The third quarterly report (3rd quarter 1989) never mentions impoundments and only certifies, in general, that the waste rock disposal site shows no evidence of instability, structural weakness, or other hazardous conditions. Therefore, there is no basis for withdrawing the TDN. The TDN was appropriately issued based on information on hand at the time of the inspection.

On the basis of the new information provided in your response (the Utah Power and Light Company letter of September 26, 1989), AFO finds that DOGM has shown good cause for not taking action. However, we urge DOGM to ensure that when operator's are required to inspect non-embankment ponds quarterly, in accordance with a permit condition, that the inspection is conducted in accordance with the Division's policy, "Certification and Reporting Requirements." This would improve consistency and the ease by which pond inspections could be verified.

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

Sincerely,



Robert H. Hagen, Director  
Albuquerque Field Office