



# United States Department of the Interior

OFFICE OF SURFACE MINING  
Reclamation and Enforcement  
WASHINGTON, D.C. 20240

TAKE  
PRIDE IN  
AMERICA

orig mine file  
ACT 015 018

c. l. Braxton  
T. Mitchell  
AKK

JAN 16 1991

JAN 23 1991

Dianne R. Nielson, Ph.D.  
Director, Division of Oil, Gas,  
and Mining  
3 Triad Center, Suite 350  
355 West North Temple  
Salt Lake City, Utah 84180-1203

Dear Dr. Nielson: *Dianne*

This is in response to your December 27, 1990, request for informal review of ten-day notice number 90-02-244-6 concerning Deer Creek Mine (permit number ACT/015/018). The ten-day notice alleges that there was a failure to obtain prior written approval in accordance with R614-303-300 before the transfer, assignment, or sale of rights granted by permit from the original permittee to its successor. The ten-day notice was issued to the permittee/operator of record, Utah Power & Light Company, and references the transfer, assignment, or sale of rights from Utah Power & Light Company to Pacificorp for the Deer Creek Mine.

In your request for informal review, you explain that the Division of Oil, Gas, and Mining (DOGM) received correspondence dated October 12, 1990, from Pacificorp stating that effective October 1, 1990, the Deer Creek Mine, previously permitted and operated by the Utah Power and Light Company, would be operated by Energy West Mining Company, a wholly-owned subsidiary of Pacificorp. On October 29, 1990, DOGM notified Pacificorp of the need for formal permit transfer to be initiated, and a transfer application was received on November 20, 1990, by DOGM. You also note that DOGM had notified Pacificorp of deficiencies in the transfer document on both November 26 and November 28, 1990. You maintain that DOGM is acting in a timely manner since being notified of the transfer, assignment, or sale of permit rights and change of operator at Deer Creek Mine by Pacificorp, well in advance of the issuance of the subject ten-day notice, and that DOGM's actions are not arbitrary and capricious.

The Utah program at R614-303-310 requires that "no transfer, assignment, or sale of rights granted by a permit will be made without the prior written approval of the Division." There is no dispute in the record that Pacificorp and Energy West Mining Company have effectively assumed control of Utah Power & Light Company's mining operations without first obtaining the written approval of DOGM. Although I recognize that an application for transfer, assignment, or sale of permit rights has been submitted and is currently under review by your agency, this does not alter the fact that a violation of R614-303-310 exists. Because mining operations are being conducted by the successor operator without an approved transfer, assignment, or sale of permit rights, your agency was required under the Utah program to take an appropriate enforcement action until a

Dianne R. Nielson, Ph.D.

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transfer, assignment, or sale of permit rights has been approved. Since no enforcement action was issued, I am affirming the written determination of the Albuquerque Field Office Director and hereby order a Federal inspection of ACT/015/018.

This case raises an additional concern regarding the implementation of Utah's procedures for the transfer, assignment, or sale of permit rights. In addition to the above, the record shows that the transfer, assignment, or sale of rights from Utah Power & Light to PacifiCorp for the Des-Bee-Dove and Cottonwood/Wilberg mines are also currently under review by your agency. I am concerned that your agency may be allowing mining operations to be conducted by the successor operator at these minesites prior to meeting all of the requirements of the Utah program. Therefore, I have requested the Albuquerque Field Office Director to issue a ten-day notice to address this issue.

Sincerely,



W. Hord Tipton  
Deputy Director  
Operations and Technical Services

cc: Utah Power & Light Company  
P.O. Box 310  
Huntington, Utah 84528

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