

0044

*Ac 1015/025*

*K8 ore of mine fill  
Bear Canyon*



# United States Department of the Interior

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

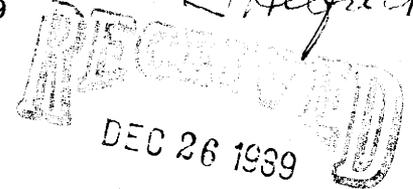


In Reply Refer To:

*cc L Braxton  
APR  
T. Helfrich*

December 22, 1989

CERTIFIED MAIL RETURN RECEIPT REQUESTED  
P 201 229 328



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 89-02-107-12

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 Ten-Day Notice (TDN).

On November 14, 1989, the Albuquerque Field Office (AFO) conducted a random sample inspection of the Bear Canyon Mine. AFO inspectors were accompanied by a DOGM inspector. The inspection resulted in the issuance of the TDN referenced above for an alleged violation of the Utah regulations. DOGM received the TDN via certified mail on November 30, 1989, thereby setting the response due date at December 11, 1989. On December 11, 1989, Mr. Rade Orell of AFO contacted Mr. Lowell Braxton of DOGM to ascertain the status of the response. Mr. Braxton provided an oral response on that date. The written response was received in AFO on December 14, 1989.

The TDN was issued for failure to pass drainage from the disturbed area through a sedimentation pond before leaving the permit area in accordance with UMC 817.42. The TDN references the outslope of the Bear #1 Mine/Lamphouse Pad as the location.

DOGM's response indicates the Division believes the area is small enough in size to be effectively treated by an alternate sediment control with certain demonstrations by the operator that the drainage from the area will not degrade the receiving waters per applicable State and Federal water quality standards. The response indicates sampling will occur during a storm event or snowmelt to demonstrate acceptable treatment of the disturbed area drainage and failure to demonstrate adequate treatment will require modification to the PAP.

Dr. Dianne R. Nielson

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AFO considers failure to pass drainage from a disturbed area through a sedimentation pond before it leaves the permit area to be a performance standard violation. AFO finds DOGM's response to the TDN inappropriate. An appropriate response would have been to issue a notice of violation with abatement measures that include the discussion presented in DOGM's response.

Therefore, in consideration of the above, OSM finds that DOGM has failed to take appropriate action to cause the violation of the TDN to be corrected or shown good cause for such failure. A violation of Utah's program exists. DOGM is aware of the violation through an inspection carried out during the enforcement of Utah's approved program. DOGM's failure to take an enforcement action is arbitrary and capricious in that the State has acted inconsistently with UMC 843.12(a)(1).

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, OSM 1951 Constitution Ave., N.W. Washington, D.C., 20240. Your request must be received within 5 days of receipt of this letter. A Federal inspection may be conducted after the five-day appeal time has elapsed, unless an informal review is requested.

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

Sincerely,



Acting  
Robert H. Hagen, Director  
Albuquerque Field Office