

# TECHNICAL MEMORANDUM

## Utah Coal Regulatory Program

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December 23, 2008

TO: Internal File

THRU: Joe Helfrich, Team Lead 

FROM: Priscilla Burton, CPSSc, Environmental Scientist III *PB/bj/sjs*

RE: Midterm Review, PacifiCorp, Trail Mountain Mine, C/015/0009, Task ID #2878

### SUMMARY:

The Division initiated a midterm review of the Trail Mine on November 15, 2007, but the review was delayed by several other active mine permitting actions that took precedence. Trail Mountain has been in Temporary Cessation since May 21, 2001. The October 2008 discussion of lease relinquishment at Trail Mountain brought the mid-term review to the fore again.

An AVS check run on December 4, 2008 indicates that there has not been a resolution to the outstanding violations on Pennsylvania permits 900101060 and 900101156. These AML fee payment violations are linked to PacifiCorps through Paul Leighton, an officer appointed in 2006 to MidAmerican Energy Holdings Company (MEHC), a parent company of PacifiCorps. On August 2, 2007, Scott Childs of PacifiCorps provided a "Factual Response to OSM..." via an email to Pamela Grubaugh-Littig, in which Mr. Childs indicates that Paul Leighton was appointer some time after a 1986 merger of MEHC with the parent entity of the coal companies involved in the violations. As such, Mr. Leighton would have had no ownership or control relationship to either coal company. The AVS database does not show a beginning or ending date for Mr. Leighton. Consequently, at this time, I am unable to connect Mr. Leighton as a controller of either Coal Junction Coal Co. or Alumbaugh Coal Co. during the years 1983, 1984, 1985 when the mis-reporting of tonnage allegedly took place.

As required by R645-300-132.110, I have requested that the Permittee provide information describing the process of correcting the violation or the results of a judicial appeal contesting the validity of the 1983 violation. The Permittee should be made aware that under existing Rules, any future permit or permit renewal issued to PacifiCorps must be issued conditionally (R645-300-132.200) while the violations remain unabated.

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Three deficiencies resulting from this mid-term review are listed below. The information requested under R645-301-113.300 should allow the Division to make the finding required by R645-300-132:

**R645-301-111.400**, Corporate ownership and control information in Appendix A of the Legal Financial Volume was last updated and incorporated September 4, 2008. Please provide notarized Secretary signature for each parent company's officer and director information. •With Secretary signature, please verify the new position of John Diesing, Jr. as Vice President (rather than Senior Vice President) of MEHC. •With Secretary signature, please verify the end dates provided for Mark C. Moench and William J. Fehrman, past officers with MidAmerican Energy Holdings Company, as they are the same as the listed starting dates. •With Secretary signature, please verify the "current" status of Jeffrey Erb, Assist. Secretary of PacifiCorps. Previous information indicated an end date of May 17, 2006 for Mr. Erb. •Please verify whether PacifiCorps Energy is a parent entity to PacifiCorp and if so, provide a list of officers and directors with accompanying Secretary signature for the beginning and ending dates. •Please indicate the connection between Interwest Mining Co. and Energy West Mining Co. •Show the relationship of all parent entities and affiliates on an ownership family tree.

**R645-301-113.300**, At a minimum, either Appendix D or Page 1-2 of the Legal and Financial Volume must discuss PacifiCorps' connection with the two unabated federal violations (900101060 and 900101156) written in 1983 on Pennsylvania permits 360268501S and 360356301S, for nonpayment of AML fees. The AVS database links these violations to PacifiCorps through Paul Leighton, who was appointed Vice President of MEHC in March 2006.

**R645-300-132**, The Permittee must provide documentation of correspondence with the Office of Surface Mining showing that these violations have been or are in the process of being corrected or that a judicial appeal was filed contesting the validity of the violations, and its resolution (R645-300-132.110).

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**TECHNICAL ANALYSIS:**

**GENERAL CONTENTS**

**IDENTIFICATION OF INTERESTS**

Regulatory Reference: 30 CFR 773.22; 30 CFR 778.13; R645-301-112

**Analysis:**

Part 1, Volume 1 of the Cottonwood MRP refers the reader to the Legal and Financial Volume for the PacificCorp mines. The Legal and Financial Volume, Section R645-301-112 indicates that the applicant is PacifiCorp and the operator is Energy West Mining Co. Section R645-301-112 further states that Energy West Mining Co. is wholly-owned by PacifiCorp (an Oregon corporation), which is wholly owned by PPW Holdings LLC, which is wholly-owned by MidAmerican Energy Holdings Co. (MEHC), which is owned in part by Berkshire Hathaway Inc.

Corporate ownership and control information in Appendix A of the Legal Financial Volume was last updated and incorporated September 4, 2008. The information provided is more current than that in the OSM/AVS data base, but some supplemental information was requested, as described below.

The current Mining and Reclamation permit, dated February 21, 2005, is assigned to PacifiCorp. All Division correspondence concerning the Trail Mountain Mine is through Kenneth Fleck, Manager of Geologic and Environmental Affairs, Energy West Mining Co.

**Findings:**

Supplemental ownership and control information is requested in accordance with:

**R645-301-111.400**, Corporate ownership and control information in Appendix A of the Legal Financial Volume was last updated and incorporated September 4, 2008. Please provide notarized Secretary signature for each parent companys' officer and director information. •With Secretary signature, please verify the new position of John Diesing, Jr. as Vice President (rather than Senior Vice President) of MEHC. •With Secretary signature, please verify the end dates provided for Mark C. Moench and William J. Fehrman, past officers with MidAmerican Energy Holdings Company, as they are the same as the listed starting dates. •With

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Secretary signature, please verify the “current” status of Jeffrey Erb, Assist. Secretary of PacifiCorps. Previous information indicated an end date of May 17, 2006 for Mr. Erb. •Please verify whether PacifiCorps Energy is a parent entity to PacifiCorp and if so, provide a list of officers and directors with accompanying Secretary signature for the beginning and ending dates. •Please indicate the connection between Interwest Mining Co. and Energy West Mining Co. •Show the relationship of all parent entities and affiliates on an ownership family tree.

## **VIOLATION INFORMATION**

Regulatory Reference: 30 CFR 773.15(b); 30 CFR 773.23; 30 CFR 778.14; R645-300-132; R645-301-113

### **Analysis:**

Appendix D of the Legal Financial Volume contains current information pertaining to violations issued by the State of Utah on PacifiCorps mines. The MRP does not identify any unabated violations received by the applicant or by any person who owns or controls the applicant. However, on May 18, 2007, June 20, 2008 and December 4, 2008 an evaluation of the ownership and control for the Trail Mountain Mine in the AVS database resulted in a list of two outstanding federal violations (900101060 and 900101156) written in 1983 on Pennsylvania permits 360268501S and 360356301S, for nonpayment of AML fees. These violations are linked to PacifiCorps through Paul Leighton, appointed Vice President of MEHC in March 2006. Eighteen other linked violations on Kentucky permits linked to PacifiCorps through Paul Leighton were resolved under the Island Creek Settlement. As of December 22, 2008, these eighteen violations were no longer listed in the AVS system.

The Division first became aware of the two outstanding violations during the Cottonwood Wilberg waste rock site Phase I bond release application (C/015/019, Task 2758). Previous correspondence may be found in the Cottonwood Wilberg 2007 Incoming folder. In particular, see documents 0017.pdf correspondence between Jim Smith and Linda Keene, OSM/AVS and document 0018.pdf. between Pamela Grubaugh-Littig and Scott Childs, Energy West Mining Co. On August 2, 2007, Scott Childs of PacifiCorps provided a “Factual Response to OSM...” via an email to Pamela Grubaugh-Littig, in which Mr. Childs indicates that Paul Leighton was appointed some time after a 1986 merger of MEHC with the parent entity of the coal companies involved in the violations. As such, Mr. Leighton would have had no ownership or control relationship to either coal company. The AVS database does not show a beginning or ending date for Mr. Leighton. Consequently, at this time, I am unable to connect Mr. Leighton as a controller of either Coal Junction Coal Co. or Alumbaugh Coal Co.

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On December 22, 2008, I spoke with Amy Willowby, OSM/AVS, who stated that OSM rule changes in December 2007 no longer require permit limitations based upon "upstream" violations (violations on a separate permitted site, connected to the Permittee through a common owner or controller). However, the Utah Coal Rules require that the Division make a finding that neither the applicant, nor any person who owns or controls the applicant, . . . is in violation of any law, rule or regulation referred to in R645-300-132, including delinquent abandoned mine reclamation fees.

Information requested below should allow the Division to make the finding required by R645-300-132. If such a finding cannot be made, the Division must require that the Permittee provide information that the violations are in the process of being corrected or that a judicial appeal contesting the validity of the violations has been filed (R645-300-132.110). Under these circumstances, any future permit issued to PacifiCorps must be issued conditionally (R645-300-132.200).

Page 1-2 of the Legal and Financial Volume, section R645-301-112 discusses the prior ownership and control by MEHC officers and directors of other coal mine operations. Appendix D provides violation information, but there is no mention of the connection between PacifiCorps' controllers and the control of the Kentucky mines where eighteen violations were resolved through a settlement, and the Pennsylvania mines where 2 violations are as yet unresolved. At a minimum, Appendix D of the Legal and Financial Volume must discuss PacifiCorps' connection with the two unabated federal violations (900101060 and 900101156) written in 1983 on Pennsylvania permits 360268501S and 360356301S, for nonpayment of AML fees. These violations are linked to PacifiCorps through Paul Leighton, appointed Vice President of MEHC in March 2006.

**Findings:**

The information provided is not accurate. The Permittee must provide the following information in accordance with:

**R645-301-113.300**, At a minimum, either Appendix D or Page 1-2 of the Legal and Financial Volume must discuss Paul Leighton's connection with the two unabated federal violations (900101060 and 900101156) written in 1983 on Pennsylvania permits 360268501S and 360356301S, for nonpayment of AML fees. These violations are linked to PacifiCorps through Paul Leighton, appointed Vice President of MEHC in March 2006.

**R645-300-132**, The Permittee must provide documentation of correspondence with the Office of Surface Mining showing that these violations have been or are in the process of being corrected or that a judicial appeal was filed contesting the validity of the violations, and its resolution (R645-300-132.110).

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**RECOMMENDATIONS:**

Utah Coal Rules require that the Division make a finding that neither the applicant, nor any person who owns or controls the applicant, ... is in violation of any law, rule or regulation referred to in R645-300-132, including delinquent abandoned mine reclamation fees. If such a finding cannot be made, the Division must require that the Permittee provide information that the violations are in the process of being corrected or the results of a judicial appeal contesting the validity of the violations (R645-300-132.110).

On August 2, 2007, Scott Childs of PacifiCorps provided a "Factual Response to OSM..." via an email to Pamela Grubaugh-Littig, in which Mr. Childs indicates that Paul Leighton was appointed some time after a 1986 merger of MEHC with the parent entity of the coal companies involved in the violations. As such, Mr. Leighton would have had no ownership or control relationship to either coal company during the years 1983, 1984, 1985 when the alleged reporting violations took place. The AVS database does not show a beginning or ending date for Mr. Leighton. Consequently, at this time, it appears that the connection between Mr. Leighton and the 1983 audit violations against Coal Junction Coal Co. or Alumbaugh Coal Co. are tenuous.