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State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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Mine file

June 10, 1997

CERTIFIED RETURN RECEIPT REQUESTED
No. P 074 976 873

Chuck Semborski
Environmental Supervisor
Energy West
P. O. Box 310
Huntington, Utah 84528

Re: Findings of Fact, Conclusions, Order and Finalized Assessment for Notice of Violation (NOV) N97-41-3-1, ACT/015/017, PacifiCorp/Energy West, Des Bee Dove Mine, Folder No. 5, Emery County, Utah

Dear Mr. Semborski:

On May 15, 1997, an Informal Hearing and Assessment Conference was held to review the fact of violation and proposed assessment for state violation N97-41-3-1 (the NOV) which was issued to PacifiCorp on February 27, 1997.

Fact of Violation

The NOV was issued "For failure to maintain a primary road to have adequate drainage control. Failure to maintain a road to control or prevent additional contributions of suspended solids to streamflow or runoff outside the permit area."

Regulations violated: R645-301-742.400 (road drainage)
R645-301-752.200 (control or prevent additional contributions of suspended solids outside the permit area)

Notice applies to: "5 culverts on the lower portion of the haul road"

Remedial action: "Maintain the culverts in accordance with designs in the Mining and Reclamation Plan"

During the discussion on the fact of the violation the permittee and representatives of the operator, Energy West Mining Company, presented a chronology of events to substantiate they had not been notified by Texaco that construction of a coalbed methane pipeline in the drainage ditch of the Des Bee Dove haul road was about to commence. After observing flagging along the pipeline route, Energy West began a dialogue with Texaco regarding SMCRA requirements, notified the Division of Oil, Gas and Mining (Division) of the proposed pipeline activity, and submitted an amendment to acknowledge the pipeline construction activity. PacifiCorp/Energy West argued that the blocked culverts were not a result of the operator's "failure to maintain", but were a direct consequence of the pipeline construction activities. The operator further argued that pipeline construction of the nature involved in the NOV is not part of the definition of "Coal Mining and Reclamation Operations" found in R645-100-200 (and consequently was not regulated activity). Further, the operator argued, since the Division had not established what the operator had done to cause the problem, the NOV failed the "reasonable specificity" test contemplated for notices of violation at UCA § 40-10-22(1)(e).

Paul Baker, the issuing inspector for the Division discussed his position on the NOV as established in his May 5, 1997, interoffice memo "Violation N97-41-3-1, PacifiCorp, Des Bee Dove Mine, ACT/015/017 Emery County, Utah. The memo and his verbal presentation supports the operator's chronology of events as presented at the informal hearing, and concludes by asserting that since the roads, culverts and roadside ditches at issue in the NOV are permitted, and subject to regulation, the NOV is supportable.

As a result of a review of all pertinent data and facts, including those presented in the Informal Hearing and Assessment Conference, the following shall constitute the findings of fact, conclusions of law and order and finalized assessment:

Findings

1. Location of man-made surface, subsurface features (including pipelines) within, passing through or passing over a permit area is discussed at R645-301-521.122, and said features must be included in the operation plan, and shown on a map.
2. Construction of the oil and gas pipeline system in the disturbed area of the Des Bee Dove mine haul road right of way minimized creation of new surface disturbances attendant to the pipeline.
3. Minimization of surface disturbances is an objective of the Coal Regulatory Program and is within the purview of the land owner, School and Institutional Trust Lands Administration (SITLA).

4. The portion of the pipe line that is subject of the NOV occupies a roadside ditch that is regulated by the Utah Coal Regulatory Program.
5. The roadside ditch disturbed by the pipe line construction did not meet the performance standards of the Utah Coal Regulatory Program at the time of issuance of the NOV.
6. The Des Bee Dove Mine Reclamation Plan (MRP) does not discuss the contingency of leaving the pipeline in place at the conclusion of coal mining.

Conclusions

1. As amended by the operator to show pipelines and other improvements made by Texaco within the Des Bee Dove permit area, the MRP is in compliance with the requirements of R645-301-521.122.
2. Pipelines and other features discussed at R645-301-521.122 are not considered part of coal mining and reclamation operations as defined at R645-100.
3. The operator is responsible for maintenance of the Des Bee Dove haul road and its road side ditches and culverts.

Order

1. NOV N97-41-3-1 is vacated.
2. Within 45 days of receipt of this Order, PacifiCorp must complete maintenance of the roadside ditch and culverts that are the subject of the NOV to assure function as contemplated under the Utah Coal Regulatory Program.
3. Within 60 days of receipt of this Order, the permittee shall submit plans to the Division that discuss the disposition of the roadside ditch containing the pipeline that is subject of the NOV upon reclamation of the Des-Bee Dove haul road.

Assessment Conference

Discussion of the proposed assessment by the operator followed the reasoning developed during the discussion on the fact of the violation, noting that operations resulting in the NOV were not "Coal Mining and Reclamation Operations", and had not been conducted by the permittee or the operator. The permittee also noted that the assessment assigned a degree of fault

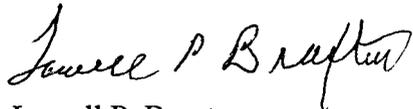
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to Texaco, but was assessing the fine against PacifiCorp. The Division re-established the position that the Coal Regulatory Program does not contemplate specialized assessments for violations caused by parties other than the permittee.

Finalized Assessment

Vacation of N97-41-3-1 precludes the need for further discussion of penalty assessment.

Sincerely,



Lowell P. Braxton
Assessment Conference Officer

vb
cc: P. Grubaugh-Littig
J. Helfrich
P. Baker

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U.S.G.P.O. 1988-217-132

FORM 3811, Mar. 1988 U.S.G.P.O. 1988-212-865 DOMESTIC RETURN RECEIPT

DOGM VB ACT/015/017 N97-41-3-1 FOLDER #5

1. Article Addressed to:
 CHUCK SEMBORSKI ENVR SUP
 ENERGY WEST
 P.O. BOX 310
 HUNTINGTON UT 84528

2. Article Number:
 P 074 976 873

3. Signature - Agent
 [Signature]

4. Date of Delivery
 JUN 16 1997

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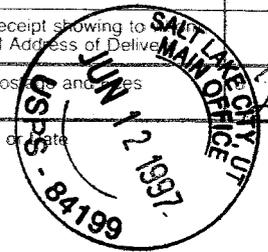
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