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(435) 748-2140  
Fax (435) 748-5125



March 14, 2001

(Document e-mail:d)

Attn: Mr. Don Fulmer, Acting Supervisor  
United States Forest Service  
Manti-LaSal National Forest  
Price District  
599 West Price River Road  
Price, Utah 84501

**Subj: Request for a Variance to Cover Asphalt Debris Within the Forest Boundaries**

PacifiCorp, by and through its wholly-owned subsidiary, Energy West Mining Company ("Energy West") as mine operator, hereby submits a request for a variance to the United States Forest Service (USFS) policy related to the disposal of asphalt within Forest boundaries.

On February 26, 1997, PacifiCorp submitted a Notice of Intent (NOI) to reclaim the Des Bee Dove Mine. Reclamation was to include portions of the Des Bee Dove haul road, surface facility demolition, and re-contouring the disturbed area. PacifiCorp petitioned suggestions and comments from all interested parties. Copies of the NOI were sent to the State Institutional Trust Lands Administration, Bureau of Land Management (BLM), Emery County, Texaco, and the USFS. No comments or suggestions were received with respect to this notice.

In September 1999, Energy West began Phase I reclamation activities at the Des Bee Dove mine site. This phase included the salvage of surface structures and demolition of concrete foundations and portal collars. The portals were sealed and backfilled at this time.

Included in this phase was the demolition of the bathhouse foundation and associate asphalt parking lot. This area lies partially within Forest boundaries. Concrete and asphalt debris was pushed along the bathhouse pad cut area and planned to use used as initial fill. The intent was to cover this material with sufficient soil material and reseed. This would partially eliminate this cut and satisfy the requirements of the Utah Coal Regulations. The estimated concrete/asphalt volumes are 800 yds<sup>3</sup> and 1200 yds<sup>3</sup> respectfully.

On March 10, 2000, Energy West met with the BLM, and USFS to discuss remote portal reclamation of the Deseret and Beehive portals, pumphouse area reclamation, and conversion of the mine access road to an approved USFS trail. Knowledge of the concrete and asphalt fill was expressed during this meeting, however no concerns were voiced.

In May of 2000, Energy West petitioned local interest to establish the Des Bee Dove Mine as a historical site since numerous old structures (i.e. hand stacked stone retaining walls, timbered ripple foundations, etc.) existed. Present were East Mountain Cartlemen's Association, Emery County, Division of Oil, Gas and Mining (DOGMA), BLM, and USFS. Representing the USFS was Mr. Carter Reed.

United States Forest Service  
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During this meeting, Mr. Reed informed Energy West of the new USFS policy on the disposal of asphalt on Forestlands. The policy is entitled "**Regulations and Policies Related to Disposal of Asphalt, Manti-LaSal National Forest, May 2000**". Energy West was unaware of the development of this policy when the concrete and asphalt was pushed along the cut of the bathhouse pad.

Recent soil sampling activities at the Des Bee Dove Mine revealed that the tipple pad (within a USFS special use area) was constructed (probably pre-1950) using reject coal produced from the mine. Energy West became concerned with the stability of a drainage system that's to be constructed across the top of the pad and decided to remove it. The reject coal within the pad will be utilized and the canyon will be reclaimed close to its original state.

Energy West has hired a contractor to remove the pad and the transport usable coal to a loading facility. This operation, which began March 6, 2001, is being stalled because of the lack of room to store soil without conflicting with the asphalt storage.

Energy West respectfully requests that a variance to the USFS policy be granted with the defense that the policy was enacted after the asphalt was backfilled with the knowledge of the USFS. Notice was given for the commencement of reclamation and no comments were received in our office.

The asphalt will be covered with at least eight (8) feet of non-toxic material. This is twice the amount required by the Utah Coal Rules to cover any acid or toxic forming materials. There is no groundwater located in the vicinity of the backfilled asphalt or within the Des Bee Dove disturbed area. The environmental resources of the surrounding area will not be adversely affected by leaving the asphalt in place.

As mentioned above, our reclamation operations are being stalled. Energy West would appreciate your immediate attention to this request in the form of a formal response letter by Friday, March 16, 2001. If you have any questions or concerns with this request, please call me at (435) 687-4825 or Chuck Semborski at (435) 687-4720.

Sincerely,

*Dennis Oakley*

Dennis Oakley  
Environmental Engineer

Cc: Carter Reed  
Crockett Dumas thru Jeff DeFreest  
Chuck Semborski



United States  
Department of  
Agriculture

Forest  
Service

Manti-La Sal  
National Forest

Supervisor's Office  
599 West Price River Drive  
Price, UT 84501  
Phone: (435) 637-2817  
Fax: (435) 637-4940

File Code: 2820-4

Date: March 16, 2001

Energy West Mining Company  
Attn: Dennis Oakley, Environmental Engineer  
P.O. Box 310  
Huntington, UT 84528

Dear Mr. Oakley:

I have received your letter of March 15, 2001 requesting a "variance" from the Forest Service policy regarding disposal of asphalt for reclamation operations on the Des Bee Dove Mine. I appreciate your concern regarding the need to now dispose of asphalt that has been pushed from the bathhouse pad cut area and which was planned to be used as initial fill material. I believe there is a misunderstanding on your part of the basis of the policy and of any authority which I would have in approving a variance.

The "Regulations and Policies Related to Disposal of Asphalt, Manti-La Sal National Forest, May 2000" document to which you refer serves two functions. First, it compiles information on State and Federal laws applicable to disposal of asphalt. Second, it asserts a Forest Service policy to not allow solid waste disposal on National Forest System lands unless it is determined to be the "highest and best use of the lands". Laws referred to include citations from the Utah Code Annotated, Utah Administrative Code, Federal Executive Order, and Code of Federal Regulations. In addition to the statutes referred to in the regulations and policy document, the Resource Conservation and Recovery Act (RCRA) 42 U.S.C. Sec. 6901 et. seq. addresses discarded material (including those from mining operations). Under this statute, the asphalt in question would also be considered a solid waste.

The direction of law is that used asphalt is a solid waste and therefore, must be disposed of in an approved solid waste landfill. Regardless of Forest Service desires in regard to these issues, I do not have any authority to approve variance from compliance with these laws. The enforcement agencies for these regulations are the U. S. Environmental Protection Agency and the Utah Department of Environmental Quality, Division of Solid and Hazardous Waste. As such, the Forest Service cannot force compliance but also cannot grant variance from these requirements.

I am aware that the reclamation plan for the Des Bee Dove Mine calls for burial of used concrete and asphalt material on the leased area. Unfortunately, as summarized above, burial of the asphalt is not allowed by law. Certainly, statutory requirements would have primacy over the reclamation plan and Energy West is responsible for compliance with all applicable laws related to your operations, including reclamation. This responsibility is specified in Section 14 of your



Federal Coal Leases and Term and Condition A under Section III, Responsibilities of the Holder, in your Special Use Permit authorizing use of the portal area for the mine. Condition A specifically mentions RCRA as well as all applicable Federal, State, and local laws, regulations, and standards. Energy West signed the current, renewed special use permit on March 2, 2001. Authorization previous to this renewed permit for use of the portal area was under a special use permit approved on February 10, 1977. This permit also had a similar clause, item 7, calling for compliance with all applicable Federal, State, county, and municipal laws, ordinances, or regulations. Both permits also included clauses requiring removal of structures and improvements with cost to be borne by the permittee.

We believe it would be an appropriate use of the used asphalt to grind it up and have it spread on roads in the area. You may find this option more desirable than disposal of the material in an approved solid waste landfill. If you wish to pursue this option, please contact Aaron Howe of this office for assistance in identifying appropriate Forest Roads and/or coordination with the County for possible use on County Roads.

Sincerely,

*/s/ Elaine J. Zieroth*

ELAINE J. ZIEROTH  
Forest Supervisor

cc: Mary Ann Wright, Utah Division of Oil, Gas and Mining