



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

Michael O. Leavitt
Governor

Kathleen Clarke
Executive Director

Lowell P. Braxton
Division Director

1594 West North Temple, Suite 1210

PO Box 145801

Salt Lake City, Utah 84114-5801

801-538-5340

801-359-3940 (Fax)

801-538-7223 (TDD)

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Chuck Semborski

June 29, 2001

July 3, 2001

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

RE: Permit Condition Added – Removal of Asphalt from Forest Service Lands PacifiCorp,
Des-Bee-Dove Mine, C/015/017, Outgoing File

Dear Mr. Semborski:

This letter is to clarify the permit approval status on the burial of asphalt at the Des-Bee-Dove Mine. In 1985 this permit was reviewed and approved by Oil, Gas and Mining with concurrence by the U.S. Forest Service.

A State-Federal Cooperative Agreement was signed in March 1987 (30CFR 944.30) allowing "for State regulation of surface coal mining and reclamation operations on Federal lands." That Agreement, under **Article VI, Review of Permit Application Package** states "any permit issued by DOGM will incorporate any terms or conditions imposed by the Federal land management agency, including conditions relating to post mining land use, and will be conditioned on compliance with the requirements of the Federal land management agency."

On March 19, 2001, the Division was copied on a letter to Mr. Dennis Oakley from Elaine Zieroth, Manti-LaSal National Forest (MLNF) Supervisor, denying a variance to conditions of a renewed special use permit for allowing continued disposal of asphalt at a portal area. (That initial special use permit was granted February 10, 1977 and renewed in March 2001.) And, on May 4, 2001, the Division was sent an email, to Pamela Grubaugh-Littig, from Carter Reed, MLNS concerning this same issue. That email stated essentially that, even though the Forest Service previously approved the disposal of asphalt on Forest Service land, through approval of the permit application with the Division, (as noted above) current USFS policy denies asphalt disposal on Forest Service lands. Please refer to copy of enclosed e-mail communication.

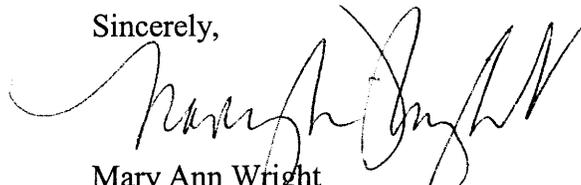
Since disposal of asphalt relates to a condition of post mining land use, the Division hereby incorporates as a permit condition that the asphalt be removed from within the boundaries of the MLNF, but not necessarily from the already disturbed area of the permit.

The permit states that "DOGM may amend these conditions at any time without the consent of the permittee in order to make them consistent with any federal or state statutes and any new regulations." The revised permit conditions for the Des-Bee-Dove Mine are enclosed.

Energy West Mining Company has several possibilities for the disposal of the asphalt. Two options, and there may be others, are: 1) disposing of the asphalt at Des-Bee-Dove Mine on disturbed lands other than those managed by the USFS, and 2) disposing of the asphalt in an approved off-site facility. The first option is allowed under the permit by rule under Division of Solid and Hazardous Waste rules, referred to in a March 22, 2001 from Dennis Downs to Chuck Semborski.

Those options, or any others, call for an amendment to the permit, prior to moving the asphalt from its current disposal area. Please contact us if you have any questions.

Sincerely,



Mary Ann Wright
Associate Director, Mining

vs

Enclosure:

cc Elaine Zieroth, MLNF
Dennis Downs, DEQ-Solid & Hazardous Waste
Price Field Office

O:\015017.DBD\FINAL\asphalt burial.doc

From: "Carter Reed/R4/USDAFS" <creed01@fs.fed.us>
To: <nrogm.pgrubaug@state.ut.us>, <nrogm.pgrubaug@state.ut.us>
Date: 5/4/01 8:48AM
Subject: Asphalt Disposal at DesBeeDove Mine

*incoming
5/10/01
Copy Mary Ann,*

*Dana,
Susan,
Pam
Forwarded
to Chuck
Lembcke on
5/4/01.*

Please reference our letter to Energy West Mining Company, dated March 16, 2001. A copy of the letter was sent to Mary Ann Wright. Our position is that the asphalt pavement materials must be removed and disposed of at a suitable landfill or recycled and reused. The letter from DEQ resolves the RCRA requirement for removal of solid waste, but the Forest Service policy regarding removal of solid waste remains.

The area of proposed disposal is on unleased NFS lands. It was included into the mine permit area only after a FS special-use permit authorized occupancy of the land for the proposed uses and facilities which do not include disposal of materials. Incorporation of this area into the mine permit area in no way supersedes or foregoes requirements of the special-use permit or Forest Service authority to administer the special-use permit. Use and occupancy of the land under the special-use permit is subject to current Forest Service rules. Even though the Forest Service consented to the mine plan that included burial of asphalt, no amendment to the special-use permit was made or requested. Condition A of the current special-use permit signed by PacifiCorp on March 2, 2001 states that the permittee is subject to applicable Federal, State, and local laws, regulations, and standards. The permit, previous to the renewal, issued in 1977 had a similar clause, item 7, calling for compliance with all applicable Federal, State, county, and municipal laws, ordinances, or regulations. Both permits included clauses requiring removal of structures and improvements with cost to be borne by the permittee. Where laws and regulations/policies change over time, the permit language requires current standards to be met at the time of work.

Forest Service policy/standards are included in the Forest Service Manual (FSM). FSM 2130.3, Item 3 states "The Forest Service discourages solid waste disposal on national Forest system lands, unless such use is the highest and best use of the land". The USDA Environmental Initiative (Item 21) states: "The FS will make every effort to insure that its lands and minerals management activities for new and currently active mines and timber related activities will not result in new or exacerbate current CERCLA sites, and that no new municipal solid waste landfills or open dumps will be permitted on National Forest System Lands. Policy and guidance will be developed for the use of NFS lands for permitted solid waste transfer and collection systems".

Current Forest Service regulations regarding FS special-uses prohibit

issuance of new permits that would involve disposal of solid waste or disposal of radioactive or other hazardous substances. Asphalt pavement materials are clearly a solid waste. Clause D. Amendment. of the current special-use permit allows amendment in whole or in part by the Forest Service when, at the discretion of the authorized officer, such action is deemed necessary or desirable to incorporate new terms, conditions, and stipulations as may be required by law, regulation, land management plans, or other management decisions.

Carter Reed
Forest Geologist
Manti-La Sal National Forest
Supervisor's Office
599 West Price River Dr.
Price, UT 84501
435-637-2817
creed01@fs.fed.us

CC: "Elaine J Zieroth/R4/USDAFS" <ezieroth@fs.fed.us>, "Aaron Howe/R4/USDAFS" <ahowe@fs.fed.us>, "Dale Harber/R4/USDAFS" <dharber@fs.fed.us>

**ATTACHMENT A
SPECIAL CONDITION**

- 1. PacifiCorp will submit water quality data in an electronic format, approved by the Division for the Des Bee Dove Mine beginning with data for the fourth quarter of 2000.**
- 2. PacifiCorp may not dispose of asphalt within the Manti – La Sal National Forest Boundary.**