



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

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August 7, 2001

CERTIFIED RETURN RECEIPT  
7099 3400 0016 8896 0051

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

Re: Proposed Assessment for State Violation No. N-01-7-1-1, PacifiCorp, Des-Bee-Dove Mine. 08/15/01 Compliance File

Dear Mr. Semborski:

The undersigned has been appointed by the Division of Oil, Gas & Mining as the Assessment Officer for assessing penalties under R645-401.

Enclosed is the proposed civil penalty assessment for the above referenced violation. The violation was issued by Division Inspector, Ken Wyatt, on July 9, 2001. Rule R645-401-600 et. seq. has been utilized to formulate the proposed penalty. By these rules, any written information which was submitted by you or your agent within fifteen (15) days of receipt of the Notice of Violation has been considered in determining the facts surrounding the violation and the amount of penalty.

Under R645-401-700, there are two informal appeal options available to you:

1. If you wish to informally appeal the fact of violation, you should file a written request for an Informal Conference within 30 days of receipt of this letter. This conference will be conducted by the Division Director. This Informal Conference is distinct from the Assessment Conference regarding the proposed penalty.
2. If you wish to review the proposed penalty assessment, you should file a written request for an Assessment Conference within 30 days of receipt of this letter. If you are also requesting a review of the fact of violation, as noted in paragraph 1,

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C/015/017  
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the Assessment Conference will be scheduled immediately following that review.

**If a timely request for review is not made, the fact of violation will stand, the proposed penalty(ies) will become final, and the penalty(ies) will be due and payable within thirty (30) days of the proposed assessment. Please remit payment to the Division, mail c/o Vickie Southwick.**

Sincerely,



Pamela Grubaugh-Littig  
Assessment Officer

sd  
Enclosure  
cc: OSM Compliance Report  
Vickie Southwick, DOGM  
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WORKSHEET FOR ASSESSMENT OF PENALTIES  
DIVISION OF OIL, GAS, & MINING

COMPANY/MINE PacifiCorp/ Des-Bee-Dove Mine

NOV# N-01-7-1-1

PERMIT C/015/017

VIOLATION 1 OF 1

ASSESSMENT DATE 08/06/2001

ASSESSMENT OFFICER Pamela Grubaugh-Littig

I. HISTORY MAX 25 POINTS

- A. Are there previous violations, which are not pending or vacated, which fall within 1 year of today's date?

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS
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\_\_\_\_\_

1 point for each past violation, up to one year  
5 points for each past violation in a CO, up to one year  
No pending notices shall be counted

TOTAL HISTORY POINTS 0

II. SERIOUSNESS (EITHER A OR B)

NOTE: For assignment of points in Parts II and III, the following apply:

- Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
- Beginning at the mid-point of the category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an Event (A) or Hindrance (B) violation? A

A. EVENT VIOLATION MAX 45 POINTS

1. What is the event which the violated standard was designed to prevent?

**\*\*\*Performance Standards for R645-301-200 dictate that all topsoil substitutes will be removed, maintained and redistributed according to the operation and reclamation plan that was provided to the Division in order to obtain a permit to mine coal. The operation plan had identified the best available material in the permit area for use at reclamation. Mixing of these substitute topsoils with refuse compromised the revegetation potential of this site.**

2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 18

PROVIDE AN EXPLANATION OF POINTS:

***\*\*\*The permittee hired a contractor who excavated coal and coal waste from the Tipple Pad valley fill but did not remove, segregate, or stockpile the top 18 to 24 inches of surface soil material from the outslope of the storage yard/valley fill pad or from the outslope of the Deseret pad. The permittee is responsible for insuring that the best available plant support material was collected as described in the Des-Bee-Dove approved Mining and Reclamation Plan (Page 4-13).***

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 15

PROVIDE AN EXPLANATION OF POINTS:

***\*\*\*The potential for reclamation success has been reduced because of the surface soils that contained microorganisms, seeds, and detritus accumulated over the past 15 -20 years was destroyed. This damage is difficult to measure. The surface soil material that was to be salvaged has now been mixed with spoil and coal waste and is buried below significant amounts of coal and debris on the north end of the Tipple Pad and on Bath House Pad.***

B. HINDRANCE VIOLATION MAX 25 POINTS

1. Is this a potential or actual hindrance to enforcement?       
RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS     

PROVIDE AN EXPLANATION OF POINTS:

TOTAL SERIOUSNESS POINTS (A OR B) 33

III. NEGLIGENCE MAX 30 POINTS

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE: or was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, or the failure to abate any violation due to the same? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Greater Degree of Fault

ASSIGN NEGLIGENCE POINTS 25

PROVIDE AN EXPLANATION OF POINTS:

***\*\*\*The permittee is fully aware of the coal mining regulations and the contents of the approved Des-Bee-Dove Mining and Reclamation Plan.***

***Prior to the valley fill excavation, during a conference call in February 2001, Division personnel asked when removal of substitute topsoil from the outsoles would occur. The Division soil scientist went to the site on March 8, 2001 to observe soil handling at the outset of the excavation. In early March, activity was just beginning on the valley fill excavation and Division personnel observed that spoil and mine waste was being allowed to spill onto the outslope which the MRP stated held the substitute topsoil and was to be salvaged. A field visit report dated June 28, 2001 stated that this point was mentioned to the permittee during the March 8, 2001 visit and there was acknowledgement by the permittee that "the outslope would be salvaged."***

***During subsequent compliance inspections in April, May, and June of 2001, substitute topsoil handling was again discussed and the permittee was advised of the potential loss of valuable organic matter and live earth. A conference call was held on May 30, 2001 with Division personnel and the permittee and it was agreed that no additional material would be placed on the potential substitute soil until sampling had occurred.***

***The permittee submitted an amendment to this effect on June 8, 2001. The complete inspection of June 26, 2001 revealed that the permittee did not segregate the potential substitute soil from refuse. The topic of the June 8, 2001 submittal (soil substitute material to be sampled) was buried underneath a fresh layer of waste and refuse.***

***The Division has maintained with the permittee that room exists on the bath house pad to allow for this soil to be stockpiled away from construction activities. During a field visit on July 17, 2001, the Division noted that the contractor for the permittee had segregated road base and separately***

*stored the material on the Deseret pad, a safe distance from the valley fill excavation operation.*

IV. GOOD FAITH MAX 20 POINTS

(Either A or B)

(Does not apply to violations requiring no abatement measures)

A. Did the operator have onsite the resources necessary to achieve compliance of the violated standard within the permit area?

IF SO--EASY ABATEMENT

Easy Abatement Situation

Immediate Compliance -11 to -20\*

(Immediately following the issuance of the NOV)

Rapid Compliance -1 to -10

(Permittee used diligence to abate the violation)

Normal Compliance 0

(Operator complied within the abatement period required)

(Operator complied with conditions and/or terms of approved Mining and Reclamation Plan)

\*Assign in upper or lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IN SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

Rapid Compliance -11 to -20\*

(Permittee used diligence to abate the violation)

Normal Compliance -1 to -10\*

(Operator complied within the abatement period required)

Extended Compliance 0

(Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete)

(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? Easy

ASSIGN GOOD FAITH POINTS 3

PROVIDE AN EXPLANATION OF POINTS:

*\*\*\*The violation required the permittee to 1) "cease all further mixing of outslope fill "topsoil" as referenced in the Des-Bee-Dove MRP, page 4-13, approved September 1, 1998, with underlying coal and coal waste, Immediately, no later than Monday, July 9, 2001.*

*In a letter to the Division, dated July 19, 2001 (received on July 23, 2001), the permittee indicated that they instructed the contractor on July 10, 2001 (the day after the violation was issued) to cease storing any more material on top of the existing pile on the bath house pad. However, the permittee found that while at the site on that day, the contractor had already hauled and dumped material at this location. The permittee then instructed the contractor not to haul any more refuse material to the top of the pile, but rather haul it to the west end of the bath house pad. This activity should have ceased "immediately", per the instructions of the abatement time of the violation.*

*The permittee in the July 19, 2001 letter stated that during a site visit on July 17, 2001, no more refuse had been hauled and dumped on top of said pile.*

*There are two more abatement requirements:*

*2) "To remove, segregate and stockpile the top 18" to 24" of "topsoil" from all future fill outcrops that are disturbed as described in the MRP." The permittee instructed the contractor not to haul any more refuse material to the top of the pile, but rather to haul it to the west end of the bath house pad. During a site visit by the permittee on July 17, 2001, it was stated no more material had been placed after the July 10, 2001 placement, and*

*3) Develop and submit for Division approval, a soil management plan for the entire Des-Bee-Dove Mine reclamation project. This should include a complete soil volume and quality analysis. Implementation upon Division approval. This plan has not been submitted to date.*

V. ASSESSMENT SUMMARY

NOTICE OF VIOLATION	<u>N-01-7-1-1</u>
I. TOTAL HISTORY POINTS:	<u>0</u>
II. TOTAL SERIOUSNESS POINTS:	<u>33</u>
III. TOTAL NEGLIGENCE POINTS:	<u>25</u>
IV. TOTAL GOOD FAITH POINTS:	<u>-3</u>
TOTAL ASSESSED POINTS:	<u>55</u>
TOTAL ASSESSED FINE:	<u>\$1200</u>

sd

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