

BEFORE THE DIVISION OF OIL GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH

---oo0oo---

IN THE MATTER OF THE APPEAL OF FACT OF VIOLATION N95-35-2-1, PACIFICORP, DEER CREEK MINE, EMERY COUNTY, UTAH	: : : : :	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER  CAUSE NO. ACT/015/018
---	-----------------------	---

---oo0oo---

On March 11, 1996, the Division of Oil, Gas and Mining ("Division") held an informal hearing concerning the fact of violation issued to PacifiCorp for the above-referenced Notice of Violation ("NOV"). The following individuals attended:

- Presiding: James W. Carter, Director
- Petitioner: Val Payne
- Division: Joe Helfrich  
Susan White  
Mike Suflita

The Findings, Conclusions, and Order in this matter are based on information provided by the Petitioner in connection with this informal hearing, and on information in the files of the Division.

FINDINGS OF FACT

1. Notice of this hearing was properly given.
2. The Assessment Conference, to review the proposed penalties for NOV N95-35-2-1, was held immediately following this informal hearing regarding fact of violation. The

requirement to pay the assessed penalty is stayed pending this decision upon the informal review of fact of violation.

3. Violation N95-35-2-1 was written for "Failure to comply with conditions of approved permit. Rilda Canyon permit condition #8, dated July 31, 1995." Condition #8 prohibits the emplacement of imported fill at the Rilda Canyon site without prior testing to determine the fill material's alkalinity and toxicity.

4. Condition #8 also contemplated an on-site visit by the Division's soil specialist to determine which types of testing would be appropriate for the fill selected by the operator. PacifiCorp selected the fill source on August 1, 1995 and contacted the Division and Forest Service to schedule a site visit August 8. The Division's soil specialist was unable to attend.

5. PacifiCorp unsuccessfully attempted contacts to schedule a site visit by the Division's soils specialist on August 11th, 15th, 16th and 21st. PacifiCorp compared the analysis of a Soil Conservation Service sample site in the Kenilworth Series soils with the selected fill material and found them comparable. PacifiCorp concluded the selected fill was compatible with the native materials at the mine site, and concluded that it had met the requirements of condition #8, but did not inform the Division of its conclusions.

6. PacifiCorp imported approximately 10 yards, out of an estimated 9000 yards to be imported, and performed compaction tests on August 22nd. On August 23rd, Division personnel inspected the site, noticed the fill and reiterated the permit condition prohibition on importing untested fill material. Later that morning, an approximately 30 additional yards of fill was delivered to the Rilda Canyon mine site.

7. Violation N95-35-2-1 was hand delivered to PacifiCorp at 11:00 am August 23, 1996 and delivery of the imported fill material ceased immediately. Testing parameters were agreed to between the Division and PacifiCorp within three days, and importation and emplacement of the selected fill material was resumed.

#### CONCLUSIONS OF LAW

1. The importation of untested fill material to the Rilda Canyon site constituted a violation of permit condition #8.

2. PacifiCorp was hindered, to some extent, in its efforts to arrange for testing through conditions not reasonably anticipated by PacifiCorp and not readily within its control.

3. PacifiCorp's belief that it had met the requirements of condition #8 constituted ordinary negligence under the circumstances, but did not constitute reckless, knowing or intentional conduct. After being informed by the Division that further importation of fill would constitute a violation, the addition of fill material was conducted with the knowledge that a violation would be issued, but was not conducted with the knowledge that environmental harm would occur. PacifiCorp reasonably believed that the fill material met the requirements of condition #8, which was ultimately proven to be the case.

#### ORDER

The facts of this violation test the application of the negligence and seriousness points system to complicated circumstances. The good or bad faith of an operator requires a decision about the operator's mental state when an action is taken, and whether that mental state is a reasonable one under all the circumstances. In this case, the shortness of the time period between approval of the permit with condition #8 and the desired commencement of

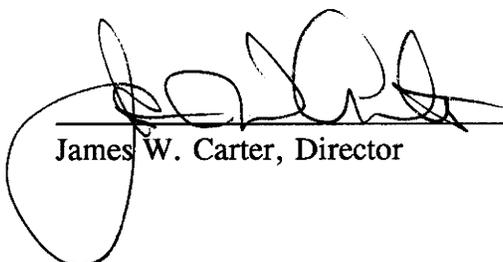
emplacment of fill material gave the operator very little cushion for unexpected events. A more prudent course might have been to commence the permitting process earlier. At the same time, the Division's inability to more quickly respond to the operator's requests for clarification of the requirements of condition #8 exacerbated the situation. Luckily, in this case there was no environmental damage.

NOW THEREFORE, it is ordered that:

1. NOV N95-35-2-1 is upheld.
2. The negligence points assessed are reduced from 30 to 18, with the total points assessed thereby reduced from 50 to 38.
3. The finalized assessment, resulting from the assessment conference is due and payable to the Division 30 days from the date of this Order.
4. The Petitioner may appeal the determinations of fact of violation and/or the finalized assessments to the Board of Oil, Gas and Mining by filing said appeal within 30 days of the date of this Order, in accordance with statutory and regulatory requirements, including placing the assessed civil penalty in escrow.

SO DETERMINED AND ORDERED this 17<sup>th</sup> day of May, 1996.

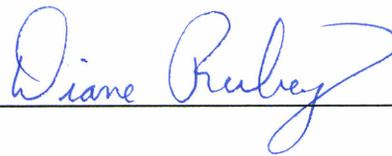
STATE OF UTAH  
DIVISION OF OIL, GAS AND MINING

  
James W. Carter, Director

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER for Cause No. ACT/015/018 to be mailed by first-class mail, postage prepaid, this 20th day of May, 1996, to the following:

Val E. Payne  
Senior Environmental Engineer  
PacifiCorp  
P. O. Box 310  
Huntington, UT 84528

  
\_\_\_\_\_



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

*1 Mine file  
Folder # 5*

Michael O. Leavitt  
Governor  
Ted Stewart  
Executive Director  
James W. Carter  
Division Director

355 West North Temple  
3 Triad Center, Suite 350  
Salt Lake City, Utah 84180-1203  
801-538-5340  
801-359-3940 (Fax)  
801-538-5319 (TDD)

February 9, 1996

CERTIFIED RETURN RECEIPT REQUESTED  
No. P 074 976 528

Val Payne  
Sr. Environmental Engineer  
PacifiCorp  
P. O. Box 310  
Huntington, Utah 84528

Re: Informal Hearing and Assessment Conference for State Violation No. N95-35-2-1, PacifiCorp, Deer Creek Mine, ACT/015/018, Folder #5, Emery County, Utah

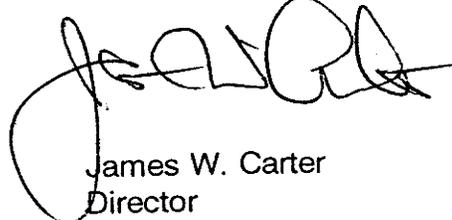
Dear Mr. Payne:

In accordance with your written request dated January 19, 1996, please be advised that the Informal Hearing and Assessment Conference on state violation N95-35-2-1, Deer Creek Mine, has been established for Monday, March 11, 1996, beginning at 1:30 p.m.

Pertinent, written material you wish reviewed before the conference can be forwarded to me at the address listed above.

The conference will be held at the office of the Division of Oil, Gas and Mining.

Very truly yours,



James W. Carter  
Director

vb  
cc: L. Braxton





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

Michael O. Leavitt  
Governor  
Ted Stewart  
Executive Director  
James W. Carter  
Division Director

355 West North Temple  
3 Triad Center, Suite 350  
Salt Lake City, Utah 84180-1203  
801-538-5340  
801-359-3940 (Fax)  
801-538-5319 (TDD)

January 9, 1996

CERTIFIED RETURN RECEIPT  
P 074 979 426

Val Payne  
Sr. Environmental Engineer  
PacifiCorp Energy West  
P. O. Box 310  
Huntington, Utah 84528

Re: Proposed Assessment for State Violation No. N95-35-2-1, PacifiCorp, Deer Creek Mine, ACT/015/018, Folder #5, Emery County, Utah

Dear Mr. Payne:

The undersigned has been appointed by the Board of Oil, Gas and 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, Susan White on August 23, 1995. Rule R645-401-600 et. Sec. 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:

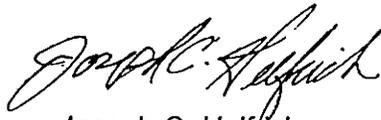
1. If you wish to informally appeal the fact of this violation, you should file a written request for an Informal Conference within 30 days of receipt of this letter. This conference will be conducted by the Division Director. This Informal Conference is distinct from the Assessment Conference regarding 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 one, the Assessment Conference will be scheduled immediately following that review.



Page 2  
N-95-35-2-1  
ACT/015/018  
January 9, 1996

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 Vicki Bailey.

Sincerely,



Joseph C. Helfrich  
Assessment Officer

mt  
Enclosure  
cc: James Fulton, OSM  
015018.paf

WORKSHEET FOR ASSESSMENT OF PENALTIES  
UTAH DIVISION OF OIL, GAS AND MINING

COMPANY/MINE PacifiCorp / Deer Creek Mine

NOV #N-95-35-2-1

PERMIT # ACT/015/018

VIOLATION 1 OF 1

ASSESSMENT DATE 01/04/96

ASSESSMENT OFFICER Joseph C. Helfrich

I. HISTORY MAX 25 PTS

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

ASSESSMENT DATE 01/04/96

EFFECTIVE ONE YEAR TO DATE 01/04/95

PREVIOUS VIOLATIONS

EFFECTIVE DATE

POINTS

— — —  
One point for each past violation, up to one year;  
Five points for each past violation in a CO, up to one year;  
No pending notices will be counted.

TOTAL HISTORY POINTS 0

II. SERIOUSNESS (either A or B)

**NOTE:** For assignment of points in Parts II and III, the following applies. Based on the facts supplied by the inspector, the Assessment Officer will determine within which 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? Hindrance

A. Event Violations Max 45 PTS

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

PROBABILITY	RANGE
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS \_\_\_\_\_

PROVIDE AN EXPLANATION OF POINTS

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**

PROVIDE AN EXPLANATION OF POINTS

**B. Hindrance Violations MAX 25 PTS**

1. Is this a potential or actual hindrance to enforcement? Actual Hindrance

RANGE 0 - 25

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

**ASSIGN HINDRANCE POINTS 20**

PROVIDE AN EXPLANATION OF POINTS

The inspector statement revealed that the permit condition required analysis of fill material prior to hauling to the Rilda Canyon site. Fill material was brought on site and placed in a riparian area prior to testing and knowledge of alkalinity or toxicity.

**TOTAL SERIOUSNESS POINTS (A or B) \_\_\_\_\_**

**III. NEGLIGENCE MAX 30 PTS**

**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 - NEGLIGENCE;**  
OR Was this violation the result of reckless, knowing, or intentional conduct? **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 30**

PROVIDE AN EXPLANATION OF POINTS

The permittee was given written approval to develop the Rilda Canyon site with specific permit conditions. The inspector, (Susan White) spoke with the permittee's representative, Mr. Val Payne the morning the fill was to be delivered to the site. Mr. Payne was advised that if delivery took place it would be a violation of the approved permit conditions. As a result the fill was delivered.

**IV. GOOD FAITH MAX 20 PTS.** (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

(The operator complied within the abatement period required)

(The 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 in first or second 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?

**IF SO - DIFFICULT ABATEMENT**

Difficult Abatement Situation

**Rapid Compliance** -11 to -20\*

(Permittee used diligence to abate the violation)

**Normal Compliance** -1 to -10\*

(The 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, or the plan submitted for abatement was incomplete)

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

EASY OR DIFFICULT ABATEMENT?

ASSIGN GOOD FAITH POINTS 0

PROVIDE AN EXPLANATION OF POINTS

No abatement beyond the cessation of the unauthorized activities was required by the notice of the violation.

**V. ASSESSMENT SUMMARY FOR** N-95-35-2-1

I.	TOTAL HISTORY POINTS	<u>0</u>
II.	TOTAL SERIOUSNESS POINTS	<u>20</u>
III.	TOTAL NEGLIGENCE POINTS	<u>30</u>
IV.	TOTAL GOOD FAITH POINTS	<u>-0</u>
	TOTAL ASSESSED POINTS	<u>50</u>
	TOTAL ASSESSED FINE	<u>\$ 1000.00</u>



JAN 22 1996

CERTIFIED - RETURN RECEIPT  
P210 522 965

January 19, 1996

Utah Coal Regulatory Program  
Division of Oil, Gas and Mining  
355 West North Temple  
3 Triad Center, Suite 350  
Salt Lake City, Utah 84180-1203

Attention: Joseph C. Helfrich

Re: **PROPOSED ASSESSMENT FOR STATE VIOLATION NO. 95-35-2-1,  
PACIFICORP, DEER CREEK MINE, ACT/015/018, EMERY COUNTY,  
UTAH.**

PacifiCorp, by and through its wholly-owned subsidiary, Energy West Mining Company ("Energy West") as mine operator, requests an Informal Conference and an Assessment Conference for NOV No. 95-35-2-1. This request is a response to the Division letter dated January 9, 1996.

Your help is greatly appreciated. If you have any questions please feel free to contact Karl Houskeeper at 687-4825 or me at 687-4722.

Sincerely,

A handwritten signature in black ink, appearing to read 'Val Payne', is written over a horizontal line.

Val Payne  
Sr. Environmental Engineer

KRH/krh

cc: Carl Pollastro  
J. Blake Webster  
File

FILE: F:\PCCOMMONEN\ENG\953521.NOV

Huntington Office:  
(801) 687-9821  
Fax (801) 687-2695  
Purchasing Fax (801) 687-9092

Deer Creek Mine:  
(801) 381-2317  
Fax (801) 381-2285

Cottonwood Mine:  
(801) 748-2319  
Fax (801) 748-2380