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DIV. OF OIL, GAS & MINING

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December 4, 2003

Utah Coal Regulatory Program
Division of Oil, Gas, and mining
1594 West North Temple, Suite 1210
Box 145801
Salt Lake City, Utah 84114-5801

RE: **Informal Assessment Conference on State Notice of Violation N03-49-4-1, N03-49-5-1, N03-49-6-1, PacifiCorp, Deer Creek Mine, C/015/018, Emery County, Utah**

PacifiCorp, by and through its wholly-owned subsidiary, Energy West Mining Company ("Energy West"), as mine operator, hereby submits to the Assessment Conference Officer (Officer) supporting information regarding the above stated Notice of Violations (NOV). The Officer should note that the fact of the NOV is not being questioned, only the assessed penalty points to the NOV's. The NOV's were written on October 1, 2003 by Division of Oil, Gas, and Mining (DOGM) inspector Karl Houskeeper. Company representative Dennis Oakley and DOGM inspector Steve Demczak were present.

The stated NOV's were written for; 1) N03-49-4-1: Failure to maintain siltation structures associated with the waste rock site, 2) N03-49-5-1: Failure to maintain disturbed and undisturbed diversions associated with the mine site, and 3) N03-49-6-1: Failure to control and contain non-coal waste in a controlled manner in the designated control structure. Photos of the infractions are enclosed in Attachment 1.

Background

Prior to receiving the NOV's, Energy West experienced numerous precipitation events throughout the months of August and September. These events were less than a 10yr/24hr events, however, the type and frequency of the events hampered clean up efforts and repair of sediment control structures throughout the mine site and waste rock site. Documented events are enclosed in Attachment 2.

The first event occurred throughout the days of August 14th - 16th. Approximately 1.25" of precipitation was recorded from a rain gage on the west end of the material storage yard. It was reported that during one event, hail (approximately 3/8" - 1/2" dia.) mixed with rain had down pored within a 15 to 30 minute time period. The hail plugged drop drains and filled traps to their capacity. Sediment flowed into the parking lot and settled to a depth of nearly four inches. Clean up efforts began immediately to clear sediment from the parking areas. Our compliance contractor was called after assessing the damage throughout the entire mine site.

Clean up efforts at the mine site involved repairing/replacing several sediment traps and silt fences, cleaning sediment traps, redefining ditches and berms, and blading roads. This work was on-going throughout the latter part of August and throughout September.

The waste rock site was also assessed and found that 1.55" of precipitation had occurred during the same time period. Sediment fence around the Phase 1 area needed replaced in several areas. This sediment fence is located around the entire area to protect against off-site impact. However, after assessing the area, it was noted that a tremendous amount of water and sediment had flowed from off-site areas into the waste rock site. Photos in Attachment 3 show the drainage areas. Work to repair/replace silt fence followed the mine

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Trail Mountain Mine:
(435) 748-2140
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site work. This work, however, was hampered by the availability of the contractor and early September storms.

The early September storms added an additional inch of precipitation. Sediment traps and culvert inlets that had been previously cleaned had filled again with the unconsolidated disturbed material. Contractor crews (when available) had to be brought in again to clean and repair sediment control structures. Total number of man-hours required for clean up came to 107 hours and costing \$10,266.00.

An inspection occurred on October 1, 2003 at the mine site and waste rock site. Completed work at the waste rock site consisted of the replacement of approximately 1500 ft of silt fence on the south and east sides. The north and west area was still in need of repair but was completed by the abatement date of November 3, 2003.

The north and west areas of the waste rock site had to be completed by Energy West since the compliance contractor was not available. The work required included the re-establishment of the main bypass ditch, re-establishment of the berm on the northwest corner of the pile, and the replacement of silt fence along the toe of the berm. During this work, the company backhoe broke down and a replacement had to be rented. All work associated with this area was caused by outside permit influences.

Assessment of Penalty Points

According to the R645-401 regulations, the amount of the penalty to be assessed will consider the operator's history of previously violations, seriousness of the violation based on the potential or actual impact on the public or the environment, the degree of fault of the operator in causing the violation, and the operator's good faith in abating the violation. Each of the assessment for the violations given on October 1, 2003 are discussed below.

History (All NOV's)

There have been no violations at the Deer Creek Mine since September, 1993 (N93-7-1-3).

Seriousness (N03-49-4-1; Waste Rock Site)

Two areas are involved; 1) Access Road, and 2) North side of Phase 1 area. It is noted that the silt fences #1, #3, and #4 were in poor repair. In a 1997 vegetation report by Mt. Nebo Scientific, it was determined that the vegetation growth along the access road was sufficient to control erosion. However, Division staff determined that there were areas that still needed protection and only allowed the removal of certain portions of the silt fence. The portions of the fence were in place. The #1 fence had a three foot downed section running parallel to the slope. The #3 fence was nearly full. The #4 fence had a small piping hole that was fixed during the inspection.

The fence north end of the waste rock site was inundated with sediment, undercut and in poor repair because of off-site flooding coming onto the disturbed area.

It is Energy West's opinion that the probability of occurrence should be insignificant since it was off-site that impacted disturbed rather than the other way around.

The extent of potential or actual damage should be assessed to 0 since the operator had no control of the event.

Negligence (N03-49-4-1; Waste Rock Site)

The Officer assessed 15 penalty point which basically infers that Energy West borderlines between negligent and reckless. This, however, is nowhere near the case. Energy West was in the process of repairing the sediment fences at the waste rock site prior to the inspection. The damage to the silt fences were not within the control of the operator.

Regulation R645-401-323.110 states that "*a violation which occurs through no fault of the operator,.....will be assigned no penalty points for degree of fault.*" Therefore, no fault points should be assigned.

Good Faith Points (N03-49-4-1; Waste Rock Site)

Because the fact that Energy West was conducting repairs prior to the October 1st inspection, good faith points, in our opinion should match the assessed points for seriousness for this violation. Total points assessed should be zero.

Seriousness (N03-49-5-1; Mine Site)

The Officer assigned 15 points for probability of occurrence. The stated event is transfer of sediment from the site with its attendant erosion and water pollution. The actual probability for sediment transferred from the site is none. Culvert inlets may have been restricted, however in each instance, there was a operating treatment structure below. Energy West feels that the assessed points should be zero.

Again, the extent of potential or actual damage should be assessed to 0 in this case since there was no potential damage or actual damage occurring off-site.

Negligence (N03-49-5-1; Mine Site)

The points assessed by the Officer was 15, which again, borderlines on reckless negligence. These culvert inlets were cleaned after the August storms, but got filled again after the September storms. Energy West feels that the assessed penalty points should be on the lower end of negligence.

Good Faith Points (N03-49-5-1; Mine Site)

Good faith points, in our opinion should match the assessed points for seriousness for this violation. Total points assessed should be zero.

Seriousness (N03-49-6-1; Mine Site Non-Coal Waste)

No comment on the points assigned to this category.

Negligence (N03-49-6-1; Mine Site Non-Coal Waste)

The points assessed by the Officer was 15, which again, borderlines on reckless negligence. Energy West conducts monthly sweeps over the mine site to collect loose trash. It is our goal to keep the

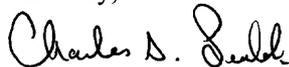
mine site free of trash because it reflects the way we do business to our colleagues that visit. The month of September was extremely difficult because of all of the extra work that was need to stay in compliance. Energy West feels that an assessment of point on the lower scale of negligence should be given.

Good Faith Points (N03-49-5-1; Mine Site Non-Coal Waste)

No good faith points were assessed even though the loose trash had been cleaned up prior to the end of the abatement period. The day that the Division inspector came to the mine site to abate the violation, the mine site had been cleaned and trash was being loaded into an end-dump trailer with a front-end loader. Trash was scattered in this area as a result of this work. The inspector said he could not abate the violation on this day since the trash was observed outside the trash bin. Energy West feels that diligence was used to abate the violation and should be credited accordingly.

As the above information verbally presented to the Division of Oil, Gas, and Mining, questions or concerns may surface. Please direct any additional questions or concerns to myself (435-687-4720) or Dennis Oakley (435-687-4825).

Sincerely,



Chuck Semborski
Geology/Permitting Superivsor

CC Carl Polastro
File

Informal Assessment Conference

PacifiCorp

Energy West Mining Company

December 17, 2003

Attachment 1

NOV Photos



NOV: N03-49-4-1, Failure to maintain siltation structures associated with waste rock site.



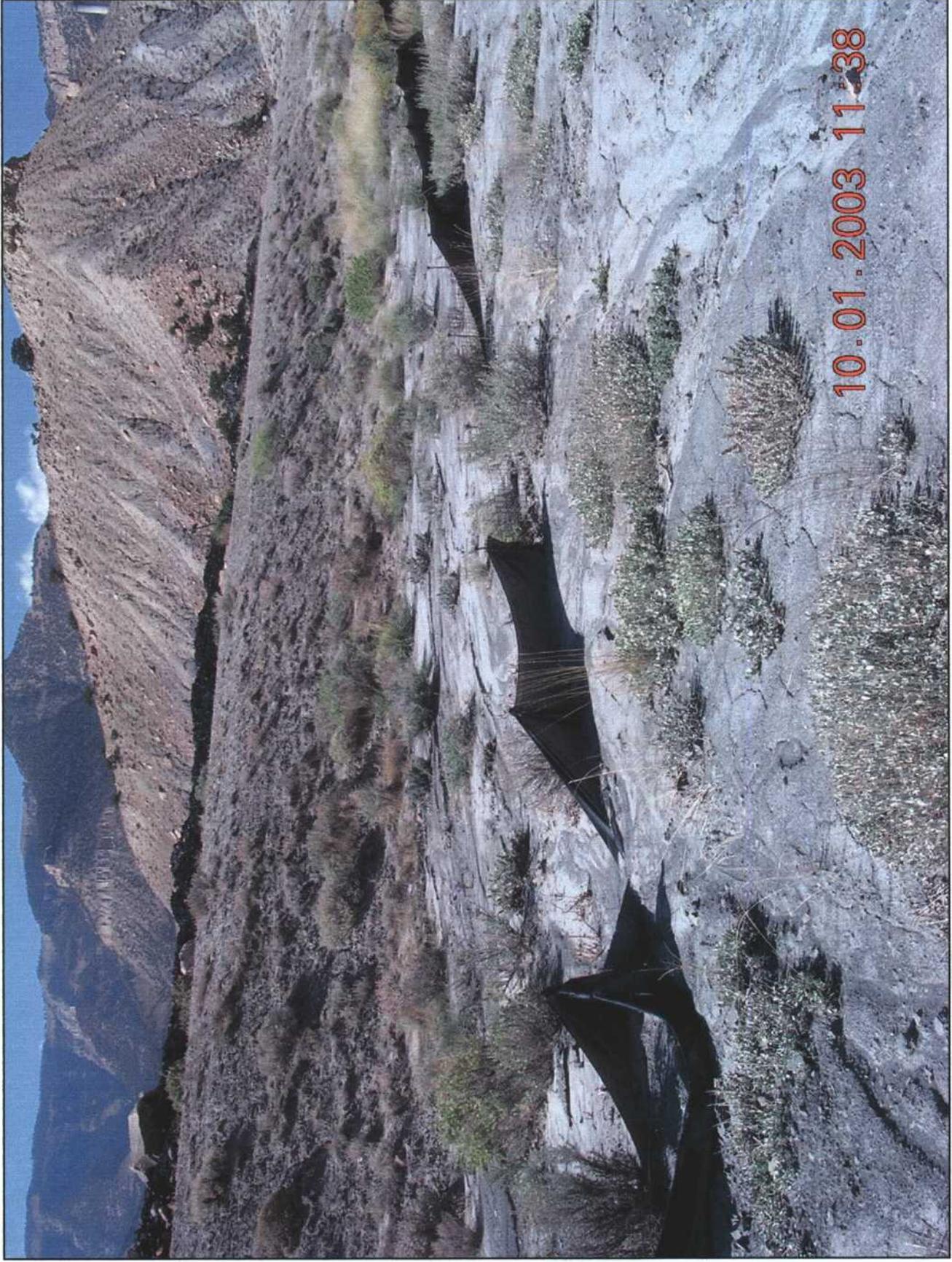
NOV: N03-49-4-1, Failure to maintain siltation structures associated with waste rock site.



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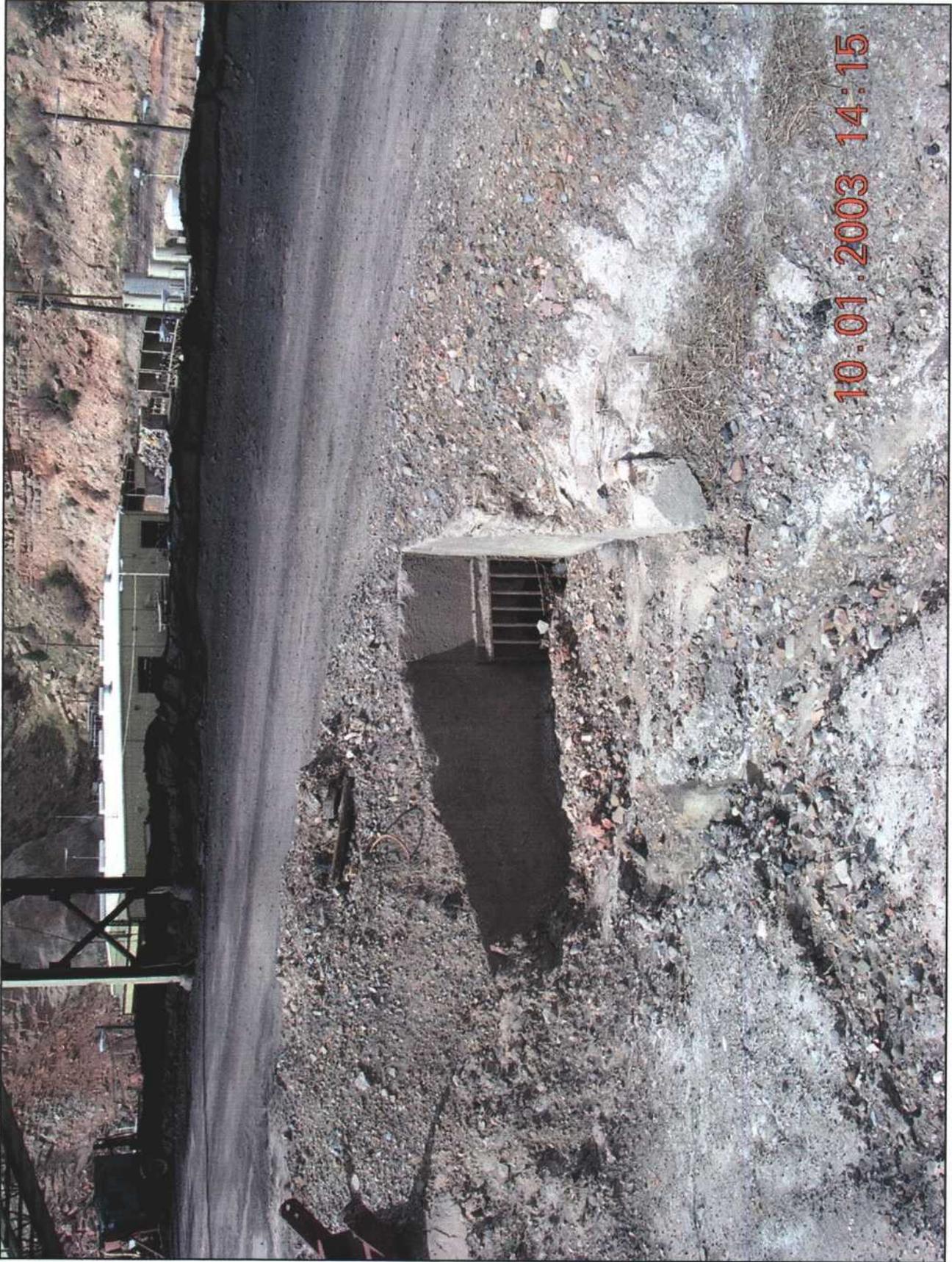
NOV: N03-49-4-1, Failure to maintain siltation structures associated with waste rock site.



NOV: N03-49-4-1, Failure to maintain siltation structures associated with waste rock site.



NOV: N03-49-5-1, Failure to maintain disturbed and undisturbed diversions associated with mine site.



NOV: N03-49-5-1, Failure to maintain disturbed and undisturbed diversions associated with mine site.



NOV: N03-49-5-1, Failure to maintain disturbed and undisturbed diversions associated with mine site.



NOV: N03-49-6-1, Failure to control and contain non-coal waste in a controlled manner in the designated control structure.



NOV: N03-49-5-1, Failure to maintain disturbed and undisturbed diversions associated with mine site.



NOV: N03-49-5-1, Failure to maintain disturbed and undisturbed diversions associated with mine site.

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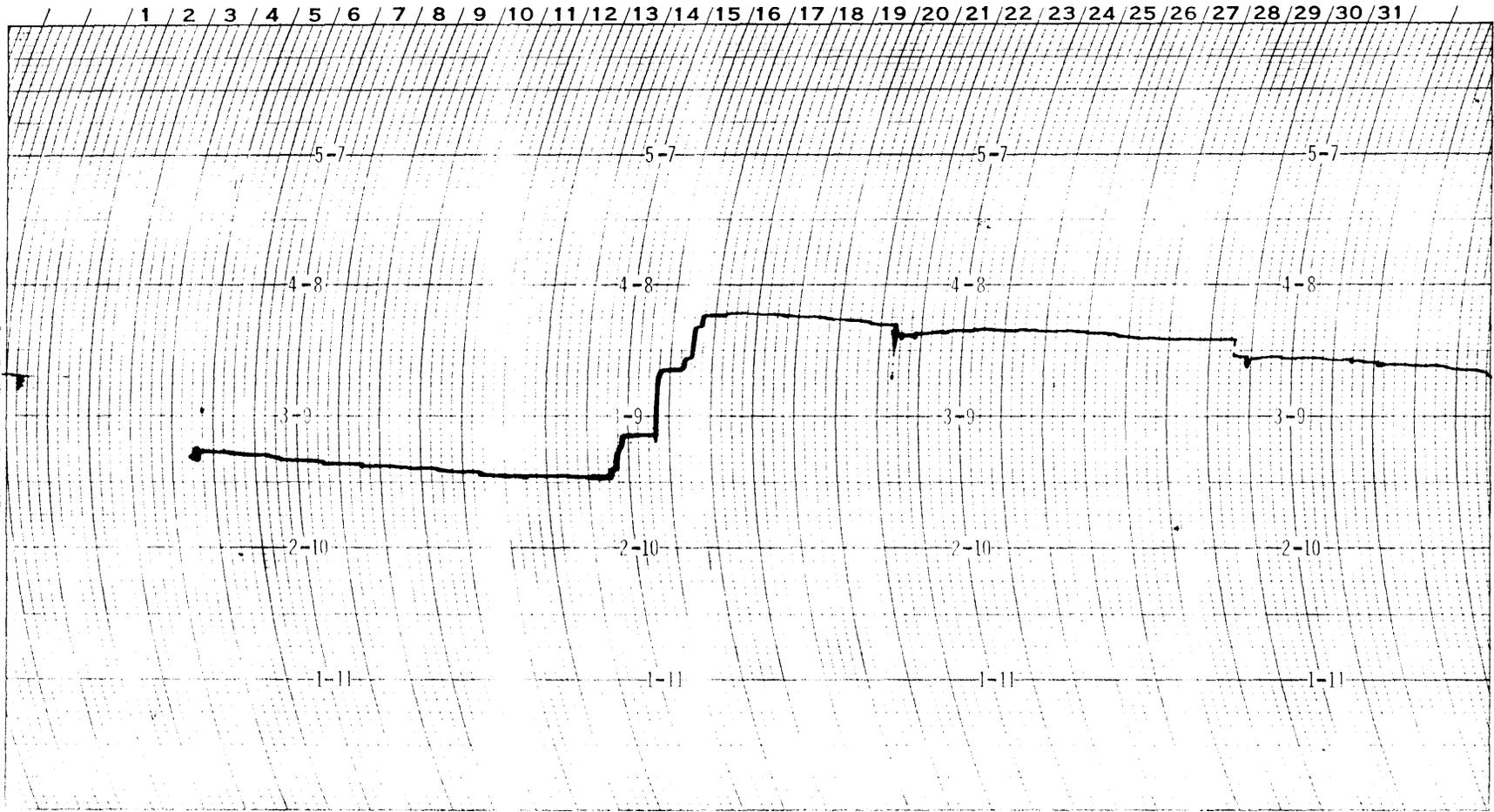
December 17, 2003

Attachment 2

Rain Gauge Charts

10-INCH DUAL TRAVERSE MONTHLY-861 HRS.
UNIVERSAL RAIN GAGE

SELFORT INSTRUMENT COMPANY
ALTIMORE, MARYLAND



SCALE WITH "1" ADAPTER 12" CAPACITY, READ CHART DIRECTLY
WITH "1" ADAPTER 24" CAPACITY, MULTIPLY CHART X 2
WITH "2" ADAPTER 48" CAPACITY, MULTIPLY CHART X 4

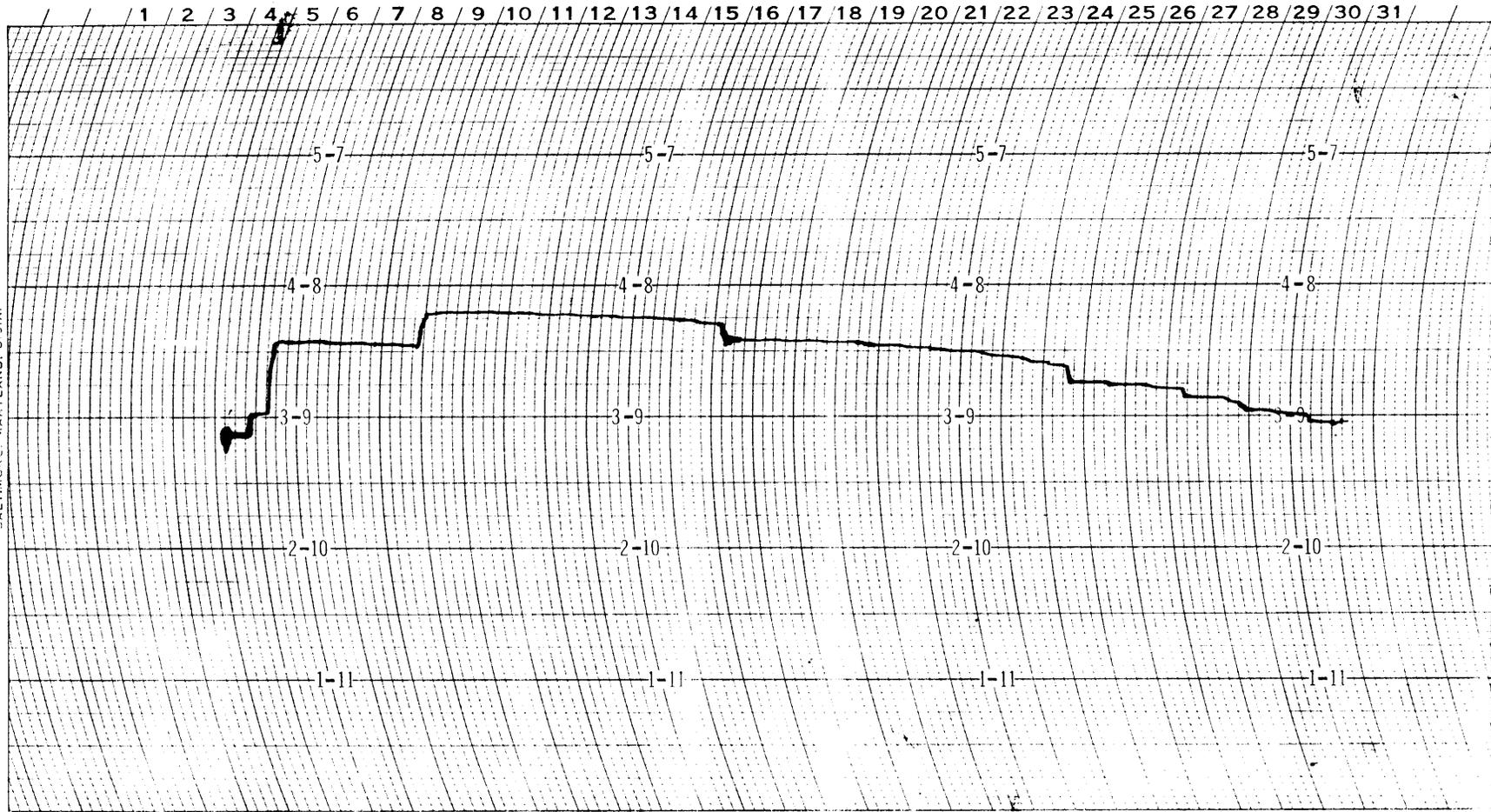
DESIGNED BY
D. Shurtz,
EAST Mt.

NO. 1803
DATE 08/4/03
SERIAL 726
DATE 09/5/03

PRINTED IN U.S.A.

CHAKI 110. 15000
12-INCH DUAL TRAVERSE MONTHLY-861 HRS.
UNIVERSAL RAIN GAGE

TELFORT INSTRUMENT COMPANY
BALTIMORE, MARYLAND, U.S.A.



GAGE WITHOUT ADAPTER, 12" CAPACITY, READ CHART DIRECT

WITH¹ ADAPTER, 24" CAPACITY MULTIPLY CHART X 2

WITH² ADAPTER, 48" CAPACITY, MULTIPLY X 4

OBSERVER: D. Shurtz
EAST Mt.
ON 930 9/5/63
930 10/2/63

Informal Assessment Conference

PacifiCorp

Energy West Mining Company

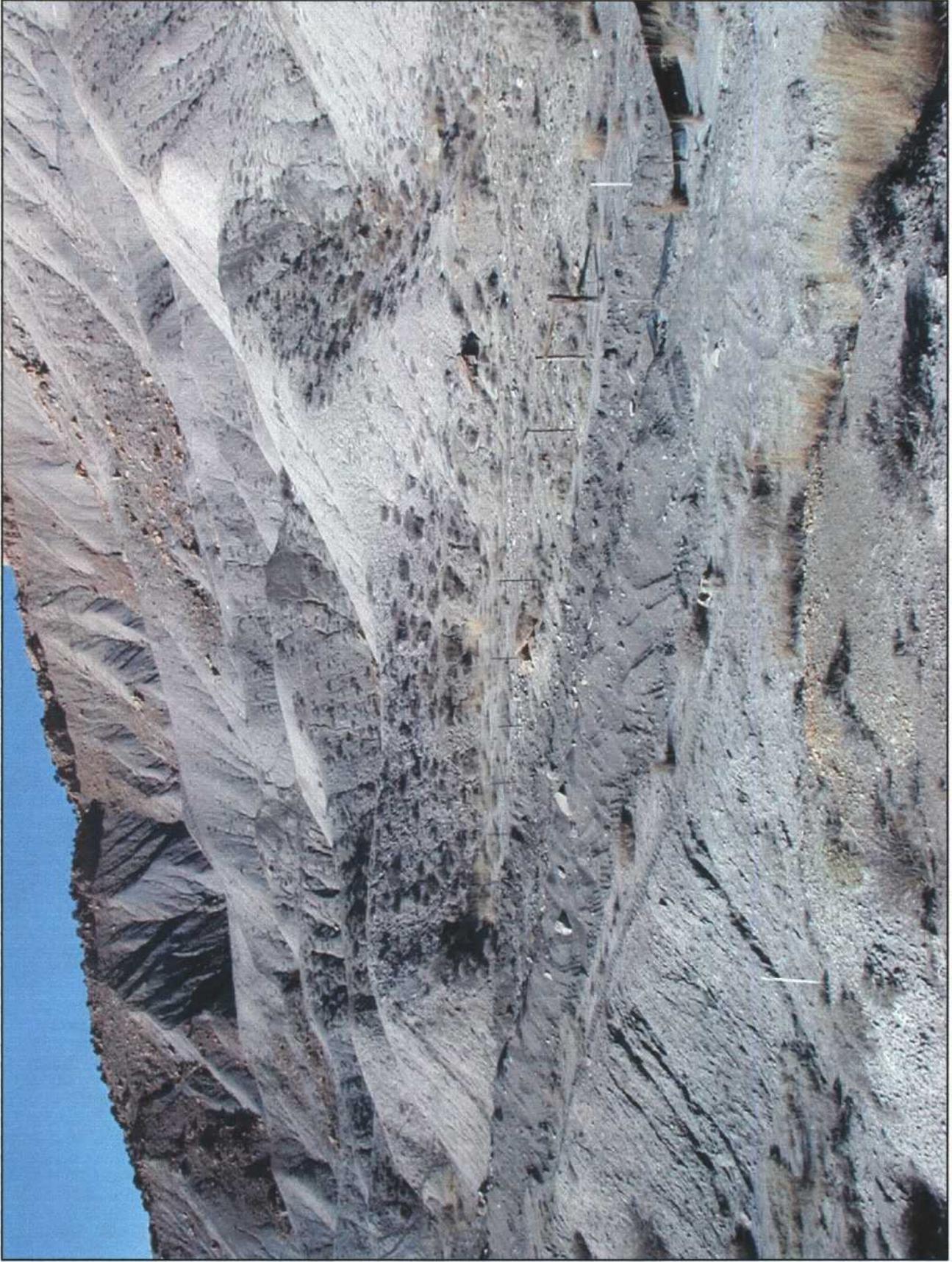
December 17, 2003

Attachment 3

Waste Rock Site Drainage Area Photos



Drainage area Northeast side of waste rock site.



Diversion berm on Northeast side of waste rock site.



Diversion berm and ditch on North side of waste rock site.



Non-coal waste cleaned. Photo taken October 28, 2003.