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December 22, 2003

CERTIFIED RETURN RECEIPT REQUESTED
7099 3400 0016 8895 6801

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

Re: Findings of Fact, Conclusions of Law and Order and Finalized Assessment for Violations N03-49-4-1, N03-49-5-1, N03-49-6-1, Energy West Mining Company, Deer Creek Mine, C/015/018

Dear Mr. Semborski:

On December 17, 2003 an Informal Hearing and Assessment Conference was held to review the history of the 3 violations and to discuss proposed assessment for state violations N03-49-4-1, N03-49-5-1, N03-49-6-1, Deer Creek Mine C/015/018. As a result of a review of all pertinent data and facts, including those presented in the Assessment Conference, the following shall constitute the findings of fact, conclusions of law and order and finalized assessment for the above Notices of Violation:

Fact of Violation

In the Assessment Conference, Energy West Mining Company was represented by Chuck Semborski, and Dennis Oakley. The Division of Oil, Gas and Mining was represented by Karl Houskeeper, the Inspector who issued the violations, Daron Haddock, the Division's Assessment Officer, and Mary Ann Wright, Associate Director of Mining. Susan White, Coal Program Coordinator observed the proceedings, and Lowell Braxton was the Assessment Conference Officer. When the conferences was requested, Energy West did not ask for an Informal Hearing on the fact of the violation. Consequently discussions on the respective violations were limited to background information that would facilitate finalization of the penalties.

Findings

The Informal Hearing and Assessment Conference was appropriately noticed and held under the requirements of the Utah Coal Regulatory Program. Each of the subject Notices of Violation was issued in concert with the requirements of the Utah Coal Regulatory Program.

Order

Violations N03-49-4-1, N03-49-5-1, N03-49-6-1, issued to Energy West Mining Company's, Deer Creek Mine are upheld.

The Assessment Conference

During the Assessment Conference Mr. Houskeeper presented background information related to issuance of each Notice of Violation, Mr. Haddock described the rationale leading to the proposed penalty assessment, and Mr. Oakley and Mr Semborski made suggestions relevant to finalizing the proposed penalty.

Notice of Violation N03-49-4-1 was issued "for failure to maintain siltation structures associated with the Waste Rock Site". In the penalty proposal the event that the violated standard was designed to prevent was "transfer of sediment from the site with its attendant water pollution". Discussions revealed that some of the impacted silt fences had been compromised by storm related water and debris flowing from undisturbed lands onto the permit area, although there were also impacts to silt fences by waters emanating from within the permit/disturbed areas. No evidence substantiating off-site water degradation was presented, although all parties agreed that silt fences at the time of issuance of the NOV were compromised, and the operator has an obligation to maintain functioning silt fences, where required.

Notice of Violation N03-49-5-1 was issued for "failure to maintain disturbed and undisturbed diversions associated with the mine site." In proposing the penalty the Division noted that the event that the violated standard was designed to prevent was "transfer of sediment from the site with its attendant erosion and water pollution". During the Assessment Conference discussions substantiated that structures cited in the NOV were compromised at the time the NOV was issued. It was further noted that many of the blocked structures were up gradient from and connected to functioning sediment control structures, consequently the likelihood of off-site hydrologic damage (the cited "event") was minimal. No evidence was presented substantiating off site sediment transfer or water pollution. No argument was presented suggesting the permittee was not responsible for maintaining the cited diversions.

Notice of Violation N03-49-6-1 was issued for “failure to control and contain noncoal waste in a controlled manner in the designated control structure”. The event that the violation was designed to prevent was cited as “environmental harm and possible water pollution”. Photographic evidence substantiates the presence of noncoal waste in non-designated locations within the mine site at the time the NOV was issued. Discussions at the assessment conference indicate the permittee is aware that its noncoal waste containment and control procedures are not 100 percent effective, and that the permittee is trying to improve these procedures. No evidence was presented substantiating the occurrence of environmental harm and/ or water pollution resulting from the uncontrolled noncoal waste cited in the NOV.

Finalized Assessment

N03-49-4-1			
Proposed Assessment		Finalized Assessment *	
History Points	0		0
Seriousness Points			
Probability	15		10
Damage	10		8
Negligence Points	15		7
Good Faith Points	0		(5)
Total points	40		20
Proposed fine	\$ 600	Fine	\$ 200

*Note: the fact that storm debris encroached upon the permit area and compromised some of the silt fences substantiates lowering the final seriousness and negligence points, although not all cited, degraded silt fences were the result of off site damage. Good faith points were awarded to reflect the permittee’s efforts to remediate storm damages. Continued dialogue between the Division and the Permittee regarding sediment control on this site is encouraged.

N03-49-5-1			
Proposed Assessment		Finalized Assessment**	
History Points	0		0
Seriousness Points			
Probability	15		7
Damage	10		6
Negligence Points	15		6
Good Faith Points	(5)		(5)
Total points	35		14
Proposed fine	\$ 500	Fine	\$ 140

** Note: while off-site damage resulting from failure to maintain the diversions cited in the NOV was not substantiated, (this supports a lowering of

proposed assessed points), there is an obligation on the part of the permittee to maintain diversions in accordance with the approved plan.

N03-49-6-1

Proposed Assessment		Finalized Assessment***	
History Points	0		0
Seriousness Points			
Probability	10		3
Damage	8		3
Negligence Points	15		3
Good Faith Points	0		0
Total points	33		9
Proposed fine	\$460	Fine	\$90

*** Note: the permittee has established, approved procedures for the control of noncoal waste, and stated in the Assessment Conference that it conducts a monthly "sweep" of the disturbed portion of the mine site in order to collect noncoal waste that escapes routine control procedures. Nonetheless, the subject of noncoal waste control has been cited by division inspectors at previous inspections as something needing improvement at this particular site. Continued dialogue between the permittee and the division is encouraged to ensure the intent of R 645-301-528.330 is met.

Within fifteen (15) days of your receipt of this letter, you or your agent may make a written appeal to the Board of Oil, Gas and Mining. To do so, you must escrow the assessed civil penalties with the Division within a maximum of thirty (30) days of receipt of this letter, but in all cases prior to the Board Hearing. Failure to comply with this requirement will result in a waiver of your right of further recourse.

If no timely appeal is made, this assessed civil penalty must be tendered within thirty (30) days of your receipt of this letter. Please remit payment to the Division of Oil, Gas and Mining, mail c/o Vickie Southwick at the address listed above.

Sincerely,

Lowell P. Braxton
Assessment Conference Officer

vs.
cc:

Daron Haddock
Karl Houskeeper
Mary Ann Wright