



C/015/018 Incoming
cc: Dana

Interwest Mining Company
Huntington Office
P. O. Box 310
15 North Main Street
Huntington, UT 84528

#5024
#5025

November 17, 2015

Submitted by hard copy and electronically

Dana Dean – Associate Director, Mining
Utah Division of Oil, Gas, and Mining
1594 West North Temple, Suite 1210
P.O. Box 145801
Salt Lake City, Utah 84114-5801

RECEIVED

NOV 23 2015

DIV. OF OIL, GAS & MINING

Subj: Request to Vacate NOV's – Regulatory Action Against PacifiCorp's Deer Creek Mine Waste Rock Site, PacifiCorp, Deer Creek Mine, C/015/0018, Emery County, Utah.

Dear Ms. Dean,

PacifiCorp, by and through its wholly-owned subsidiary, Interwest Mining Company, as manager of its mining assets, hereby requests that the recent Notice of Violation (NOV), issued by the Coal Regulatory Program to PacifiCorp's Deer Creek Mine, be vacated. PacifiCorp feels the two (2) NOV's were unwarranted and unnecessary given the fact that the site was sold and transferred to BRC Wellington, LLC (BRC) on August 4, 2015, and BRC is actively working with the your technical group to secure its own separate permit for this site. Attached for your information is a copy of the Special Warranty Deed dated August 4, 2015, from PacifiCorp to BRC Wellington, LLC to enable BRC to secure their own specific permit with the legal right-of-entry to this site and with the intent to remove it from the Deer Creek mine permit. The two notices of violation received are listed as follows:

1) Failure to conduct quarterly inspection (3rd Quarter 2015) of the refuse pile/waste rock site.

NOV #21159 - cited R645-301-514.210 thru R645-301-514.250 as the provisions of the Act that were violated.

2) Failure to conduct quarterly inspection (3rd Quarter 2015) of the waste rock sediment pond.

NOV #21160 - cited R645-301-514.300 and R645-301-514.320 as the provisions of the Act that were violated.

The NOV's were issued on November 10, 2015 as a result of a complete monthly inspection. Mr. Karl Houskeeper conducted a records review as well as an on-site inspection of the Deer

Creek mine site. During the records review, Mr. Houskeeper found that the quarterly certified inspections for the waste rock pile and impoundment were not filed for the 3rd quarter. When he inquired about the certified inspections, PacifiCorp indicated it did not conduct the certified inspections and would check with BRC. PacifiCorp later found that BRC did not conduct the certified inspections. However, since PacifiCorp announced the decision on December 15, 2014 to permanently close the Deer Creek Mine, the site has been idle with no coal waste material being hauled to the site and the pond has been dry since. The site has not conducted any placement or compaction of materials since at least the 4th quarter of 2014. Production at the Deer Creek Mine permanently ceased on January 7, 2015.

PacifiCorp has reviewed the Utah Coal Regulations which were cited in both NOV's and will discuss each in the order received.

NOV #21159

The regulation R645-301-514.210 references R645-301-514.200 ..."Refuse Piles. The professional engineer or specialist experienced in the construction of similar earth and waste structures will inspect the refuse pile **during construction**.

PacifiCorp's interpretation of R645-301-514.210 is that the Regulation is stating the time period at which refuse piles are required to be inspected. As stated in the regulations, inspections are required during "**construction**", as well as, during "**...placement and compaction of the coal mine waste materials.**"

R645-301-514.220 et.al. states that inspections shall be made at least quarterly during **construction, foundation preparation, placement of underdrains, installation of final surface drainage systems, and the final graded and revegetated facility**. Since the site is long past the construction phase, quarterly inspections are no longer required.

PacifiCorp permanently ceased all coal production at its Deer Creek underground mining operation on January 7, 2015. The mine portals were permanently sealed and backfilled at the Deer Creek canyon facilities in April 2015. There have been no coal mine waste materials transported, placed, or compacted at the Deer Creek waste rock site throughout 2015.

PacifiCorp interprets these regulations as requiring site inspections during activities, such as, construction activities (**requiring quarterly inspections**), and placement and compaction activities (**requiring regular inspections**).

Since these activities are no longer occurring, regular quarterly inspections shouldn't be required. Although all mining activities permanently ceased on January 7, 2015, PacifiCorp's did conduct its last inspection of this site on June 29, 2015. In a cooperative effort to show good faith, a certified inspection was conducted by PacifiCorp on November 16, 2015, to demonstrate there were no changes between these two inspections. Attached for your reference is a certified inspection report for an inspection of the waste rock pile dated November 16, 2015. As you can see, there were no material changes from June to November.

In a letter dated August 27, 2015, PacifiCorp notified the Division of the sale of this site to BRC. As of August 4, 2015 PacifiCorp no longer held ownership or had legal right-of-entry to the site.

Based on the foregoing, and particularly in light of the current ownership of the site and PacifiCorp's prompt action in responding to the notices with the preparation of the recent certified inspection, PacifiCorp requests that Citation #21159 be vacated and struck from the Division records and database.

NOV #21160

PacifiCorp's interpretation of R645-301-514.300 through R645-301-514.320 is that the regulation is stating; 1) who shall inspect an impoundment, 2) when the impoundment shall be inspected, 3) when a report is required after the inspection, and 4) that impoundments that meet certain criteria shall be examined.

Expanding this discussion, R645-301-514.311 states that "an impoundment shall be inspected upon the completion of construction" (***pond construction was completed around 1990***). It also states that "the impoundment shall be inspected at least yearly" (***the pond has been inspected twice in 2015. At both inspections, the pond was dry***). Therefore, PacifiCorp feels that even though it traditionally inspected and reported its waste rock site impoundment quarterly since construction, it did not (according to the Utah Coal Regs) need to inspect and report to such a rigorous schedule.

Furthermore, R645-301-514.320 states that "impoundments meeting the NRCS Class B and C criteria for dams in TR-60 or the size other criteria in 30 CFR 77.216, must be examined in accordance with 30 CFR 77.216-3". The regulations goes on to state "***Impoundments not meeting the NRCS Class B***

and C criteria for dams in TR-60 or the size other criteria in 30 CFR 77.216, shall be examined at least quarterly.” This fragment of 514.320 contradicts 514.311 where it states *“Inspections will be made regularly during construction, upon completion of construction, and at least yearly until removal...”*. Although historically, PacifiCorp has inspected the impoundment on a quarterly basis, the regulations are unclear as to the time interval impoundments should be inspected.

PacifiCorp’s last inspection of the impoundment was June 29, 2015. In a cooperative effort to show good faith, a certified inspection of the impoundment was conducted by PacifiCorp on November 16, 2015. Attached for your reference is an inspection report for the waste rock impoundment dated November 16, 2015. As you can see, there were no changes from June to November. The pond has remained dry throughout 2015.

Based on the foregoing, and particularly in light of the current ownership of the site and PacifiCorp’s prompt action in responding to the notices with the preparation of the recent certified inspection, PacifiCorp requests that Citation #21160 be vacated and struck from the Division records and database.

CONCLUSION

Given the awkwardness of this situation, especially being placed in a state of limbo beyond the control of PacifiCorp, we respectfully request the Division to consider vacating the referenced NOV’s based on the following facts:

1. PacifiCorp has sold this site and no longer has access or right-of-entry to these lands,
2. The new permittee has not concluded the arduous and lengthy permitting requirements of the Utah Coal Regulatory Program with the Division,
3. The stability status of the waste rock pile and the impoundment are unchanged thus far throughout 2015 as demonstrated herein, and
4. There has been no environmental harm.

PacifiCorp will, however, respect your final decision to carry forth with the regulatory action or not.

Please feel free to contact me if you have any questions or need any further information regarding this request. My direct number is (435) 687-4712. This document has been transmitted to you both electronically and by hard copy.

Sincerely,



Kenneth Fleck

Geology and Environmental Affairs Manager

Attachments

Cc Karl Houskeeper (UDOGM)
Daron Haddock (UDOM)
Kyle Edwards (BRC)
Scott Child (IMC)
File

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Stoel Rives, LLP
Attn: Richard R. Hall
201 S. Main St., Suite 1100
Salt Lake City, Utah 84111

(Space Above For Recorder's Use)

SPECIAL WARRANTY DEED

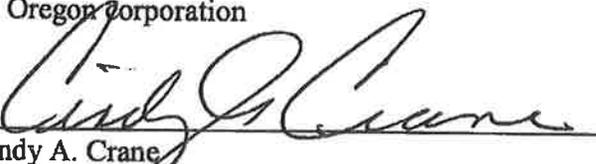
Waste Rock Site Parcel

PACIFICORP, an Oregon corporation, having a mailing address of 1407 West North Temple, Suite 310, Salt Lake City, Utah 84116, as "**Grantor**", hereby conveys and warrants, against all those claiming by, through or under Grantor, but not otherwise, to BRC WELLINGTON, LLC, a Delaware limited liability company, having a mailing address of 6100 Dutchmans Lane, 9th Floor, Louisville, Kentucky 40205, as "**Grantee**," for the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, that certain parcel of real property located in Emery County, State of Utah, together with any and all interests, rights and appurtenances thereto, as well as any and all improvements thereon (if any), as more particularly described in Exhibit A attached hereto (described hereinafter as the "**Real Property**").

Subject to: (i) any state of facts that an accurate and complete ALTA/ACSM Land Title Survey might disclose, (ii) all zoning regulations, restrictions, rules and ordinances, land use regulations, building restrictions, and other laws and regulations now in effect or hereafter adopted by any governmental authority having jurisdiction, and (iii) reservations, easements, rights-of-way, declarations, covenants, conditions, restrictions, encroachments, liens, and encumbrances and all other matters of record or enforceable at law or in equity.

IN WITNESS WHEREOF, the said Grantor has executed this Special Warranty Deed as of this 4th day of August, 2015.

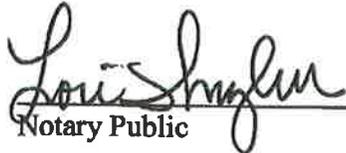
PACIFICORP,
an Oregon corporation


Cindy A. Crane
President/CEO - Rocky Mountain Power

STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)

The forgoing instrument was acknowledged before me this 4th day of August, 2015, by CINDY A. CRANE, the President/CEO of the PacifiCorp dba Rocky Mountain Power, an Oregon corporation.

Witness my hand and official seal.



Notary Public

My Commission expires: October 19, 2015 Residing at: Salt Lake County



Exhibit A

Central Warehouse Parcel Legal Description

That certain parcel of land located in Emery County, State of Utah, as more particularly described as follows:

Beginning at the Northeast corner of Section 6, Township 17 South, Range 8 East, SLB&M, and running thence S 89°52'00" W, 1272.00 feet along Section line; thence S 00°08'00" W, 610.00 feet; thence S 83°28'43" E, 302.04 feet; thence S 72°54'35" E, 314.08 feet; thence S 63°06'41" E, 224.51 feet; thence S 48°18'17" E, 268.40 feet; thence S 20°06'29" W, 1066.85 feet; thence S 39°24'03" W, 846.37 feet, more or less to the Northerly right-of-way of SR-31; thence N 89°39'06" E, 139.42 feet along said right-of-way; thence N 43°39'42" E, 1520.19 feet; thence N 31°02'18" E, 412.96 feet; thence N 22°58'45" E, 1322.55 feet to the North line of Section 5, Township 17 South, Range 8 East, SLB&M.; thence N 89°44'10" W, 744.58 feet along Section line to the point of beginning.

Containing 49.05 acres more or less

samples taken, monitoring/instrumentation information, inlet/outlet conditions, or other related activities associated with the pond including but not limited to sediment cleanout, pond decanting, embankment erosion/repairs, monitoring information, vegetation on outslopes of embankments, etc.

Waste Rock Pond

Water Elevation Dry
 Discharging Never
 Inlet, Outlet, Spillway Conditions Good
 Out slope Conditions No Change

*See "Hydrologic Monitoring Data" report submitted quarterly to DOGM for monitoring information.

Waste Rock Pond

Sediment Volume None
 Remaining 0.59 A.F.
 Water impounded 0.0 AF
 Changes, Comments, etc.

Qualification Statement

I hereby certify that; I am experienced in the construction of impoundments; I am qualified and authorized under the direction of a Registered Professional Engineer to inspect the condition and appearance of impoundments in accordance with the certified and approved designs for this structure; that the impoundment has been maintained in accordance with approved design and meet or exceed the minimum design requirements under all applicable federal, state and local regulations; and, that inspections and inspection reports are made by myself and include any appearances of instability, structural weakness or other hazardous conditions of the structure affecting stability.

Signature: _____

Date: 11-17-15

Signature: _____

Date: 11-18-15



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INSPECTION AND CERTIFIED REPORT ON EXCESS SPOIL PILE OR REFUSE PILE		Page 1 of 2	
Permit Number	C/015/0018	Report Date	Nov. 16, 2015
Mine Name	Deer Creek		
Company Name	InterWest Mining Company (Ownership: Bowie Refined Coal LLC)		
Excess Spoil Pile or Refuse Pile Identification	Pile Name	Waste Rock Disposal Site	
	Pile Number		
	MSHA ID Number	42-02649	
Inspection Date	Nov. 16, 2015		
Inspected By	Mark Reynolds/Rick Cullum		
Reason for Inspection (Annual, Quarterly or Other Periodic Inspection, Critical Installation, or Completion of Construction)		2015 Fourth Quarter Inspection	
		Attachments to Report? X No Yes	
Field Evaluation			
<p style="text-align: center;">1.Foundation preparation, including the removal of all organic material and topsoil.</p> <p>All construction was completed according to the permitted, professional engineered design specifications in 1989.</p>			
<p style="text-align: center;">2.Placement of underdrains and protective filter systems.</p> <p>An under-drain was installed when the site was constructed in 1989. The drain had a small amount of flow coming through it at the time of the inspection.</p>			
<p style="text-align: center;">3.Installation of final surface drainage systems.</p> <p>All interim slopes have been maintained at their proper grade. The final slopes have been surveyed to assure they are correct. Also the two final designed rip-rap ditches were installed as per the permitted plan.</p>			
<p style="text-align: center;">4.Placement and compaction of fill materials.</p> <p>The site no longer receives Waste Rock from the Deer Creek Mine.</p>			

NO Material has been delivered in 2015.

5. Final grading and revegetation of fill.

See No. 3.

The sub-soil berm surrounding the site was seeded shortly after construction in 1989. The total capacity of Phase I is 468,215 yd³, this includes both cells 1 and 2.

6. Appearances of instability, structural weakness, and other hazardous conditions.

No weakness or instabilities are evident at this time.

7. Other Comments.

Describe any changes in the geometry of the Excess Spoil/Refuse Pile structure, instrumentation, average and maximum lifts of materials placed in the pile, elevations of active benches, total and remaining storage capacity of the structure, evidence of fires in the pile and abatement of such fires, volumes of materials placed in the structure during the year, and any other aspect of the structure affecting its stability or function which has occurred during the reporting period.

CELL	ELEVATION *	DESIGN ELEV.	CAPACITY**
1 (Upper, northern)	6366.43	6369.2	87%
2 (Lower, southern)	6344.31	6369.2	44%

*The elevations were taken on top of the last compacted lift. The elevation of the dumped piles will not be surveyed until the active lift is compacted and leveled. The survey location is approximately the center of each cell. (site transferred to Bowie Refined coals LLC in Aug. 2015.)

** The capacity is based on the last survey elevation compared to available height of waste rock in each cell. To figure the available height an approximate elevation of the original ground was determined based on pre-construction ground contours. The capacity will be updated when a new elevation is survey. This site has been inactive throughout 2015. Production ceased on Jan.7,2015 no waste material has been transported to the waste rock site since 4th quarter 2014.

Certification Statement

I hereby certify that; I am experienced in the construction of earth and rock fills; I am qualified and authorized in the State of Utah to inspect and certify the condition and appearance of earth and rock fills in accordance with the certified and approved designs for this structure; that the fill structure has been maintained in accordance with approved design and meet or exceed the minimum design requirements under all applicable federal, state and local regulations; and, that inspections and inspection reports are made by myself or my designee and include any appearances of instability, structural weakness or other hazardous conditions of the structure affecting stability.

By: Mark Reynolds, Sr. Construction Engineer
(Full Name and Title)

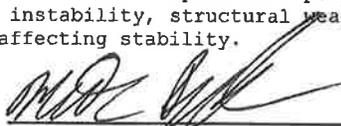
Signature: _____ Date: _____

P.E. Number & State: 5049079-2202, Utah

**Qualification
Statement**

I hereby certify that; I am experienced in the construction of impoundments; I am qualified and authorized under the direction of a Registered Professional Engineer to inspect the condition and appearance of impoundments in accordance with the certified and approved designs for this structure; that the impoundment has been maintained in accordance with approved design and meet or exceed the minimum design requirements under all applicable federal, state and local regulations; and, that inspections and inspection reports are made by myself and include any appearances of instability, structural weakness or other hazardous conditions of the structure affecting stability.

Signature: _____



Date: _____

11-17-15

Signature: _____



Date: _____

11-18-15

