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State of Utah
DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas and Mining

JOHN R. BAZA
Division Director

April 23, 2018

Ken Fleck, Manager of Geology and Environmental Affairs
Interwest Mining Company
P.O. Box 310
Huntington, Utah 84528

Subject: Findings of Fact, Conclusions, and Order for Violation NO21159, PacifiCorp, Deer Creek Mine, C/015/0018

Dear Mr. Fleck:

On January 5, 2016 an Informal Assessment Conference was held at the Division of Oil, Gas and Mining regarding a violation Issued to PacifiCorp at the Deer Creek Mine. As a result of the facts given at the conference I have vacated the violation and directed the Division to reflect that in the record. The assessed fine of $660 is hereby rescinded.

The violation was vacated because based on the plain language of the rules and the preamble to the federal rule, it seems that it would be improper to uphold this particular NOV. The rule requires inspections in three scenarios: (1) during construction; (2) during placement and compaction of coal mine waste materials; and (3) during certain critical construction periods. Inspections under these scenarios must be made at least quarterly, but only until the refuse pile has been finally graded and revegetated (unless a danger of harm exists to the public or environment).

The rule does not require an inspection during a quarter if the pile has already been constructed and the operator did nothing to the refuse pile during that quarter. Here, where PacifiCorp did nothing to its refuse pile during Q3, no inspection was required. A plain language reading of the definition of construction also supports PacifiCorp's arguments. Construction is the process of building or forming something. An interpretation that "construction" means all points in time when a refuse pile is open and not reclaimed does not align with common understandings of the term.

Sincerely,

Dana Dean, P.E.
Associate Director
Assessment Conference Officer

DD/vscc: Karl Houskeeper
Daron Haddock
John Webster
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