

0020



State of Utah

Department of
Natural Resources

ROBERT L. MORGAN
Executive Director

Division of
Oil, Gas & Mining

LOWELL P. BRAXTON
Division Director

OLENE S. WALKER
Governor

GAYLE F. McKEACHNIE
Lieutenant Governor

June 1, 2004

CERTIFIED RETURN RECEIPT
7099 3400 0016 8895 5644

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

Re: Proposed Assessment for State Violation No. N04-1-1-1, PacifiCorp,
Cottonwood Wilberg Mine, C/015/0019, Outgoing File

Dear Mr. Semborski:

The undersigned has been appointed by the Division of Oil, Gas & 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, Joe Helfrich, on May 11, 2004. Rule R645-401-600 et. seq. 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 this 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 thirty (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 thirty (30) days of receipt of this letter. If you are also requesting a review of the fact of violation, as noted in paragraph 1, the Assessment Conference will be scheduled immediately following that review.

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 Vickie Southwick.

Sincerely,



Daron R. Haddock
Assessment Officer

Enclosure

cc: OSM Compliance Report
Vickie Southwick, DOGM
Price Field Office

O:\015019.CWW\COMPLIANCE\2004\N04-1-1-1\PROLTR.DOC

**WORKSHEET FOR ASSESSMENT OF PENALTIES
DIVISION OF OIL, GAS & MINING**

COMPANY / MINE PacifiCorp (Energy West Mining Co.)/ Cottonwood Wilberg Mine
 PERMIT C/015/019 NOV / CO # N04-1-1-1 VIOLATION 1 of 1

ASSESSMENT DATE June 1, 2004 ASSESSMENT OFFICER Daron R. Haddock

I. HISTORY (Max. 25 pts.)

A. Are there previous violations, which are not pending or vacated, which fall one (1) year of today's date?

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS
_____	_____	_____
_____	_____	_____

1 point for each past violation, up to one (1) year
 5 points for each past violation in a CO, up to one (1) year
 No pending notices shall be counted

TOTAL HISTORY POINTS 0

II. SERIOUSNESS (Either A or B)

NOTE: For assignment of points in Parts II and III, the following apply:

- Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
- Beginning at the mid-point of the 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 (B)

A. EVENT VIOLATION (Max 45 pts.)

- What is the event which the violated standard was designed to prevent?
- 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 VIOLATION (Max 25 pts.)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? Potential

RANGE 0-25

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

ASSIGN HINDRANCE POINTS 8

PROVIDE AN EXPLANATION OF POINTS:

****The permittee did not submit a permit renewal application 120 days prior to the existing permit expiration date. This time frame is established by regulation to allow adequate time for review, publication, and public comment. The renewal application was submitted 65 days late and less than 2 months before permit expiration. The Division has been hindered by not being able to evaluate the required renewal information and by not having adequate opportunity for the public to comment prior to the renewal date. In order to renew the permit, the Permittee must publish a notice in a local paper for four consecutive weeks. The public has an opportunity to comment for 30 days after the public notice. Due to the late submittal, there will not be adequate time for the public comment period to run before it will be time to renew the permit.*

TOTAL SERIOUSNESS POINTS (A or B) 8

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--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Negligence

ASSIGN NEGLIGENCE POINTS 15

PROVIDE AN EXPLANATION OF POINTS:

******The permittee is aware of the regulation that specifies an application for a permit renewal is to be submitted 120 days prior to the expiration of the existing permit. Failure to submit the renewal application in the required timeframe indicates indifference to DOGM regulations or lack of reasonable care. The permittee had been reminded by "E" mail, and verbally, about the pending renewal, but still failed to submit the renewal application within the required time.***

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
(Operator complied within the abatement period required)
(Operator complied with condition and/or terms of approved Mining and Reclamation Plan)

*Assign in upper of lower half of range depending on abatement occurring the 1st or 2nd 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*
(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 of the plan submitted for abatement was incomplete)
(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? Easy

ASSIGN GOOD FAITH POINTS -5

PROVIDE AN EXPLANATION OF POINTS:

****The permittee submitted an application for renewal on May 10, 2004. Since the submittal of the renewal application was the abatement, the violation was issued and terminated the same day. Even though the abatement was completed at the time of NOV issuance, this was considered to be normal compliance because 65 days had already elapsed since the date that the renewal application was supposed to be submitted.*

V. ASSESSMENT SUMMARY

NOTICE OF VIOLATION # <u>N04-1-1-1</u>	
I. TOTAL HISTORY POINTS	<u>0</u>
II. TOTAL SERIOUSNESS POINTS	<u>8</u>
III. TOTAL NEGLIGENCE POINTS	<u>15</u>
IV. TOTAL GOOD FAITH POINTS	<u>-5</u>
TOTAL ASSESSED POINTS	<u>18</u>
TOTAL ASSESSED FINE	<u>\$ 396</u>

cc: Price Field Office
O:\015019.CWW\COMPLIANCE\2004\N04-1-1-1\WKSHT.DOC

OUTGOING
C0150009
cc: C0150017
C0150018
C0150019

From: Stephanie Dunlap
To: Chuck Semborski
Date: 6/22/2004 8:58:17 PM
Subject: May Inspection Reports

Inspection report(s) for the following Mine(s) is attached:

Trail Mountain, C/015/009, None
Des Bee Dove, C/015/017, 05/25/2004
Deer Creek, C/015/018, 05/27/2004
Cottonwood, C/015/019, 05/10/2004

If you wish to acquire a copy of the signed inspection(s), please e-mail or give me a call and I will be happy to provide you with one.

Thank you,
Stephanie
(435) 613-5636
stephaniedunlap@utah.gov

CC: Sheila Morrison

**U.S. Postal Service
CERTIFIED MAIL RECEIPT**
(Domestic Mail Only; No Insurance Coverage Provided)

6/01/04, C/015/0019-N04-1-1-1

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Recipient's Name (Please Print Clearly) (to be completed by mailer)

CHUCK SEMBORSKI

Street, Apt. No., or PO Box No.

P O BOX 310

City, State, ZIP+4

HUNTINGTON UT 84528

See Reverse for Instructions

7099 3400 0016 8495 5644
 4495 5644 9100 0016 6602

PS Form 3800, February 2000