

Montana Department of  
**ENVIRONMENTAL QUALITY**

**MEMO**

TO: Katherine Orr, Hearing Examiner  
Board of Environmental Review

FROM: Joyce Wittenberg, Board Secretary  
Board of Environmental Review  
P.O. Box 200901  
Helena, MT 59620-0901

DATE: November 4, 2009

SUBJECT: Board of Environmental Review case, Case No. BER 2009-23 SM

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW

OF THE STATE OF MONTANA

IN THE MATTER OF:  
 VIOLATIONS OF THE MONTANA STRIP  
 AND UNDERGROUND MINE RECLAMATION  
 ACT BY SIGNAL PEAK ENERGY, LLC AT  
 BULL MOUNTAIN MINE #1, ROUNDUP,  
 MUSSELSHELL COUNTY, MONTANA.  
 [FID #1803, DOCKET NO. SM-09-04]

Case No. BER 2009-23 SM

TITLE

BER has received the attached request for hearing. Also attached is DEQ's administrative document relating to this request (Enforcement Case FID #1803, Docket No. SM-09-04).

Please serve copies of pleadings and correspondence on me and on the following DEQ representatives in this case.

Edward Hayes  
 Legal Counsel  
 Department of Environmental Quality  
 P.O. Box 200901  
 Helena, MT 59620-0901

John Arrigo, Administrator  
 Enforcement Division  
 Department of Environmental Quality  
 P.O. Box 200901  
 Helena, MT 59620-0901

Attachments

PER 2009-23 Sm

# Signal Peak Energy, LLC.

100 Portal Drive - Roundup MT 59072  
Tel. 406-323-4500

November 3, 2009

Certified Mail # EG 020659066 US  
Return Receipt Requested

Board Secretary  
Board of Environmental Review  
1520 East Sixth Avenue  
PO Box 200901  
Helena, MT 59620-0901

FILED this 4<sup>th</sup> day of  
November AD 2009  
at 11:38 o'clock A. M.  
MONTANA BOARD OF  
ENVIRONMENTAL REVIEW  
by: Misty Cosh

Re: Notice of Violation and Administrative Penalty Order, Docket No. SM-09-04,  
Notices of Noncompliance No. 09-17-04, 05, 06, 07 (FID #1803).

To: Board Secretary

Signal Peak Energy, LLC (Signal Peak) is hereby filing a letter of appeal and requesting a hearing regarding Notice of Violation and Administrative Penalty Order, Docket No. SM-09-04 (FID #1803). Signal Peak believes that one of the violations did not occur and that the penalties associated with the other violations are incorrectly calculated in one category or more (Gravity, Extent, Circumstances, Good Faith and Cooperation, Amounts Voluntarily Expended, Days of Violation, and Economic Benefit).

Respectfully,



Dennis L. Garnett  
Environmental Engineer  
Direct Dial: 406-656-6820

cc. John DeMichiei, President, Signal Peak Energy, LLC

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

IN THE MATTER OF:  
VIOLATIONS OF THE MONTANA STRIP  
AND UNDERGROUND MINE  
RECLAMATION ACT BY SIGNAL PEAK  
ENERGY, LLC AT BULL MOUNTAIN  
MINE #1, ROUNDUP, MUSSELSHELL  
COUNTY, MONTANA. (FID #1803)

NOTICE OF VIOLATION  
AND  
ADMINISTRATIVE PENALTY ORDER

Docket No. SM-09-04

**I. NOTICE OF VIOLATION**

Pursuant to the authority of Section 82-4-254, Montana Code Annotated (MCA), the Department of Environmental Quality (Department) hereby gives notice to Signal Peak Energy, LLC (Signal Peak) of the following Findings of Fact and Conclusions of Law with respect to violations of the Montana Strip and Underground Mine Reclamation Act (the Act) codified at Title 82, chapter 4, part 2, MCA; the administrative rules implementing the Act set forth in Title 17, chapter 24, Administrative Rules of Montana (ARM); and/or the provisions of Signal Peak's operating permits.

**II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Department is an agency of the executive branch of government of the State of Montana, created and existing under the authority of Section 2-15-3501, MCA.

2. The Department administers the Act.

3. Signal Peak is a corporation registered with the State of Montana and, therefore, is a "person" within the meaning of Section 82-4-203(39), MCA.

4. Signal Peak operates an underground coal mine, known as the Bull Mountain Mine #1, under Permit No. 93017 (Permit) located near Roundup, Montana. The Permit was issued by the Department under the Act.

5. Signal Peak, therefore, is an "operator" as defined by Section 82-4-203(35), MCA.

1           6.       As an operator, Signal Peak is subject to the requirements of the Act, the  
2 administrative rules adopted under the Act, and the provisions of the Permit.

3  
4 ***Violation #1 (NON 09-17-04): Construction of a road that was not identified in the approved  
5 facility plan area.***

6           7.       Pursuant to Section 82-4-221(1), MCA, an operator may not engage in strip or  
7 underground mining without having first obtained from the Department a permit designating the  
8 area of land affected by the operation. The designation must include all lands reasonably  
9 anticipated to be mined or otherwise affected.

10           8.       Pursuant to ARM 17.24.321, an applicant for a mining permit must submit an  
11 application containing a description of each road, conveyor, and railroad loop to be constructed  
12 within the proposed permit area.

13           9.       Pursuant to ARM 17.24.413(1)(a), a permittee must conduct all operations as  
14 described in the application as approved by the Department.

15           10.      On April 28, 2009, a Department inspector observed that a road not identified in  
16 the approved facility area plan had been constructed as a bypass between the railroad spur and  
17 the railroad loop.

18           11.      On May 12, 2009, the Department issued Notice of Noncompliance and Order of  
19 Abatement 09-17-04 (NON 09-17-04) to Signal Peak alleging violations of the statute and  
20 administrative rules set forth above. NON 09-17-04 required Signal Peak to abate the alleged  
21 violation by removing the road and reclaiming the area of disturbance.

22           12.      By letter dated May 29, 2009, Signal Peak responded to NON 09-17-04. Signal  
23 Peak indicated that Ames Construction, its construction contractor, had constructed the road using  
24 topsoil and subsoil and without salvaging any soil prior to construction. At Signal Peak's  
direction, Ames Construction removed the road and placed the materials in appropriate soil

1 stockpiles. Signal Peak also indicated that it was preparing an application for a minor revision to  
2 its Permit authorizing construction of the road and, after Department approval, that it would  
3 reconstruct the road using appropriate material.

4 13. On June 26, 2009, the Department issued a Termination of Abatement Order.

5 14. The conditions described above constitute a violation of Section 82-4-221(1),  
6 MCA, and ARM 17.24.321 and 413(1)(a).

7 ***Violation #2 (NON 09-17-05): Failure to use temporary sediment control measures during***  
8 ***access road and railroad loop construction.***

9 15. Section 82-4-231(10)(c), MCA, requires an operator to impound, drain, or treat all  
10 runoff or underground mine waters so as to reduce soil erosion, damage to grazing and agricultural  
11 lands, and pollution of surface and subsurface waters.

12 16. ARM 17.24.601(4) requires an operator to use temporary erosion control  
13 measures as necessary during construction to control sedimentation erosion until permanent  
14 control measures can be established.

15 17. On April 28, 2009 and May 4, 2009, a Department inspector observed that  
16 temporary sediment control measures had not been installed during access road and railroad loop  
17 construction. The Department had notified Signal Peak of deadlines to install these measures in  
18 its February and April, 2009, inspection reports.

19 18. On May 12, 2009, the Department issued Notice of Noncompliance and Order of  
20 Abatement 09-17-05 (NON 09-17-05) alleging that the condition set forth above violated Section  
21 82-4-231(10)(c), MCA, and ARM 17.24.601(4). NON 09-17-05 ordered Signal Peak to abate  
22 the violation by installing appropriately designed temporary sediment control measures, as  
23 approved by the Department, on all disturbed areas, including facilities, roads, and railroads  
24 located within the Permit area.

1 19. Signal Peak submitted a letter to the Department on June 25, 2009. With its letter,  
2 Signal Peak submitted for the Department's approval a Temporary Sediment Control Plan for the  
3 Mine Facilities Area. The Department subsequently approved the plan.

4 20. On June 30, 2009, Signal Peak notified the Department that it had installed  
5 temporary sediment control devices at various locations in the general mine facilities area and  
6 around the railroad loop.

7 21. On August 19, 2009, the Department issued a Termination of Abatement Order.

8 22. The conditions described above constitute a violation of Section 82-4-231(10)(c),  
9 MCA, and ARM 17.24.601(4).

10 ***Violation #3 (NON 09-17-06): Failure to salvage and handle soil materials in the construction***  
11 ***of the railroad loop and other mine features requiring fill, such as roads and pond***  
***embankments.***

12 23. Under Section 82-4-232(4), MCA, all available topsoil must be removed in a  
13 separate layer, guarded from erosion and pollution, and kept in a condition so that it can sustain  
14 vegetation of at least the quality and variety it sustained prior to removal. The operator is  
15 required to accord substantially the same treatment to any subsurface deposit of material that is  
16 capable, as determined by the Department, of supporting surface vegetation virtually as well as  
17 the present topsoil. After the operation has been backfilled and graded, the topsoil or available  
18 subsurface material that is best able to support vegetation must be returned as the top layer.

19 24. Pursuant to ARM 17.24.701(1), an operator must remove all soil suitable for  
20 reclamation from an area prior to any surface disturbance.

21 25. Pursuant to ARM 17.24.701(2), an operator must use multiple lift soil handling  
22 methods to separately handle surface soil and subsurface soil during salvage, stockpiling, and  
23 redistribution, unless, for any particular component, the operator affirmatively demonstrates, and  
24 //

1 the Department finds, that multiple lifts are not necessary to achieve reclamation consistent with  
2 the Act, rules, and reclamation plan.

3 26. Pursuant to ARM 17.24.701(3), an operator must protect undisturbed soils to the  
4 extent possible from contamination and degradation and must conduct soil salvage operations in  
5 a manner and at a time that minimizes erosion, contamination, degradation, compaction and  
6 deterioration of the biological properties of the soil.

7 27. On April 28, 2009, a Department inspector observed that: (a) unstripped topsoil  
8 had been used to build a small road turnout; (b) fill had been placed on native soil in an area off  
9 the southwest corner of the railroad loop; (c) an unapproved "A" soil pile and an unapproved "B"  
10 soil pile had been placed at the toe of the rail fill; (d) soil salvaged prior to the construction of a  
11 road connecting the rail loop to the rail spur had been salvaged without proper soil segregation;  
12 and (e) rocks and overburden not required for construction had been placed on undisturbed  
13 native soils potentially contaminating and degrading the native soils.

14 28. On May 4, 2009, a Department inspector observed that: (a) the unapproved  
15 segregated "A" and "B" soil stockpiles at the toe of the rail fill had been blended together, spread  
16 across a larger area, and used to construct a small dozer ramp; (b) a trench excavated along the  
17 toe of the fill associated with the road connecting the rail loop with the rail spur revealed the road  
18 fill had been placed on native topsoil; and (c) rock and overburden material not required for  
19 construction had been placed on undisturbed native soils potentially contaminating and  
20 degrading the native soils.

21 29. On May 12, 2009, the Department issued Notice of Noncompliance and Order of  
22 Abatement 09-17-06 (NON 09-17-06) alleging the conditions set forth above violated Section  
23 82-4-232(4), MCA, and ARM 17.24.701(1), (2), and (3). NON 09-17-06 ordered Signal peak to  
24 abate the violations by:

1 a. Calculating and providing to the Department the current "A" soil and "B"  
2 soil volumes within stockpiles, excluding the waste disposal area (WDA). The surveys  
3 and calculation methods must also be provided to the Department.

4 b. Calculating and providing to the Department the soil volumes required to  
5 complete the 1-foot "A" and 2-foot "B" reclamation re-soiling commitment in the Permit.  
6 The surveys, calculations, and methods must also be provided to the Department.

7 c. Developing a sampling plan, and implementing it following Department  
8 approval, that includes excavating into fill slopes to identify the extent of soil salvage on  
9 all fill areas that do not show a stripping edge.

10 d. Separating the "A" and "B" soils located at 46.2703 latitude by  
11 -108.43512 longitude and relocating these soils to the approved soil storage areas.

12 e. Relocating the soils located at 46.27037 latitude by -108.43481 longitude  
13 to the approved soil storage area.

14 30. Signal Peak submitted a letter of mitigating circumstances to the Department on  
15 June 16, 2009. Signal Peak indicated that it had addressed subsections (c), (d) and (e) set forth in  
16 the abatement order and that it would subsequently submit a report prepared under subsection (c)  
17 regarding the extent of soil salvage on all fill areas. Signal Peak submitted another letter of  
18 mitigating circumstances to the Department on August 10, 2009, indicating that it had addressed  
19 subsection (a) and (b) of the abatement order. Signal Peak included a report entitled "Soil  
20 Investigation" (the Report) with its August 10, 2009 submittal.

21 31. The Report revealed the extent of Signal Peak's failure to properly salvage soil  
22 materials. The railroad loop that Signal Peak constructed during the Winter of 2008 and Spring  
23 of 2009 is approximately 8 miles long. In preparation of the Report, fourteen soil salvage  
24 verification pits were dug at locations along the toe of the railroad loop fill slopes. Thirteen of

1 the salvage verification pits demonstrated that fill had been placed over areas where soil material  
2 had not been adequately salvaged.

3 32. In addition, thirteen other soil salvage verification pits were dug at other fill sites  
4 in the Permit area, primarily those associated with construction of roads and pond embankments.  
5 These soil salvage verification pits also demonstrated that fill material had been placed over  
6 areas where soil material had not been adequately salvaged.

7 33. The Report also indicated that the original soil survey completed in 1991 and  
8 supplemented in 2007 had overestimated the volume of material available for salvage.  
9 According to the Report, 463,584 cubic yards (yd<sup>3</sup>) of material was available for salvage from  
10 the currently disturbed area. The Report indicated that Signal Peak had salvaged and stockpiled  
11 309,205 yd<sup>3</sup> of material from the currently disturbed area. Thus, Signal Peak failed to salvage  
12 and stockpile approximately 154,379 yd<sup>3</sup> of soil material.

13 34. On September 30, 2009, the Department issued a Termination of Abatement Order.

14 35. Signal Peak's improper salvage and handling of soil materials as described  
15 above constitute violations of Section 82-4-232(4), MCA, and ARM 17.24.701(1), (2), and (3).

16 ***Violation #4 (NON 09-17-07): Failure to salvage all available topsoil, and using topsoil as fill***  
17 ***material at the base of a coal conveyor.***

18 36. Under Section 82-4-232(4), MCA, all available topsoil must be removed in a  
19 separate layer, guarded from erosion and pollution, and kept in a condition so that it can sustain  
20 vegetation of at least the quality and variety it sustained prior to removal. The operator is  
21 required to accord substantially the same treatment to any subsurface deposit of material that is  
22 capable, as determined by the Department, of supporting surface vegetation virtually as well as  
23 the present topsoil. After the operation has been backfilled and graded, the topsoil or available  
24 subsurface material that is best able to support vegetation must be returned as the top layer.

1 37. ARM 17.24.702(2) states that "Salvaged soil must be stockpiled if graded areas  
2 are not immediately available for redistribution."

3 38. On April 28, 2009 and May 4, 2009, a Department inspector observed that topsoil  
4 was being used as fill at the base of the raw coal conveyor in PM Draw.

5 39. On May 12, 2009, the Department issued Notice of Noncompliance and Order of  
6 Abatement 09-17-07 (NON 09-17-07) alleging that the conditions set forth above violated ARM  
7 17.24.702(2) and Section 82-4-232(4), MCA. NON 09-17-07 ordered Signal Peak to abate the  
8 violation by:

9 a. Identifying the original location of the topsoil used in the fill at the base of  
10 the raw coal conveyor in PM draw.

11 b. Salvaging the soil to the depth of the original contour of PM Draw and  
12 placing this topsoil in the approved "A" stockpile.

13 40. Signal Peak submitted a Letter of Mitigating Circumstances to the Department on  
14 May 29, 2009. In its letter Signal Peak provided the location of where the soil originated and  
15 indicated that the soil at the base of the conveyor had been removed and placed in the  
16 appropriate stockpile.

17 41. On June 26, 2009, the Department issued a Termination of Abatement Order.

18 42. The conditions described above constitutes a violation of Section 82-4-232(4),  
19 MCA, and ARM 17.24.702(2).

20 ***Administrative penalties***

21 43. Pursuant to Section 82-4-1001, MCA, and ARM 17.24.301, *et seq.*, the  
22 Department has calculated an administrative penalty of \$6,000 for NON 09-17-04, \$15,600 for  
23 NON 09-17-05, \$327,600 for NON 09-17-06, and \$3,300 for NON 09-17-07. The Penalty  
24 Calculation Worksheet is enclosed with this Order and is hereby incorporated by reference.

1 44. An administrative penalty in the amount of \$6,000 for NON 09-17-04 is a proper  
2 penalty for Signal Peak's construction of a road that was not identified in the approved facility  
3 plan area.

4 45. An administrative penalty in the amount of \$15,600 for NON 09-17-05 is a proper  
5 penalty for Signal Peak's violation of the regulatory requirements regarding the proper  
6 installation of temporary sedimentation control measures.

7 46. An administrative penalty in the amount of \$327,600 for NON 09-17-06 is a proper  
8 penalty for Signal Peak's failure to properly salvage and handle soil material in the construction of  
9 the railroad loop and other mine features requiring fill, such as roads and pond embankments.

10 47. An administrative penalty in the amount of \$3,300 for NON 09-17-07 is a proper  
11 penalty for Signal Peak's violation of the regulatory requirement that topsoil not be used as fill  
12 material as it relates to construction of the coal conveyor.

13 48. In addition, \$3,225 has been added to the administrative penalties listed above for  
14 history of violation, and \$22,752 has been added to reflect the economic benefit Signal Peak  
15 realized in costs avoided by not hiring and designating a professional staff person to oversee the  
16 soil stripping operations and to verify soil volumes associated with the violations described in  
17 NON 09-17-06.

### 18 **III. ADMINISTRATIVE PENALTY ORDER**

19 This Notice of Violation and Administrative Penalty Order (Order) is issued to Signal Peak  
20 pursuant to the authority vested in the State of Montana, acting by and through the Department under the  
21 Act. Now, therefore, based on the foregoing Findings of Fact and Conclusions of Law, and under  
22 authority of Section 82-4-254, MCA, the Department hereby ORDERS Signal Peak to do the following:

23 49. Signal Peak is hereby assessed an administrative penalty in the amount of  
24 \$378,477 for the violations cited in this Order.



1 of *Graybill, Ostrem, Warner and Crotty*, 246 Mont. 175, 803 P.2d 1089 (1990) and Section 37-  
2 61-201, MCA.

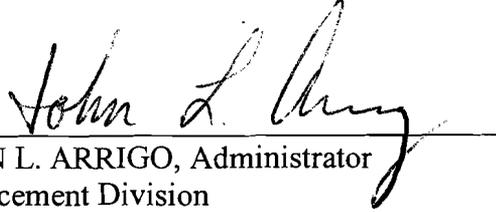
3 53. If Signal Peak does not request a hearing, or if it does not submit testimony at  
4 such hearing, Signal Peak forfeits its right to judicial review of the Department's determination  
5 of the violation or penalty.

6 54. If a hearing is not requested within 30 days after service of this Order, the  
7 opportunity for a contested case appeal is waived.

8 IT IS SO ORDERED:

9 DATED this 9<sup>th</sup> day of October, 2009.

10 STATE OF MONTANA  
11 DEPARTMENT OF ENVIRONMENTAL QUALITY

12   
13 \_\_\_\_\_  
14 JOHN L. ARRIGO, Administrator  
15 Enforcement Division

**Department of Environmental Quality - Enforcement Division  
Penalty Calculation Worksheet**

Responsible Party Name:	Signal Peak Energy, LLC (Signal Peak) at Bull Mountain Mine #1
FID:	1803
Statute:	Montana Strip and Underground Mine Reclamation Act (Act)
Date:	10/7/2009
Name of Employee Calculating Penalty:	Bill Harbrecht and John Arrigo
Maximum Penalty Authority:	\$5,000.00

**Penalty Calculation #1 [NON 09-17-04]**

<b>Description of Violation:</b>
Section 82-4-221(1), MCA, requires an operator to obtain a permit designating the areas of land to be affected by its mining operation. ARM 17.24.321 requires an application for an operating permit to describe each road, conveyor and railroad loop to be constructed and ARM 17.413(1)(a) requires a permittee to conduct all operations as described in the application as approved by the Department. During an April 28, 2009 inspection, Department inspectors observed that Signal Peak had constructed a road that was not described in its application, and therefore, was not authorized by its permit. Signal Peak, therefore, violated Section 82-4-221(1), MCA, and ARM 17.24.321 and 413(1)(a).

**I. BASE PENALTY**

**Nature**

<b>Explanation:</b>	
Construction of a road that was not described in an application for an operating permit deprives the Department of the opportunity to assess any environmental impacts associated with construction of the road, impairing the Department's administration of the Act and its associated administrative rules. Therefore, the Nature of the violation is Administrative.	
Potential to Harm Human Health or the Environment	
Potential to Impact Administration	X

**Gravity and Extent**

<b>Gravity Explanation:</b>
Pursuant to ARM 17.4.303(5)(b)(ii), violations that have major gravity include construction or operation without a required permit or approval. Signal Peak's construction of a road that was not authorized by its permit is therefore considered to have a Major Gravity.
<b>Extent Explanation:</b>
Not applicable.

**Harm to Human Health or the Environment**

**Gravity**

<b>Extent</b>	Major	Moderate	Minor	
Major	0.85	0.70	0.55	
Moderate	0.70	0.55	0.40	
Minor	0.55	0.40	0.25	
	Gravity and Extent Factor:			0.00

**Impact to Administration**

**Gravity**

Major	Moderate	Minor	
.50	.40	.30	
Gravity Factor:			0.50

**BASE PENALTY (Maximum Penalty Authority x Gravity Factor):** **\$2,500.00**

**II. ADJUSTED BASE PENALTY**

**A. Circumstances (up to 30% added to Base Penalty)**

Explanation:  
 Signal Peak's behavior in this violation exhibited a moderate degree of culpability. As a regulated entity, Signal Peak is expected to have knowledge of its permit and the requirements of the Act. In a Letter of Mitigating Circumstances, Signal Peak stated that it had hired an outside contractor to construct the railroad loop inside of the mine permit boundary, including the road providing bypass between the railroad spur and railroad loop. The contractor was either unaware of the requirements of the Permit or chose to ignore them. Signal Peak should have had sufficient communication and control of its contractor to assure compliance with the terms of the Permit. Signal Peak had or should have had control of the circumstances that resulted in the violation, could foresee that the actions would result in a violation, and failed to take reasonable precautions to prevent the violation. Therefore, the Base Penalty is increased by 20% for a moderate degree of Circumstances.

Circumstances Percent:	0.20
Circumstances Adjustment (Base Penalty x Circumstances Percent)	\$500.00

**B. Good Faith and Cooperation (up to 10% subtracted from Base Penalty)**

Explanation:  
 Signal Peak did not report the violation and did not take immediate corrective action when requested by the Department. Therefore, no decrease in the Base Penalty is calculated for Good Faith and Cooperation.

Good Faith & Coop. Percent:	0.00
Good Faith & Coop Adjustment (Base Penalty x G F & Coop. Percent)	\$0.00

**C. Amounts Voluntarily Expended (AVE) (up to 10% subtracted from Base Penalty)**

Explanation:  
 The Department is not aware of any amounts voluntarily expended by Signal Peak to mitigate the violation and/or its impacts above and beyond what was required to return to compliance. Therefore, no reduction in the Base Penalty is calculated for Amounts Voluntarily Expended.

AVE Percent:	0.00
Amounts Voluntarily Expended Adjustment (Base Penalty x AVE Percent)	\$0.00

**ADJUSTED BASE PENALTY SUMMARY**

Base Penalty	\$2,500.00
Circumstances	\$500.00
Good Faith & Cooperation	\$0.00
Amt. Voluntarily Expended	\$0.00
<b>ADJUSTED BASE PENALTY</b>	<b>\$3,000.00</b>

**III. DAYS OF VIOLATION**

Explanation:  
 Signal Peak constructed a road without first obtaining the approval of the Department. The Department estimates at least two days were spent on road construction. Therefore, the Department is calculating a penalty for 2 days of violation.

Number of Days:	2
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**ADJUSTED BASE PENALTY x NUMBER OF DAYS: \$6,000.00**

Other Matters as Justice May Require Explanation:  
 Not applicable.

**OTHER MATTERS AS JUSTICE MAY REQUIRE TOTAL: \$0.00**

**IV. ECONOMIC BENEFIT**

Explanation:  
 Signal Peak removed the road and reclaimed the area. Therefore Signal Peak did not realize a significant economic benefit as a result of the violation.

**ECONOMIC BENEFIT REALIZED: \$0.00**

Responsible Party Name:	Signal Peak Energy, LLC (Signal Peak) at Bull Mountain Mine #1
FID:	1803
Statute:	Montana Strip and Underground Mine Reclamation Act (Act)
Date:	10/7/2009
Maximum Penalty Authority:	\$5,000.00

**Penalty Calculation #2 [NON 09-17-05]**

Description of Violation:  
Signal Peak failed to install temporary sediment control measures during access road and railroad loop construction, in violation of Section 82-4-231(10)(c), MCA, and ARM 17.24.601(4).

**I. BASE PENALTY**

**Nature**

Explanation:	
Signal Peak's failure to install temporary sediment control during access road and railroad loop construction has the potential to cause degradation of soil resources. Therefore, the violation has the potential to harm human health or the environment.	
Potential to Harm Human Health or the Environment	X
Potential to Impact Administration	

**Gravity and Extent**

Gravity Explanation:	
Pursuant to ARM 17.4.303(5)(b), a violation has a moderate gravity if it poses a potential to harm human health or the environment. Sediment control is necessary to prevent erosion and the deposition of unwanted soil material over native and/or reclaimed ground. Also, the failure to incorporate adequate sediment controls could cause the loss of a valuable soil resource. Therefore the violation has the potential to harm the environment and the Gravity of the violation is Moderate.	
Extent Explanation:	
Although the road and rail track loop were installed without adequate sediment control, little or no soil resource was lost as a result of erosion during construction since no significant surface water runoff event occurred. Therefore, the Extent of the violation is Minor.	

**Harm to Human Health or the Environment**

**Gravity**

Extent	Major	Moderate	Minor	
Major	0.85	0.70	0.55	
Moderate	0.70	0.55	0.40	
Minor	0.55	0.40	0.25	Gravity and Extent Factor: 0.40

**Impact to Administration**

**Gravity**

Major	Moderate	Minor	
.50	.40	.30	Gravity Factor: 0.00

**BASE PENALTY (Maximum Penalty Authority x Gravity and Extent Factor):** **\$2,000.00**

**II. ADJUSTED BASE PENALTY**

**A. Circumstances (up to 30% added to Base Penalty)**

Explanation:  
 Signal Peak's behavior in this violation exhibited a high degree of culpability. As a regulated entity, Signal Peak is expected to have knowledge of the requirements of the Strip and Underground Mine Reclamation Act, its associated rules, and permit No. 93017, including the requirement that adequate sediment control is required prior to construction of a road and railroad loop. During the February 23, 2009 and the April 28, 2009 inspections, Signal Peak was informed of the need to construct adequate sediment control. Appropriate erosion controls were not installed by the time the Department conducted a follow-up inspection on May 4, 2009. Because Signal Peak exhibited a reckless disregard for the violated requirement, the Base Penalty is increased by a high degree or a 30% increase for Circumstances.

Circumstances Percent:	0.30
Circumstances Adjustment (Base Penalty x Circumstances Percent)	\$600.00

**B. Good Faith and Cooperation (up to 10% subtracted from Base Penalty)**

Explanation:  
 Signal Peak did not report the violation and did not take immediate corrective action when requested by the Department. Therefore, no decrease in the Base Penalty is calculated for Good Faith and Cooperation.

Good Faith & Coop. Percent:	0.00
Good Faith & Coop Adjustment (Base Penalty x G F & Coop. Percent)	\$0.00

**C. Amounts Voluntarily Expended (AVE) ( up to 10% subtracted from Base Penalty)**

Explanation:  
 The Department is not aware of any amounts voluntarily expended by Signal Peak to mitigate the violation and/or its impacts above and beyond what was required to return to compliance. Therefore, no reduction in the Base Penalty is calculated for Amounts Voluntarily Expended.

AVE Percent:	0.00
Amounts Voluntarily Expended Adjustment (Base Penalty x AVE Percent)	\$0.00

**ADJUSTED BASE PENALTY SUMMARY**

Base Penalty	\$2,000.00
Circumstances	\$600.00
Good Faith & Cooperation	\$0.00
Amt. Voluntarily Expended	\$0.00
<b>ADJUSTED BASE PENALTY</b>	<b>\$2,600.00</b>

**III. DAYS OF VIOLATION**

Explanation:  
 During a February 23, 2009 inspection, Signal Peak was informed that adequate sediment controls must be installed. The follow-up inspection report mailed March 19, 2009 notified Signal Peak that the controls must be installed prior to April 10, 2009 or earlier before any runoff event. On March 31, 2009, Signal Peak requested that this deadline be extended to May 1, 2009. The Department approved the extension but retained the requirement that sediment controls would need to be installed earlier before any runoff event. During the May 4, 2009 inspection, Department inspectors documented that the sediment controls were still inadequate. Signal Peak failed to install adequate sediment controls from some time prior to February 23 through at least May 4, 2009, for a period of at least 71 days. Considering that the Department provided Signal Peak with an extension to the deadline for installing sediment controls and because the Department believes that calculating a penalty for 71 days of violation results in a penalty that is in excess of what is required to provide an adequate deterrent, the Department will calculate the days of violation as follows: one day each for March and April 2009 and 4 days for May 1 through May 4, 2009, for a total of 6 days of violation.

Number of Days:	6
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**ADJUSTED BASE PENALTY x NUMBER OF DAYS: \$15,600.00**

Other Matters as Justice May Require Explanation:	
Not applicable.	
<b>OTHER MATTERS AS JUSTICE MAY REQUIRE TOTAL:</b>	<b>\$0.00</b>

**IV. ECONOMIC BENEFIT**

Explanation:	
The Department believes that Signal Peak did not realize a significant economic benefit by failing to construct adequate sediment controls in a timely manner. Therefore, the Department will not calculate an amount for economic benefit.	
<b>ECONOMIC BENEFIT REALIZED:</b>	<b>\$0.00</b>

Responsible Party Name:	Signal Peak Energy, LLC (Signal Peak) at Bull Mountain Mine #1
FID:	1803
Statute:	Montana Strip and Underground Mine Reclamation Act (Act)
Date:	10/7/2009
Maximum Penalty Authority:	\$5,000.00

**Penalty Calculation #3 [NON 09-17-06]**

<b>Description of Violation:</b>
Section 82-4-232(4), MCA, and ARM 17.24.701(1), (2), and (3) require Signal Peak to properly salvage and segregate soil horizons. Signal Peak did not adequately salvage and stockpile the two separate soil stratas in its construction of the railroad loop and other mine facilities, such as roads and pond embankments. Therefore, Signal Peak violated Section 82-4-232(4), MCA, and ARM 17.24.701(1), (2), and (3).

**I. BASE PENALTY**

**Nature**

<b>Explanation:</b>	
Signal Peak's failure to properly salvage and segregate soil materials creates the potential to harm the environment. The failure to salvage soil materials and the use of soil material as fill may result in an insufficient quantity of soil material for reclamation, compromising revegetation. Failure to segregate the soil materials by soil horizon may result in the degradation of the topsoil which should be returned as the top layer after backfilling and regrading of an area as it is best able to support vegetation. Therefore, the Nature of the violation is one that has the potential to harm the environment.	
Potential to Harm Human Health or the Environment	X
Potential to Impact Administration	

**Gravity and Extent**

<b>Gravity Explanation:</b>
Pursuant to ARM 17.24.303(5)(b), a violation that poses a potential to harm the environment is considered to have a moderate gravity. The failure to adequately collect, segregate and stockpile topsoil inhibits Signal Peak's ability to adequately revegetate the site, thus potentially impacting the environment. Therefore, the Gravity of the violation is Moderate.
<b>Extent Explanation:</b>
The Department estimates that Signal Peak failed to adequately salvage approximately 154,379 cubic yards of soil material. Given this large volume, the Extent of the violation is Major.

**Harm to Human Health or the Environment**

**Gravity**

<b>Extent</b>	Major	Moderate	Minor	
Major	0.85	0.70	0.55	
Moderate	0.70	0.55	0.40	
Minor	0.55	0.40	0.25	Gravity and Extent Factor: 0.70

**Impact to Administration**

**Gravity**

Major	Moderate	Minor	
.50	.40	.30	Gravity Factor: 0.00

**BASE PENALTY (Maximum Penalty Authority x Gravity and Extent Factor):** **\$3,500.00**

**II. ADJUSTED BASE PENALTY**

**A. Circumstances (up to 30% added to Base Penalty)**

Explanation:	
Signal Peak's behavior in this violation exhibited a moderate degree of culpability. As a regulated entity, Signal Peak is expected to have knowledge of its Permit and the requirements of the Act. Signal Peak hired an outside contractor to construct the railroad loop, roads and pond embankments. The contractor was either unaware of the requirements of the Permit, or chose to ignore them. Signal Peak should have had sufficient communication and control of its contractor to assure compliance with the terms of the Permit. Signal Peak had or should have had control of the circumstances that resulted in the violation, could foresee that the actions would result in a violation, and failed to take reasonable precautions to prevent the violation. Therefore, the Base Penalty is increased by 20% for a Moderate degree of Circumstances.	
Circumstances Percent:	0.20
Circumstances Adjustment (Base Penalty x Circumstances Percent)	\$700.00

**B. Good Faith and Cooperation (up to 10% subtracted from Base Penalty)**

Explanation:	
Signal Peak did not report the violation and did not take immediate corrective action when requested by the Department. Therefore, no decrease in the Base Penalty is calculated for Good Faith and Cooperation.	
Good Faith & Coop. Percent:	0.00
Good Faith & Coop Adjustment (Base Penalty x G F & Coop. Percent)	\$0.00

**C. Amounts Voluntarily Expended (AVE) ( up to 10% subtracted from Base Penalty)**

Explanation:	
The Department is not aware of any amounts voluntarily expended by Signal Peak to mitigate the violation and/or the impacts above and beyond what was required to return to compliance. Therefore, no reduction in the base penalty is calculated for Amounts Voluntarily Expended.	
AVE Percent:	0.00
Amounts Voluntarily Expended Adjustment (Base Penalty x AVE Percent)	\$0.00

**ADUSTED BASE PENALTY SUMMARY**

Base Penalty	\$3,500.00
Circumstances	\$700.00
Good Faith & Cooperation	\$0.00
Amt. Voluntarily Expended	\$0.00
<b>ADJUSTED BASE PENALTY</b>	<b>\$4,200.00</b>

**III. DAYS OF VIOLATION**

Explanation:	
Signal Peak conducted soil handling operations since before the Department's inspection of the mine site on September 15, 2008. The soil handling operations continued at least until the Department's inspection on June 15, 2009. During the majority of this time, Signal Peak was constructing the railroad loop. The span of time between the two inspections totals 273 days. The Department believes that it is not reasonable to assume that violations related to the improper movement and handling of topsoil occurred every day during that period. Given the scope of Signal Peak's construction activities and the amount of soil material Signal Peak failed to salvage, the Department conservatively believes that improper soil salvage and handling occurred two days a week, for a total of 78 days (39 weeks x 2 days/week = 78 days). Thus, the Department is assessing a penalty for 78 days of violation.	
Number of Days:	78

**ADJUSTED BASE PENALTY x NUMBER OF DAYS: \$327,600.00**

Other Matters as Justice May Require Explanation:	
Not applicable.	
<b>OTHER MATTERS AS JUSTICE MAY REQUIRE TOTAL:</b>	<b>\$0.00</b>

**IV. ECONOMIC BENEFIT**

Explanation:	
<p>Signal Peak did not have adequate control over its contractors to ensure that soil was properly salvaged, segregated and stockpiled in accordance with the Permit. The Department believes that Signal Peak should have employed at least one full-time professional person to oversee the contractor's work and ensure topsoil was properly handled. Therefore, Signal Peak realized an economic benefit by avoiding the cost of hiring an oversight person. The Department estimates the cost of a professional person or a construction oversight person would be at least \$100,000 per year (\$70,000 wages + \$30,000 benefits). The Department further estimates that for the nine months between September 15, 2008 and June 15, 2009, Signal Peak realized an economic benefit of \$22,752. See attached Economic Benefit Calculation.</p>	
<b>ECONOMIC BENEFIT REALIZED:</b>	<b>\$22,752.00</b>

Responsible Party Name:	Signal Peak Energy, LLC (Signal Peak) at Bull Mountain Mine #1
FID:	1803
Statute:	Montana Strip and Underground Mine Reclamation Act (Act)
Date:	7/29/2009
Maximum Penalty Authority:	\$5,000.00

<b>Penalty Calculation #4 [NON 09-17-07]</b>	
<b>Description of Violation:</b>	
Section 82-4-232(4), MCA, ARM 17.24.701(2), and 17.24.305(1)(m), requires Signal Peak to properly salvage topsoil and subsoil, and place the soils in approved soil stockpiles. Signal Peak did not adequately salvage and stockpile the two separate soil stratas. In addition, Signal Peak did not place the soils in an approved stockpile location as delineated in the Permit, but used the topsoil as fill material in the construction of the railroad loop and at the base of the raw coal conveyor in PM Draw. Therefore, Signal Peak violated Section 82-4-232(4), MCA, ARM 17.24.701(2), and 17.24.305(1)(m).	

**I. BASE PENALTY**

**Nature**

<b>Explanation:</b>	
Signal Peak's failure to properly collect and stockpile topsoil and subsoil, as approved by the Department and required by the Permit, creates the potential to harm the environment by not ensuring that the soil strata are replaced in the proper order, thus possibly impairing the recovery of adequate vegetation growth. Therefore, the Nature of violation is one that has the potential to harm human health or the environment.	
Potential to Harm Human Health or the Environment	X
Potential to Impact Administration	

**Gravity and Extent**

<b>Gravity Explanation:</b>	
Pursuant to ARM 17.24.303(5)(b)(ii), a violation that poses a potential to harm the environment is considered to have a moderate gravity. The failure to adequately collect and stockpile topsoil will inhibit Signal Peak's ability to adequately revegetate the site, thus potentially impacting the environment. Therefore, the Gravity of the violation is Moderate.	
<b>Extent Explanation:</b>	
On April 28, 2009, the Department observed that topsoil and subsoil had been mixed following the soil salvage operation. The Permit requires that soil and subsoil must be salvaged in separate lifts, and placed in separate soil stockpiles. In addition, the soil stockpiles were not in an approved soil storage area. Therefore, the extent of the violation is deemed Moderate.	

**Harm to Human Health or the Environment**

**Gravity**

Extent	Major	Moderate	Minor	
Major	0.85	0.70	0.55	
Moderate	0.70	0.55	0.40	
Minor	0.55	0.40	0.25	Gravity and Extent Factor: 0.55

**Impact to Administration**

**Gravity**

Major	Moderate	Minor	
.50	.40	.30	Gravity Factor: 0.00

**BASE PENALTY (Maximum Penalty Authority x Gravity and Extent Factor):** **\$2,750.00**

**II. ADJUSTED BASE PENALTY**

**A. Circumstances (up to 30% added to Base Penalty)**

Explanation:  
 As a regulated entity, Signal Peak knew or should have known that it was not authorized to allow the mixture of the A and B soil horizons following soil stripping operations, and that the soil had to be placed in approved soil stockpiles. Signal Peak had complete control over the circumstances that resulted in the violation, could foresee that its actions would result in a violation, and failed to take reasonable precautions to prevent the violation. Therefore, the Department is calculating a moderate or 20% increase in the Base Penalty for Circumstances.

Circumstances Percent:	0.20
Circumstances Adjustment (Base Penalty x Circumstances Percent)	\$550.00

**B. Good Faith and Cooperation (up to 10% subtracted from Base Penalty)**

Explanation:  
 Signal Peak did not report the violation and did not take immediate corrective action when requested by the Department. Therefore, no decrease in the Base Penalty is calculated for Good Faith and Cooperation.

Good Faith & Coop. Percent:	0.00
Good Faith & Coop Adjustment (Base Penalty x G F & Coop. Percent)	\$0.00

**C. Amounts Voluntarily Expended (AVE) ( up to 10% subtracted from Base Penalty)**

Explanation:  
 The Department is not aware of any amounts voluntarily expended by Signal Peak to mitigate the violation and/or the impacts above and beyond what was required to return to compliance. Therefore, no reduction in the Base Penalty is calculated for Amounts Voluntarily Expended.

AVE Percent:	0.00
Amounts Voluntarily Expended Adjustment (Base Penalty x AVE Percent)	\$0.00

**ADUSTED BASE PENALTY SUMMARY**

Base Penalty	\$2,750.00
Circumstances	\$550.00
Good Faith & Cooperation	\$0.00
Amt. Voluntarily Expended	\$0.00
<b>ADJUSTED BASE PENALTY</b>	<b>\$3,300.00</b>

**III. DAYS OF VIOLATION**

Explanation:  
 Signal Peak improperly salvaged topsoil and subsoil, allowed the two horizons to be mixed, and did not place the soils in approved stockpile locations. It is estimated that this violation occurred during a minimum of one day of operation. Therefore, the Department is calculating one day of violation.

Number of Days:	1
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**ADJUSTED BASE PENALTY x NUMBER OF DAYS: \$3,300.00**

Other Matters as Justice May Require Explanation:  
 Not applicable.

**OTHER MATTERS AS JUSTICE MAY REQUIRE TOTAL: \$0.00**

**IV. ECONOMIC BENEFIT**

Explanation:  
 The Department believes that Signal Peak did not accrue a significant economic benefit by not separating and properly storing the two distinct soil horizons during soil stripping operations. Therefore, the Department will not increase the penalty for economic benefit for this violation.

**ECONOMIC BENEFIT REALIZED: \$0.00**

Responsible Party Name:	Signal Peak Energy, LLC (Signal Peak) at Bull Mountain Mine #1
FID:	1803
Statute:	Montana Strip and Underground Mine Reclamation Act (Act)
Date:	10/7/2009

**V. HISTORY**

**Explanation:**  
Signal Peak has incurred four other violations within the past three years: (1) NON 09-17-01 - Failure to receive approval for a minor revision prior to constructing two access roads. Nature = Potential to Impact Administration. (2) NON 09-17-02 - Failure to segregate topsoil and subsoil and not using approved soil stockpile locations. Nature = Potential to Harm Human Health or the Environment. (3) NON 09-17-03 - Failure to maintain complete and accurate blasting records. Nature = Potential to Impact Administration. (4) NON 09-17-04 - Failure to have a certified blaster on site at the time of detonation of explosives. Nature = Potential to Harm Human Health or the Environment.

**Historical Violation: Harm to Human Health or the Environment - 10%**  
**Historical Violation: Impact to Administration - 5%**

Historical Violation #1 Percent:	0.05
Historical Violation #2 Percent:	0.10
Historical Violation #3 Percent:	0.05
Historical Violation #4 Percent:	0.10
<b>Total History Percent (cannot exceed 30%):</b>	<b>0.30</b>

Base Penalty Violation #1	\$2,500.00
Base Penalty Violation #2	\$2,000.00
Base Penalty Violation #3	\$3,500.00
Base Penalty Violation #4	\$2,750.00
<b>Total Base Penalties:</b>	<b>\$10,750.00</b>

**HISTORY ADJUSTMENT (Base Penalty x History Percent) \$3,225.00**



**ECONOMIC BENEFIT CALCULATION**

**FID:** 1803

**Date:** 09/30/09

**Responsible Party:** Signal Peak Energy, LLC (Signal Peak)

**NON:** 09-17-06

**Violation:** Signal Peak failed to properly salvage and segregate soil materials by soil horizon.

**Discussion:** Signal Peak did not have adequate control over its subcontractors to ensure that soil was properly salvaged, segregated and stockpiled in accordance with the permit. The Department believes that Signal Peak should have employed at least one full-time professional person to oversee the subcontractor's work and ensure topsoil was properly handled. Signal Peak realized an economic benefit by saving the costs that it would have incurred if it had an employee provide oversight of its contractor during soil stripping and salvaging operations.

**Assumptions:**

1. A Signal Peak employee should have been in the field whenever its contractor was stripping soil to observe whether permit and contract obligations were being met. The duration of the task was from September 15, 2008 through June 15, 2009, a period of nine months.
2. The Department estimated that the employee assigned this task would have been at least a half-time employee.
3. The Department believes that the position would require the qualifications of a professional engineer.
4. The Department estimates that the wage and benefit package for an employee with the appropriate qualifications would be not less than \$100,000 per year.
5. The combined federal and state corporate tax rates are 39.64%

**Formula for Calculating Economic Benefit from Avoided Costs:**

**Avoided Cost = [Annual Cost – (Annual Cost x Tax Rate)] x Years of Noncompliance**

Description of Saved Expense	Annual Avoided Costs	Corporate Tax Rate	Years of Noncompliance	Economic Benefit
Wages and Benefits	\$50,000	39.4%	.75	\$22,752
			<b>TOTAL</b>	<b>\$22,752</b>

**Avoided Economic Benefit Gained: \$22,752**