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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

March 10, 2015

CERTIFIED MAIL 7010-1670-0001-4810-3430

Mr. Chris Hansen  
Bowie Resources  
Skyline Mine  
597 S SR24  
Salina, Utah 84654

SUBJECT: FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOR NOV 15149, SKYLINE MINE, C/007/0005

Dear Mr. Hansen:

On February 13, 2015, an informal conference was held at the Skyline Mine in Carbon County, Utah, to review the fact of violation for the referenced Notice of Violation issued on January 8, 2015. As a result of a review of all pertinent data and facts, including those presented in the informal conference, the attached document constitutes the Findings of Fact, Conclusions of Law, and Order of the Informal Conference Officer.

Pursuant to Utah Admin. Code R645-401-800, you may make a written appeal of this Order to the Board of Oil, Gas, and Mining. Your written appeal may be filed with Julie Ann Carter, Board Secretary, P.O. Box 145801, Salt Lake City, Utah 84115-5801. If you have questions regarding the filing, she can be contacted at [juliecarter@utah.gov](mailto:juliecarter@utah.gov) or (801) 538-5277.

If you have questions or concerns please contact me at (801) 538-5334.

Sincerely,

John Baza  
Director  
Informal Conference Officer

Attachment  
JRB;jrj/er

cc: Dana Dean  
Daron Haddock

**BEFORE THE DIVISION OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH**

**In the Matter of the Informal  
Conference for the Fact of Violation and  
Proposed Penalty Assessment for Notices  
of Violation 15149, Canyon Fuel  
Company, Skyline Mine**

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER**

**Permit No. C/007/0005**

**PROCEDURAL HISTORY**

1. On January 8, 2015, the Utah Division of Oil, Gas and Mining (“Division” or “DOGM”) issued Notice of Violation No. 15149 (“NOV”) to Canyon Fuel Company (“CFC” or “the operator”) as a result of a partial inspection conducted on the same day, by Karl Houskeeper of DOGM.
2. NOV #15149 was subsequently terminated on January 15, 2015.
3. By letter dated January 27, 2015, CFC timely requested an informal conference before the Division to review the fact of the violation and proposed assessment for the NOV.
4. At approximately 11:00 a.m. on February 13, 2015, the Division held an informal conference pursuant to Utah Admin. Code R645-401-700 to review the NOV. The hearing took place at the CFC office for the Skyline Mine located in Carbon County.
5. John Baza, Director of the Division, served as the Conference Officer for the informal conference.
6. Karl Houskeeper and Steve Demczak, Environmental Scientists/Inspectors for the Division, presented the Division’s arguments for the NOVs. Other persons in attendance representing the Division were Dana Dean, Associate Director for Mining, and Daron Haddock, Coal Regulatory Program Supervisor.
7. Representatives of CFC and Bowie Resources attending the conference were Chris Hansen, Carl Winters, Gregg Galecki, Jeremiah Armstrong, and certain other employees of CFC/Skyline Mine. Jeremiah Armstrong provided principal arguments contesting the Fact of Violation of the NOV.

## FINDINGS OF FACT

8. During a complete inspection of the Skyline Mine on December 17, 2014, Mr. Demczak identified in his report that:

“The diversions were inspected but most of them were now filedl (sic). Some water was flowing in some of the diversions. A diversion at the coal storage yard had pipe and snow pushed into the diversion. Permittee said they would remove this from the diversion. They were informed that snow in the diversion was a violation and was upheld by past Directors in a ‘Fact of Violation Conference’. The next time event occurs (sic) it will be written if snow is pushed into the diversions.”

9. At the informal conference, CFC stated that Mr. Demczak’s inspection report had been received by them only just prior to the date of the informal conference. Mr. Demczak stated that this was because he had been on leave, out of the country for the previous month, and he had only gotten his December inspection report prepared in the days leading up to the informal conference. Mr. Demczak had not issued an NOV as a result of his December inspection.

10. During Mr. Demczak’s leave of absence, Mr. Houskeeper performed a partial inspection of the mine on January 8, 2015. In his report, Mr. Houskeeper identified that:

“Several of the surface diversions were inspected. Five diversions were found not to be maintained. The diversions and related problems are outlined as follows:

- #1 Road Diversion DD-2 (Snow and/or Road Base pushed into diversion entire road length).
- #2 Diversion inlet by main entrance (Snow pushed in front of inlet).
- #3 Inlet from base of mine road into DD-3 (Snow pushed in front of inlet).
- #4 DD-3 at Stair Crossing (Snow pushed into diversion on both sides of stair access).
- #5 Mine Road Diversion that lay’s below SR#284 (Snow pushed into diversion the entire length of road diversion).

NOV #15149 issued for failure to maintain diversions. Abatement date given is February 9, 2015. Surface crews were notified and work begun before the end of the inspection.”

11. Mr. Houskeeper issued NOV #15149 referencing violations of the following regulations:

R645-301-732.300  
R645-301-742.110  
R645-301-742.312  
UCA 40-10-18-11

12. On January 13, 2015, Mr. Houskeeper revisited the mine site and found that maintenance on diversion ditches had occurred. He subsequently terminated the NOV on the following day.
13. By letter dated January 22, 2015, DOGM presented CFC with a proposed assessment performed by Mr. Joe Helfrich, DOGM Assessment Officer. The total assess fine based on Mr. Helfrich's analysis was \$220.
14. During the informal conference, Mr. Houskeeper provided explanation of his reasons for issuing the NOV, and he presented a number of photographs of the snow covered areas for which he issued the NOV.
15. In response to the NOV, Mr. Armstrong stated that on the date of Mr. Houskeeper's inspection, snow had been plowed after a snow storm in order to maintain safe and workmanlike conditions allowing personnel and vehicular travel around the mine site. He stated that at no time was snow pushed into the diversions, and all diversions were only filled with snow that had fallen into those ditches. He also indicated that fluid flow of the diversions were unimpeded, and upon conditions of warmer weather, water and mine sediment would flow to appropriate collection areas of the mine site and ultimately to a permitted sediment pond. No water, disturbed material, or mine sediment would be allowed off the mine site. Mr. Armstrong also displayed photographs taken by CFC following the inspection to illustrate their points.
16. Following the discussion in the conference room, all attendees participated in a tour of the mine site areas identified in the NOV.

### CONCLUSIONS OF LAW

17. For the referenced violations of Paragraph 11, the specific rules cited (R645-301-732.300, R645-301-742.110, and R645-301-742.312) are part of broader categories of rules identified by the following Paragraphs 18-20. Each rule violation must be considered in the context of the broader categories of rules.
18. The "**R645-301-700. Hydrology**" section of rules pertains to the hydrologic effects of coal mining and the related design, permitting, and operation of mines for mitigation of adverse hydrologic impacts.
19. Specifically, the "**R645-301-730. Operation Plan**" rules pertain to the establishment of an operation plan of a coal permit application in order to "minimize disturbance to the hydrologic balance within the permit and adjacent areas; to prevent material damage outside the permit area; to support approved postmining land use in accordance with the terms and conditions of the approved permit and performance standards of R645-301-750; to comply with the Clean Water Act; and to meet applicable federal and Utah water quality laws and regulations." (See "**R645-301-731. General Requirements**").

20. The “**R645-301-740. Design Criteria and Plans**” rules describe permit requirements that “Each permit application will include site-specific plans that incorporate minimum design criteria as set forth in R645-301-740 for the control of drainage from disturbed and undisturbed areas.” (See “**R645-301-741. General Requirements**”).
21. The statutory requirements of **UCA §40-10-18 (11)** state in part that coal mining shall be conducted “to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event shall these contributions be in excess of requirements set by applicable state or federal law”.
22. It is my understanding of the rule requirements that improper maintenance of the diversions at the mine site would consist of failure to accomplish the broad intents of Paragraphs 18-21; namely:
  - a. Minimizing disturbance to the hydrologic balance,
  - b. Preventing material damage,
  - c. Supporting approved postmining land use,
  - d. Complying with the Clean Water Act,
  - e. Meeting applicable federal and state water quality requirements,
  - f. Designing for control of drainage, and
  - g. Preventing contributions of suspended solids to streamflow or runoff.
23. Based on the evidence presented, including the discussion and site visit performed during the informal conference, it is my opinion that CFC did not prevent, impede, or obstruct the diversion ditches from performing their designed purpose by moving snow from road and access areas of the mine site on the date of the inspection. It was not clear from either the inspector’s notations or from photographs that the mine operator purposefully placed plowed snow into the diversions, but it seems likely that snow that gets into a diversion as a result of normal snowfall or that is incidental to other proper maintenance procedures like plowing is a temporary condition (dependent on climatological conditions that allow melting and thawing). It is my opinion that CFC performed necessary routine maintenance following a winter storm; and therefore, CFC has not violated the intents or the requirements of the aforementioned rules and statute.
24. There may be other circumstances where a mine operator may be cited for adversely affecting the designed purpose of diversion ditches. Such may be the case where icy material, boulders, or other solid obstructions prevent the flow of snowmelt through the diversions or cause fluid to flow outside of intended designed flow paths. It is my opinion CFC did not cause such things to occur in this case.

**ORDER**

NOV #15149 is hereby vacated. With the vacation of the NOV, there is no further need for the proposed assessment described by Mr. Helfrich's letter dated January 22, 2015, so it is in effect vacated as well.

**RIGHTS OF APPEAL**

This Order may be appealed to the Board of Oil Gas and Mining in accordance with the procedures set out in Rule R645-401-800 by filing a written petition for appeal with the Board within 30 days of receipt of the Order. To do so, you must also escrow the assessed civil penalties with the Division within 30 days of receipt of the Order, 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.

SO DETERMINED AND ORDERED this 10th day of March, 2015.



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John R. Baza, Director  
Division of Oil, Gas and Mining  
Informal Conference Officer

## **RIGHTS OF APPEAL**

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