



## State of Utah

### Department of Natural Resources

MICHAEL R. STYLER  
*Executive Director*

### Division of Oil, Gas & Mining

JOHN R. BAZA  
*Division Director*

JON M. HUNTSMAN, JR.  
*Governor*

GARY R. HERBERT  
*Lieutenant Governor*

May 11, 2005

CERTIFIED RETURN RECEIPT  
7002 0510 0003 8602 8819

Mark Reynolds, Resident Agent  
Hiawatha Coal Company  
P.O. Box 1245  
Huntington, Utah 84528

Subject: Proposed Assessment for State Violation No. N05-01-01-01, Hiawatha Coal Company, Hiawatha Mine Complex, C/007/0011, Outgoing File

Dear Mr. Reynolds:

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, Joseph C. Helfrich, on April 8, 2005. 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.

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Charles Reynolds  
May 11, 2005

**If a timely request for review is not made, the fact of violation will stand, the proposed penalty will become final, and the penalty 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,

D. Wayne Hedberg  
Assessment Officer

Enclosure

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

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

COMPANY / MINE Hiawatha Coal Company – Hiawatha Mine Complex  
PERMIT C/007/0011 NOV/CO # N05-01-1-1 VIOLATION 1 of 1

ASSESSMENT DATE May 4, 2005

ASSESSMENT OFFICER D. Wayne Hedberg

**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:

1. Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
2. 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.)

1. What is the event which the violated standard was designed to prevent?
2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 0

**PROVIDE AN EXPLANATION OF POINTS:**

**\*\*\*Not Applicable**

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 0

**PROVIDE AN EXPLANATION OF POINTS:**

**\*\*\*Not Applicable**

B. HINDRANCE VIOLATION (Max 25 pts.)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? 16  
RANGE 0-25

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

ASSIGN HINDRANCE POINTS 16

**PROVIDE AN EXPLANATION OF POINTS:**

**\*\*\*The Permittee failed to enter the 4<sup>th</sup> quarter water monitoring data for Hiawatha complex into the Division's water quality electronic database by the close of business on March 31, 2005. The Permittee also failed to collect the October 2004 water quality samples. These actions prevented/hindered the Division's assigned hydrologist from reviewing the information in a timely manner.**

TOTAL SERIOUSNESS POINTS ( A or B ) 16

III. NEGLIGENCE (Max 30 pts.)

- A. Was this an inadvertent violation that 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 Greater Degree

ASSIGN NEGLIGENCE POINTS 17

**PROVIDE AN EXPLANATION OF POINTS:**

***\*\*\*The permittee had sufficient time and received an advance reminder from the Division (via emailed notice) to get the required information in on time. Quarterly water monitoring information using the electronic data base system is a stipulation of the approved mine permit and a requirement of the R645 Coal Rules.***

**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

C	Immediate Compliance	-11 to -20*
	(Immediately following the issuance of the NOV)	
C	Rapid Compliance	-1 to -10
	(Permittee used diligence to abate the violation)	
C	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

C	Rapid Compliance	-11 to -20*
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- (Permittee used diligence to abate the violation)
- C Normal Compliance -1 to -10\*  
(Operator complied within the abatement period required)
- C 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 (A)

ASSIGN GOOD FAITH POINTS -11

**PROVIDE AN EXPLANATION OF POINTS:**

*\*\*\*The Permittee was given 14 days from the date of NOV issuance to abate the violation. The 4<sup>th</sup> quarter water quality information was entered into the Division's electronic database on April 6, 2005 (immediately). The October water quality information was not included. Permittee told inspector that their water sampling person had a motorcycle accident while attempting to access the sites in October; therefore, samples were missed that month.*

**V. ASSESSMENT SUMMARY**

NOTICE OF VIOLATION # <u>N 05-01-01-01</u>	
I.	TOTAL HISTORY POINTS <u>0</u>
II.	TOTAL SERIOUSNESS POINTS <u>16</u>
III.	TOTAL NEGLIGENCE POINTS <u>17</u>
IV.	TOTAL GOOD FAITH POINTS <u>-11</u>
	TOTAL ASSESSED POINTS <u>22</u>
	<b>TOTAL ASSESSED FINE <u>\$ 484</u></b>

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