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**Citation for Non-Compliance**  
**Utah Coal Regulatory Program**  
 1594 West North Temple, Salt Lake City, UT 84114  
 Phone: (801) 538-5340 Fax: (801) 359-3940

**Citation #:** 10006  
**Permit Number:** C0070011  
**Date Issued:** 06/20/2007

**NOTICE OF VIOLATION**       **CESSATION ORDER (CO)**       **FAILURE TO ABATE CO**

Permittee Name: Hiawatha Coal Company, Inc.	Inspector Number and ID: 49 KHOUSKEE
Mine Name: Hiawatha Mine Complex	Date and Time of Inspection: 06/20/2007 1:00 pm
Certified Return Receipt Number: Hand Delivered	Date and Time of Service: 06/20/2007 1:00 pm

**Nature of condition, practice, or violation:**  
 Failure to maintain Slurry Cell #1 (MSHA ID #1211-UT-09-02157-01) as designed, construction activities have taken place to remove and/or lower the impoundment embankment.

**Provisions of Act, regulations, or permit violated:**  
 R645-300-142  
 R645-301-746.311  
 R645-303-220

**This order requires Cessation of ALL mining activities.** (Check box if appropriate.)

<input type="checkbox"/> Condition, practice, or violation is creating an imminent danger to health or safety of the public.	<input type="checkbox"/> Permittee is/has been conducting mining activities without a Permit.
<input type="checkbox"/> Condition, practice, or violation is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.	<input type="checkbox"/> Permittee has failed to abate Violation(s) included in <input type="checkbox"/> Notice of Violation or <input type="checkbox"/> Cessation Order within time for abatement originally fixed or subsequently extended.

**This order requires Cessation of PORTION(S) of mining activities.**

Mining activities to be ceased immediately: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Abatement Times (if applicable).
Stop excavation of materials from the embankment.	

**Action(s) required:**  Yes  No  
 Do one of the following:  
 (1) Repair/maintain the embankment for Slurry Cell #1 in accordance with the approved designs in the mining and reclamation plan, or  
 (2) Submit plans to the Division and/or MSHA for Slurry Cell #1 re-design and/or abandonment/reclamation, By 07/20/2007.

**EILLOT FINLEY**

(Print) Permittee Representative  
*Eillett Finley* 6-20-07  
 Permittee Representative's Signature - Date

**KARL HOUSKEEPER**

(Print) DOGM Representative  
*Karl Houskeeper* 6/20/07  
 DOGM Representative's Signature - Date

**SEE REVERSE SIDE Of This Form For Instructions And Additional Information**

## IMPORTANT – READ CAREFULLY

Pursuant to the Utah Coal Mined Land Reclamation Act, Utah Code Ann. § 40-10-1 et. seq. (Act), the undersigned authorized representative of the Division of Oil, Gas, and Mining (DOGM) has conducted an inspection and found that a Notice of Violation or Cessation Order must be issued.

This order shall remain in effect until it is modified, terminated or vacated by written notice of an authorized representative of DOGM.

### 1. PENALTIES.

**Proposed assessment.** DOGM assesses fines based upon a proposed recommendation by an assessment officer. If there is additional information you wish DOGM to consider regarding the cessation order and proposed fine, please submit that to DOGM within **15 days of the date this notice or order is served on you or your agent**. Such information will be used by the assessment officer in determining facts surrounding the violation(s) and amount of penalty. Once DOGM has determined the proper penalty, it will serve the proposed assessment on you or your agent, no later than 30 days of the issuance of this notice or order. See Utah Admin. Code R645-401-600 et. seq.

The penalty will be final unless you or your agent file, within 15 days of receipt of the proposed assessment, a written request for an informal hearing before the assessment officer.

**Assessment.** For each violation included in this notice, a penalty of up to \$5,000 may be assessed for each separate day the violation continues.

If you fail to abate any violation within the time set for abatement or for meeting any interim step, you will be assessed an additional minimum penalty of \$750 for each day of continuing violation beyond the time set for abatement. You will be issued a Cessation Order requiring cessation of surface coal mining operations or the portion of the operations relevant to the violation.

### 2. INFORMAL PUBLIC HEARING.

On the reverse side of this page, an authorized representative has made a finding as to whether or not this notice requires cessation of mining. If this order or notice requires cessation of mining, expressly or in practical effect, you may request that an informal public hearing be held at or near the mine site. If you wish an informal public hearing be held, please contact an authorized representative from DOGM. See Utah Admin. Code R645-400-350 et seq. Once an informal public hearing is scheduled, you will be notified of the date, time, and location of the hearing.

If this notice requires cessation of mining, it will expire within 30 days from the date you are notified unless an informal public hearing is held or waived, or the condition, practice, or violation is abated within the 30-day period.

### 3. FORMAL REVIEW AND TEMPORARY RELIEF.

You may appeal this notice or order to the Board of Oil, Gas, and Mining by submitting an application for hearing within 30 days of receipt of this notice or order. See Utah Admin. Code R645-300-164.300. Please submit the application for hearing to:

Secretary  
Board of Oil, Gas, and Mining  
1594 West North Temple, Suite 1210  
PO Box 145801  
Salt Lake City, Utah 84114-5801

If applying for a formal board hearing, you may submit with your petition for review a request for “*temporary relief*” from this notice. Procedures for obtaining a formal board hearing are contained in the Board’s Rules of Practice and Procedure and in Utah Admin. Code R645-401-800 et. seq.

### 4. EFFECT ON PERMIT.

The permit may be suspended or revoked if it is determined that a pattern of violations of the Act, regulations or permit conditions exists, and that the violations were caused by an unwarranted or willful failure to comply.

For further information, consult Utah Code Ann. § 40-10-20 through 40-10-23 and Utah Admin. Code R645-400-300 et. seq. and R645-401 et. seq., or contact the Division of Oil, Gas, and Mining at (801) 538-5340.

**EVENT VIOLATION INSPECTOR'S STATEMENT**

Company/Mine: Hiawatha Coal Co/Hiawatha Complex  
Permit #: C/007/011

NOV # 10006

**A. SERIOUSNESS**

1. What type of event is applicable to the regulation cited? Refer to the DOGM reference list of event below and remember that **the event is NOT the same as the violation**. Mark and explain each event.

- |                                     |    |  |
|-------------------------------------|----|--|
| <input type="checkbox"/>            | a. | Activity outside the approved permit area.                     |
| <input type="checkbox"/>            | b. | Injury to the public (public safety).                          |
| <input type="checkbox"/>            | c. | Damage to property.  |
| <input checked="" type="checkbox"/> | d. | Conducting activities without appropriate approvals.           |
| <input type="checkbox"/>            | e. | Environmental harm.  |
| <input type="checkbox"/>            | f. | Water pollution.   |
| <input type="checkbox"/>            | g. | Loss of reclamation/revegetation potential.                    |
| <input type="checkbox"/>            | h. | Reduced establishment, diverse and effective vegetative cover. |
| <input type="checkbox"/>            | i. | No event occurred as a result of the violation.                |
| <input type="checkbox"/>            | j. | Other.   |

Explanation: The operator allowed construction activities to take place on the embankment of Slurry Cell #1 to take place without receiving approval from the appropriate regulatory agencies (Division and/or MSHA). The activity was removal of material from the embankment and/or side casting the material over the outslope. The elevation of the embankment has been lowered and no longer matches the original design.

2. Has the even occurred? Yes

If yes, describe it. If no, what would cause it to occur and what is the probability of the event(s) occurring? (None, Unlikely, Likely).

Explanation: The event has occurred. Removed material from the embankment which lowered the elevation, without receiving the appropriate approvals.

3. Did any damage occur as a result of the violation? No

If yes, describe the duration and extent of the damage or impact. How much damage may have occurred if the violation had not bee discovered by a DOGM inspector? Describe this potential damage and whether or not it would extend off the disturbed and/or permit area.

Explanation: \_\_\_\_\_

**B. DEGREE OF FAULT** (Check the statements which apply to the violation and discuss).

- Was the violation not the fault of the operator (due to vandalism or an act of God), explain. Remember that the permittee is considered responsible for the actions of all persons working on the mine site.

Explanation: \_\_\_\_\_

- Was the violation the result of not knowing about DOGM regulations, indifference to DOGM regulations or the result of lack of reasonable care.

Explanation: Lack of reasonable care. The site is inactive and the excavation/removal was done on the embankment, but was supposed to be gravel material from a site not within the disturbed area. The permittee/operator is ultimately responsible to assure compliance within the permit area and especially within the disturbed area.

- If the actual or potential environmental harm or harm to the public should have been evident to a careful operator, describe the situation and what, if anything, the operator did to correct it prior to being cited.

Explanation: \_\_\_\_\_

- Was the operator in violation of a specific permit condition?

Explanation: \_\_\_\_\_

- Has DOGM or OSM cited the violation in the past? If so, give the dates and the type of warning or enforcement action taken.

Explanation: \_\_\_\_\_

**C. GOOD FAITH**

1. In order to receive good faith for compliance with an NOV or CO, the violation must have been abated before the abatement deadline. If you think this applies, describe how rapid compliance was achieved (give date) and describe the measures the operator took to comply as rapidly as possible.

Explanation: \_\_\_\_\_

2. Explain whether or not the operator had the necessary resources on site to achieve compliance.

Explanation: \_\_\_\_\_

3. Was the submission of plans prior to physical activity required by this NOV / CO? Yes If yes, explain.

Explanation: One of the options given allows the permittee to submit plans for abandonment, reclamation or re-design of the impoundment. The impoundment is an MSHA pond and would require their approval in addition to the Division.

Karl R. Houskeeper  
Authorized Representative

  
Signature

June 22, 2007  
Date