



JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil Gas and Mining

JOHN R. BAZA
Division Director

July 6, 2007

CERTIFIED RETURN RECEIPT
7004 2510 0004 1824 4608

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

Subject: Proposed Assessment for Notice of Violation #10006, Hiawatha Coal Company, Inc.,
Hiawatha Mine, 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, Karl Houskeeper, on June 20, 2007. 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, Associate Director or assigned conference officer. 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.



Page 2
Mark Reynolds
July 5, 2007

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,

A handwritten signature in black ink that reads "Daron R. Haddock". The signature is written in a cursive style with a large initial "D".

Daron R. Haddock
Assessment Officer

sb
Enclosure
cc: OSM Compliance Report
Vickie Southwick, DOGM
Price Field Office
O:\007011.HIA\FINAL\PROASSESSMENT_N10006.DOC

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

COMPANY / MINE Hiawatha Coal Company, Inc.
 PERMIT C/007/011 NOV / CO # 10006
 ASSESSMENT DATE July 5, 2007

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
<u>N #10004</u>	<u>2/15/2007</u>	<u>1</u>

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 1

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? Event

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 20

PROVIDE AN EXPLANATION OF POINTS:

*** *The permittee initiated construction activities (excavation of the embankment of Slurry Cell #1) without receiving the Division's approval. The inspector indicates that this activity is not approved and has altered the embankment to the point it no longer matches the original design. The event (conducting activities without appropriate approvals) has actually occurred.*

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:

*** *The inspector indicates that there is no damage as a result of the excavation. All disturbance was within the existing disturbed area of the mine.*

B. HINDRANCE VIOLATION (Max 25 pts.)

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

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

ASSIGN HINDRANCE POINTS _____

PROVIDE AN EXPLANATION OF POINTS:

TOTAL SERIOUSNESS POINTS (A or B) 20

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 6

PROVIDE AN EXPLANATION OF POINTS:

**** This violation was the result of indifference to the DOGM regulations or the lack of reasonable care. A prudent operator would understand the need to acquire DOGM approval prior to alteration of any facilities on site. In this case, the excavation/removal of the slurry embankment was done by a third party. The Operator is still responsible for activities conducted within their permit area and needs to watch the activities of others that they have allowed to operate within the disturbed area boundary. This shows ordinary negligence, which equates to the lower middle of the range.*

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

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

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

ASSIGN GOOD FAITH POINTS n/a

PROVIDE AN EXPLANATION OF POINTS:

***** No good faith points are assigned at this point because the violation has not yet been terminated. In order to receive good faith, the violation must be abated before the abatement deadline. This category will be reviewed again after the violation has been terminated.**

V. ASSESSMENT SUMMARY

NOTICE OF VIOLATION # <u>N 10006</u>	
I. TOTAL HISTORY POINTS	<u>1</u>
II. TOTAL SERIOUSNESS POINTS	<u>20</u>
III. TOTAL NEGLIGENCE POINTS	<u>6</u>
IV. TOTAL GOOD FAITH POINTS	<u>0</u>
TOTAL ASSESSED POINTS	<u>27</u>
TOTAL ASSESSED FINE	<u>\$ 770</u>

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

For delivery information visit our website at www.usps.com®

C/0071004 NOV 01 006 17/6 2005 E

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

Postmark
Here

7004 2510 0004 1824 4608

Sent To **MARK REYNOLDS**
Street, Apt. No.: **HIWAHAHA-GOAL-COMPANY**
or PO Box No. **P O BOX 1245**
City, State, Zip+4 **HUNTINGTON UT 84528**

PS Form 3800, June 2002

See Reverse for Instructions