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State of Utah
DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
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Division of Oil Gas and Mining

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Division Director

October 19, 2007

CERTIFIED MAIL
7005 2570 0000 801 7949

Mr. Mark Reynolds
Hiawatha Coal Co.
P.O. Box 1245
Huntington, UT 84528

Subject: Findings of Fact, Conclusions, Order and for Violation #10006 Hiawatha Mine, C007/0011, Carbon County, Utah

Dear Mr. Reynolds:

On August 31, 2007, an Informal Conference was held to review the fact of violation for Violation #10006. 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, and order.

Within fifteen (15) days of your receipt of this letter, you or your agent may make a written appeal to the Board of Oil, Gas and Mining. To do so, you must escrow the assessed civil penalties with the Division within thirty (30) days of receipt of this letter, 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.

If no timely appeal is made, this assessed civil penalty of \$330.00 must be tendered within thirty (30) days of your receipt of this letter. Please remit payment to the Division of Oil, Gas and Mining, mail c/o Vickie Southwick at the address listed below.

Sincerely,

Mary Ann Wright
Associate Director, Mining
Assessment Conference Officer

maw/vs
cc Elliott Finley
Enclosures
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BEFORE THE DIVISION OF OIL, GAS AND MINING
COAL REGULATORY PROGRAM
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

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IN THE MATTER OF THE Hiawatha Mine, Hiawatha Coal Co., Carbon COUNTY, UTAH	: : : :	INFORMAL CONFERENCE For Notice of Violation #10006 FINDINGS, CONCLUSIONS AND ORDER CAUSE NO. C/007/0011
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On August 31, 2007, the Division of Oil, Gas and Mining (“OGM”) held an Informal Conference concerning the Fact of Violation NOV# 10006, issued to Hiawatha Coal Co. (HCC), Hiawatha Mine, Carbon County, Utah. The following individuals attended: Elliott Finley and Mark Reynolds for HCC, and Daron Haddock and Karl Houskeeper for OGM.

Presiding:	Mary Ann Wright Associate Director, Mining Division of Oil, Gas and Mining
Petitioner:	Hiawatha Coal Co. Hiawatha Mine, Elliott Finley and Mark Reynolds

The Findings, Conclusions, and Order in this matter are based on information provided by the Petitioner in connection with this informal conference, and on information presented by Mr. Karl Houskeeper, which is in OGM files. A copy of this information was provided to the Petitioner.

FACTS PRESENTED: Fact of the Violation

1. By letter dated July 30, 2007, Mr. Mark Reynolds requested an informal conference to discuss the assessment and the fact of violation for Violation #10006.

2. Pursuant to Utah Code Ann. Section 40-10-20 and Utah Administrative Rules R645-401-700, notice of the informal conference was properly given and an informal conference in the matter was held on August 31, 2007.
3. The Violation was issued on June 20, 2007 for "Failure to maintain Slurry Cell #1 as designed, construction activities have taken place to remove and or lower the impoundment embankment.
4. The Violation was abated August 28, 2007 by the approval of a decommissioning plan. The violation was subsequently terminated by OGM on September 4, 2007.
5. Mr. Karl Houskeeper presented a package including: photos of slurry area, notice of violation, the assessment for the violation, and the request for the conference. Mr. Houskeeper went through the package and explained the information provided. He explained that Pete Hess, OGM inspector, had gotten a phone call about refuse being hauled from the site. An inspection on May 16, 2007 showed that the dam of slurry pond #1 had been mined. It had been lowered 10 feet on the North side. Since this was an MSHA impoundment, a violation was issued. The pond was still listed as active and there was no documentation that the pond had been abandoned to show closure of the site.
6. The Petitioner, Mr. Finley, stated that they are removing fines and that the work is intended to continue as part of the reclamation of Slurry Pond #1. The goal of the work was to recover the coal fines that are beneath the dam. Mr. Reynolds provided parts of the MRP (mining and reclamation plan), dated 1/26/99 that explains the final reclamation of Slurry Pond #1, "*Starting at the top of the slurry pond embankments the coal refuse material will be moved to the interior of the slurry ponds, then spread and compacted. The ponds will be shaped as close as possible to the final contours, depending on how many coal fines, if any, remain in the ponds. If this configuration cannot be met due to the removal of coal fines, an amendment will be submitted to the division before any substantial changes are made to the regarding plan.*"

7. Mr. Houskeeper provided a copy of the operational portion of MRP, stating that Slurry pond #1 was constructed pre-SMCRA and is not required to meet design standards. Also at section 5-10, dated 8/20/99, it states *“The coal fines extraction from the slurry ponds and adjacent storage will be an ongoing part of the operational phase of the mine.”*
8. Mr. Finley and Mr. Reynolds again stressed that the work that occurred, for which the violation was written, was a result of beginning the reclamation phase for the slurry pond. Their plan now is to abandon the pond, to not use it for future slurry deposition, to decommission the pond with MSHA, and to begin reclamation by accessing and removing saleable coal fines that exist beneath the dam embankment, and to remove any fines that sit 22 feet or higher at the pond.
9. Mr. Housekeeper stated that if reclamation of the Slurry Pond #1 was underway, then the division should have received a notification of such prior to commencement. Abatement plans called for official abandonment of the pond with MSHA. This has now been completed and approved by OGM.

CONCLUSIONS

- HCC began reclamation of Slurry Pond #1 but did not inform the division it was commencing the reclamation phase.
- OGM observed the activity and was concerned about public safety and that dam removal or dam breaching was not part of the operational plan for the Slurry Pond.
- HCC has now properly ‘abandoned’ the pond with MSHA in order to begin reclamation.
- HCC is still approved by the MRP to remove coal from the pond as part of its operational phase.
- HCC is now approved to begin reclamation of the SP #1 by lowering the configuration of the SP #1.
- HCC’s intentions were reasonable, but HCC should have informed the division it was going to enter the reclamation phase of SP#1 and should have changed the status of the pond with MSHA.

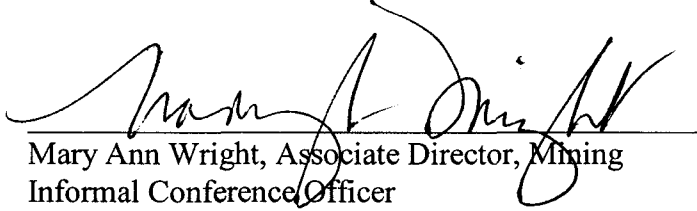
- The Fact of the Violation should stand.

ORDER

NOW THEREFORE, it is ordered that:

1. The Fact of the violation is upheld.
2. The proposed assessment is now finalized, taking into account the abatement timing and difficulty.
3. The proposed fine was \$770.00 and is finalized at \$ 330.00.

SO DETERMINED AND ORDERED this 15th day of October.



Mary Ann Wright, Associate Director, Mining
Informal Conference Officer
Division of Oil, Gas and Mining
State of Utah

UTAH DIVISION OF OIL, GAS AND MINING
WORKSHEET FOR FINAL ASSESSMENT OF PENALTIES

COMPANY: Hiawatha Coal Company PERMIT: Hiawatha Mine, C007/0011, Carbon County
VIOLATION: #10006

ASSESSMENT CONFERENCE OFFICER: Mary Ann Wright

	Proposed Assessment	Informal Conf Final Assessment
(1) History/Previous Violations	<u>1</u>	<u>1</u>
(2) Seriousness	<u>20 (20 +0)</u>	<u>20</u>
(3) Negligence	<u>6</u>	<u>4</u>
(4) Good Faith	<u>pending</u>	<u>-10</u>
	Total Points	
	<u>27</u>	<u>15</u>
Proposed fine:	\$770.00	
TOTAL Final Informal Conference ASSESSED FINE		<u>\$ 330.00</u>

NARRATIVE: Change is made in this final assessment of conducting mining activities outside the bonded areas. This violation was assessed at a proposed amount of 27 points and \$770.00. The Operator was not paying attention to keeping the division informed that HCC was beginning reclamation of Slurry Pond #1 by mining into the dam embankment. There was much confusion presented about this action and the ultimate intent of the work. The operator should have known to notify the division of its plans to lower the slurry pond embankment and mine out the coal fines beneath the dam. The operator further needed to receive 'abandonment approval' of the slurry pond from MSHA. Seriousness remains at 20, "occurred" and damage remains at zero points. Not following permitting procedure indicates a lack of reasonable care. Negligent points are reduced from 6 to 4, since the intention stated by the operator was to begin reclamation by a safe means of lowering the pond configuration.

Good faith points are given for normal compliance in performing difficult abatement, which consisted of submitting abandonment plans to amend the mine permit.

(Brief explanation for any changes made in assignment of points and any additional information that was available after the proposed assessment.)

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LETTER DATE 10/19/2007
FINDING FACT AND CONCLUSIONS
ORDER VIOLATION #10006
HIAWATHA MINE c/007/011

Total Postage & Fees

\$

Sent To

MARK REYNOLDS
P.O. BOX 1245
HUNTINGTON UTAH 84528

PS Form 3800, June 2002

See Reverse for Instructions