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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

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October 8, 2008

CERTIFIED RETURN RECEIPT
7005 2570 0000 4801 7765

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

Subject: Re- Assessment for State Violation No. N10023, Hiawatha Coal Company, Hiawatha Mine, C/007/011, 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 re-assessed civil penalty assessment for the above referenced violation. The violation was issued by Division Inspector, (DOGM inspector name), on (June 17, 2008). 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.

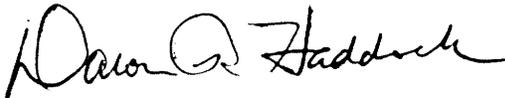


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2. If you wish to review the proposed penalty assessment, you should file a written request for an Assessment Conference within thirty (30) days of receipt of this letter. If you are also requesting a review of the fact of violation, as noted in paragraph 1, the Assessment Conference will be scheduled immediately following that review.

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,


for Joseph C. Helfrich
Assessment Officer

Enclosure

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

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OFFICIAL USE

Letter Dated 10/8/2008

Re- Assessment Violation No N10023
C007/011 Hiawatha Coal Company

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Total Postage & Fees	\$

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Sent To
MARK REYNOLDS
P O BOX 1245
HUNTINGTON UTAH 84528

7005 2570 0000 4801 7765

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

COMPANY / MINE Hiawatha Coal Company

PERMIT C/007/011 NOV / CO # 10023 VIOLATION
1 of 1

RE-ASSESSMENT DATE October 7, 2008

ASSESSMENT OFFICER Joseph C. Helfrich

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>10006</u>	<u>12/28/2007</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?
The event the standard was designed to prevent was **soil contamination**.

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:

*****According to the inspector statement the improper handling of the electrical transformers resulted in the spillage of transformer oil that contaminated soil.**

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 5

PROVIDE AN EXPLANATION OF POINTS:

*****According to the inspector statement the spill was minimal and remained inside the permittee's disturbed area. Unless otherwise tested the oil in the older transformers contains Polychlorinated Biphenyls or PCB's. These organic compounds do not break down and need to be disposed of at a certified disposal facility.**

B. HINDRANCE VIOLATION (Max 25 pts.)

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

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

ASSIGN HINDRANCE POINTS 0

PROVIDE AN EXPLANATION OF POINTS:

TOTAL SERIOUSNESS POINTS (A or B) 25

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 15

ASSIGN NEGLIGENCE POINTS 15

PROVIDE AN EXPLANATION OF POINTS:

*****According to the inspector statement the spillage occurred as a result of the contractor's lack of reasonable care with regard to properly cradling the transformer prior to moving.**

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

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

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

PROVIDE AN EXPLANATION OF POINTS:

******The violation has been terminated effective 7/31/2008. The permittee exercised diligence in abating the violation as noted by the inspector's statement. According to the "E" mail from Pete Hess to Shawn Baker on July 1, 2008 Initial steps to address the clean up were taken quickly. "I did not establish a drop dead date or time frame for the cleanup and proper disposal of the soil, but I am aware that the Permittee, Hiawatha Coal Company, jumped on the cleanup and completed the most important part of this violation in an expedient manner. I will make sure the assessment officer is aware of this prior to his final determination of the assessment amount.***

V. ASSESSMENT SUMMARY

NOTICE OF VIOLATION # <u>N 10023</u>	
I. TOTAL HISTORY POINTS	<u>1</u>
II. TOTAL SERIOUSNESS POINTS	<u>25</u>
III. TOTAL NEGLIGENCE POINTS	<u>15</u>
IV. TOTAL GOOD FAITH POINTS	<u>-20</u>
TOTAL ASSESSED POINTS	<u>21</u>
TOTAL ASSESSED FINE	<u>\$ 440</u>