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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

C0070011
Outgoing
R

January 28, 2009

CERTIFIED RETURN RECEIPT REQUESTED
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Elliot Finley, Resident Agent
Co-Op Mining Company
P.O. Box 1240
Huntington, Utah 84528

Subject: Findings of Fact, Conclusions and Order, and Finalized Assessment for
NOV 10026, C/007/011, Hiawatha Coal Company, Hiawatha Mine, Carbon County

Dear Mr. Finley:

On September 4, 2008, an Informal Conference was held to review the fact of violation for Violation #10026. 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, as decided and communicated to you in the conference.

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 \$374.00 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,

John R. Baza
Director

Assessment Conference Officer

DD/vs
Enclosures
cc Mark Reynolds
P:\GROUPS\COAL\WP\007011.HIA\FINAL\ASSESSMENT CONF-10026.DOC



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Postage	Letter Dated 1/28/2009
Certified Fee	Finding Facts and Conclusions
Return Receipt Fee (Endorsement Required)	Final Assessment NOV 10026
Restricted Delivery Fee (Endorsement Required)	C0070011 Hiawatha Mine irk
Total Postage & Fees	0009

ELLIOT FINLEY	
CO-OP MINING COMPANY	
P O BOX 1240	
HUNTINGTON UTAH 84528	

PS Form 3800, June 2002

See Reverse for Instructions

**BEFORE THE DIVISION OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

---ooOoo---

**IN THE MATTER OF THE
INFORMAL ASSESSMENT
CONFERENCE for NOTICE OF
VIOLATION AND PROPOSED
ASSESSMENT; VIOLATION No.
N10026, HIAWATHA COAL
COMPANY, HIAWATHA MINE,
C/007/011, CARBON COUNTY,
UTAH**

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**FINDINGS of FACT,
CONCLUSIONS OF LAW
AND ORDER**

CAUSE NO. C/007/011

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On September 4, 2008, the Division of Oil, Gas and Mining (Division) held an Informal Assessment Conference as provided for by R64-401-700 Utah Administrative Code (2008) in response to the written request by Hiawatha Coal Company (Hiawatha) to review the fact of violation and amount assessment for Notice of Violation 10026 (NOV), issued to it on July 2, 2008 for operations at the Hiawatha Mine, C/007/011, Carbon County, Utah.

ISSUES

The Division in its Notice of Violation found that rules R645-301-812.700 had been violated. These rules require that adequate bond coverage be in effect at all times. The Division assessed a fine of \$484.00.

PARTIES

John Baza, Director Division of Oil, Gas and Mining served as the hearing officer. The hearing was conducted as an informal adjudicative proceeding. Peter H. Hess, Division Inspector, presented the facts and arguments in support of the Notice of Violation, Joe C. Helfrich, Assessment Officer, presented the arguments concerning the determination of the assessment amount. Dana Dean, Division Associate Director, Daron Haddock, Coal Permit Supervisor and Angela Nance, Bond Coordinator were in attendance and participated for the Division. Shawn Baker represented Hiawatha Coal Company and presented the position and arguments on its behalf.

No recording or transcript of the conference was made.

FINDINGS OF FACT

Based on the information provided at the conference, the statements presented by those speaking, and on information in the files of the Division the following Findings and Conclusions were made.

1. The Request for an informal assessment conference was delivered to the Division on July 9, 2008.
2. Notice of the Informal Assessment Conference was provided as required.
3. On December 21, 2007 the Division notified Hiawatha Coal Company that they needed to renew or replace Letter of Credit #00336176 by February 19, 2008 or it would be forfeited as per R645-301-860.222.
4. In the same letter, the Division required that the total amount of bond be increased from \$2,838,000 to \$3,700,000 by the same date, as a result of escalation to 2009 dollars.
5. On February 19, 2008 Chase Bank extended Letter of Credit #00336176 to April 17, 2008. The letter of credit was not increased and remained valid for \$2,838,000.
6. On February 21, 2008 the Division notified Hiawatha that a full bond amount of \$3,700,000 must be posted by March 17, 2008.
7. On March 19, 2008 Chase Bank extended Letter of Credit #00336176 to May 15, 2008. The letter of credit still was not increased and remained valid for \$2,838,000.
8. On April 3, 2008 the Division notified Hiawatha that adequate bond coverage in the amount of \$3,700,000 must be posted by April 15 or the LOC would be forfeited.
9. On April 14, 2008 Chase Bank extended Letter of Credit #00336176 to July 15, 2008. The letter of credit still was not increased and remained valid for \$2,838,000.
10. On May 16, 2008 Pete Hess, Division inspector verbally notified Mark Reynolds of Hiawatha Coal Company that an NOV would be issued if the full bond amount of \$3,700,000 was not posted by June 16, 2008. An official letter stating the same facts was sent to Hiawatha on May 23, 2008.
11. On May 27, 2008 Hiawatha asked for an extension to June 23, 2008 to post the full bond. They indicated they were working with Chase Bank to convert the entire bond amount to a cash bond prior to the expiration of the LOC.

12. On May 28 the Division gave Hiawatha until June 30, 2008 to post the entire \$3,700,000.
13. On June 25, 2008 Wayne Western, Environmental Scientist for the Division, reviewed the bond and revised the necessary bond amount to \$3,005,000. Hiawatha was notified of the new bond amount.
14. On July 1, 2008 Mark Reynolds of Hiawatha told the Division that the bond would be posted by July 3, 2009; and that Hiawatha employees would be in touch with Angela Nance, Bond Coordinator for the Division during the intervening time.
15. On July 1, 2008 Division Inspector Pete Hess told Mark Reynolds of Hiawatha that the entire bond needed to be posted by 5:00 pm on July 2, 2008 or a cessation order would be issued.
16. On July 1, 2008 Division Associate Director Dana Dean told Mark Reynolds of Hiawatha that an extension until July 3, 2008 may be granted if Mr. Reynolds found that the bank could not act fast enough, but to keep in touch with Ms. Nance, and notify the Division ASAP if they could not meet the July 2 deadline.
17. On July 2, 2008 the Division, in absence of any communication from Hiawatha, wrote a cessation order for the Hiawatha Mine at 5:05 pm.
18. The fine was assessed by Joe Helfrich of the Division to be \$484.
19. Shawn Baker explained that Hiawatha understood July 3, 2008 to be the deadline, and did not feel they needed to be in contact with the Division in the interim.

CONCLUSIONS OF LAW

1. The Division notified Hiawatha several times of the inadequacy of the bond for the Hiawatha Complex.
2. The Division allowed several months for Hiawatha to increase their bond, or deliver a complete and correct application for bond release.
3. Hiawatha did not maintain adequate bond coverage for a period of several months, and did not meet the Division's deadline.
4. The fact of the violation should stand.
5. The negligence points should be lowered from 20 to 15, based on the miscommunication between the Division and Hiawatha as to the deadline.

ORDER

NOW THEREFORE, it is ordered that:

1. The fact of the violation is upheld.
2. The proposed assessment of \$484 is now finalized at \$374.

SO DETERMINED AND ORDERED this 28th day of January 2009



John Baza, Director
Division of Oil, Gas and Mining

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

COMPANY: Hiawatha Coal Company
PERMIT: C/007/011
VIOLATION: 10026

ASSESSMENT CONFERENCE OFFICER: John R. Baza

	Proposed Assessment	Final Assessment
(1) History/Previous Violations	<u>0</u>	<u>0</u>
(2) Seriousness	<u>12</u>	<u>12</u>
(3) Negligence	<u>20</u>	<u>15</u>
(4) Good Faith	<u>-10</u>	<u>-10</u>
Total Points	<u>22</u>	<u>17</u>

TOTAL ASSESSED FINE \$374.00

NARRATIVE: The Conference Officer reduced the negligence points by 5 in light of some miscommunication on the Division's part.