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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

Outgoing
C0070011
#4051
R

April 4, 2012

CERTIFIED RETURN RECEIPT

7009 3410 0001 4203 2079

Elliot Finley, Resident Agent
Hiawatha Coal Company
P.O. Box 1240
Huntington, Utah 84528

Subject: Proposed Assessment for State Violation No. N 10095, Hiawatha Coal Company, Hiawatha Mine, C/007/0011, Task ID #4051

Dear Mr. Finley:

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, April Abate, on March 19, 2012. 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:

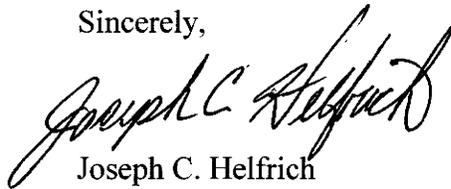
1. If you wish to informally appeal the fact of this violation, you should file a written request for an Informal Conference within thirty (30) days of receipt of this letter. This conference will be conducted by the Division Director. This Informal Conference is distinct from the Assessment Conference regarding the proposed penalty.



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 Suzanne Steab.

Sincerely,



Joseph C. Helfrich
Assessment Officer

Enclosure

cc: OSM Compliance Report
Suzanne Steab, DOGM
Accounting, DOGM
Price Field Office

O:\007011.HIA\WG4051\JCHWG4051PROPOSED ASSESSMENT.DOC

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Elliot Finley, Resident Agent
Hiawatha Coal Company
P.O. Box 1240
Huntington, UT 84528

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

COMPANY / MINE Hiawatha Mine

PERMIT C/007/0011 NOV / CO # N 10095 VIOLATION 1 of 1

ASSESSMENT DATE April 4, 2012

ASSESSMENT OFFICER Joe 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>N10091</u>	<u>02/20/2012</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? Hindrance

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 0

PROVIDE AN EXPLANATION OF POINTS:

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:

B. HINDRANCE VIOLATION (Max 25 pts.)

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

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

ASSIGN HINDRANCE POINTS 12

PROVIDE AN EXPLANATION OF POINTS:

*** According to the information provided by the inspector, the Permittee did not provide a timely submittal of 3rdrd quarter, (July through September), 2011 water monitoring data as required per the MRP. As a result, DOGM was unable to perform an evaluation of water quality and quantity conditions during that time frame.

TOTAL SERIOUSNESS POINTS (A or B) 12

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 Greater Degree of Fault

ASSIGN NEGLIGENCE POINTS 16

PROVIDE AN EXPLANATION OF POINTS:

**** The permit issued by the Division includes a number of conditions that the permittee is required to comply with, one of which is the requirement to submit water quality data for the Hiawatha mine in an electronic format through the Electronic Data Input web site. The Utah coal regulations at R645-301-731.200 thru-220 also require the collection of water monitoring data.*

The permittee was required to have all 3rd quarter data uploaded into the Division's water database by December 31, 2011. As of March 7, 2012 the Division observed that the data in the pipeline were not okayed for uploading in the water database by the permittee.

Previously cited NOV's include the following:

NOV 1009, issued on November 29, 2011 for not collecting the required water sample data from stream locations: ST-2, ST-28, ST-3A, ST-38 and all spring locations as required on Table 7-17 of the approved Mining and Reclamation Plan for the period of April thru October of 2010.

NOV 10094 issued on January 23, 2012 for not collecting water monitoring data from stream locations ST 2, 2B, 3A, 3B and 4A for the second quarter, (April, May and June), of 2011.

Given these circumstances 16 negligence points are assigned

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 0

PROVIDE AN EXPLANATION OF POINTS:

****there are no abatement measures required by the notice of violation*

V. ASSESSMENT SUMMARY

NOTICE OF VIOLATION # N 10095

I.	TOTAL HISTORY POINTS	<u>1</u>
II.	TOTAL SERIOUSNESS POINTS	<u>12</u>
III.	TOTAL NEGLIGENCE POINTS	<u>16</u>
IV.	TOTAL GOOD FAITH POINTS	<u>0</u>
	TOTAL ASSESSED POINTS	<u>29</u>

TOTAL ASSESSED FINE \$ 990