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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
#4239
K

February 11, 2013

CERTIFIED MAIL
7005 0390 00005 5857

Charles Reynolds
Hiawatha Coal Company
P.O. Box 1240
Huntington, Utah 84528

Subject: Findings of Fact, Conclusions, and Order for Violation #10101 Hiawatha Coal Company, Hiawatha Mine, C/007/0011

Dear Mr. Reynolds:

On February 6, 2013, an Informal Conference was held to review the assessment for Violation #10101. 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 \$198.00 must be tendered within thirty (30) days of your receipt of this letter. Please remit payment to the Division of Oil, Gas and Mining, c/o Vickie Southwick at the address listed below.

Sincerely,

Dana Dean, P.E.
Associate Director
Assessment Conference Officer

7005 0390 0005 5857 3081

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OFFICIAL USE

LETTER DATE 1/15/2013

FACT AND FINDING NOV 10101

Return
(Endorser)

HIAWATHA COAL COMPNY C/007/0011

Restricted
(Endorser)

CHARLES REYNOLDS

Total

Sent To

CHARLES REYNOLDS

Street,
or PO t

P O BOX 1240

City, St

HUNTING UTAH 84528

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

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**IN THE MATTER OF THE
INFORMAL ASSESSMENT
CONFERENCE for NOTICE OF
VIOLATION AND PROPOSED
ASSESSMENT; VIOLATION No.
N10101, HIAWATHA COAL
COMPANY, HIAWATHA MINE,
C/007/0011, CARBON COUNTY,
UTAH**

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

CAUSE NO. C/0007/0011

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On February 6, 2013, the Division of Oil, Gas and Mining (Division) held an Informal Assessment Conference as provided for by R645-401-700 Utah Administrative Code (2012) in response to the written request by Hiawatha Coal Company (Hiawatha) to review the fact of violation and amount assessment for Notice of Violation N10101 (NOV), issued to it on December 18, 2012 for operations at the Hiawatha Mine, C/007/0011, Carbon County, Utah.

ISSUES

The Division in its Notice of Violation found that rules R645-301-731.212 and R645-301-731.223 had been violated. These rules require that surface and groundwater monitoring be reported to the Division at least every three months, including UPDES data. The Division assessed a fine of \$550.00.

PARTIES

Dana Dean, Associate Director Division of Oil, Gas and Mining served as the hearing officer. The hearing was conducted as an informal adjudicative proceeding. April A Abate, Division Hydrologist 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. Daron R. Haddock, Coal Program Manager was in attendance and participated for the Division. Charles Reynolds 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 January 10, 2013.
2. Notice of the Informal Assessment Conference was provided as required on January 15, 2013.
3. The majority of the second quarter 2012 water monitoring data for the Hiawatha Mine was officially submitted to the Division in a timely manner.
4. April Abate reviewed the data and found that no parameters were reported for UPDES outfalls UT003 through UT013.
5. Mr. Reynolds contended that it was unnecessary to report data for the outfalls because there was no flow during the quarter.
6. Mr. Reynolds explained that he has taken steps to avoid future violations of this nature. He has implemented a QC program wherein he and the data collector will both check to see that all data is reported each quarter.

CONCLUSIONS OF LAW

1. The approved water-monitoring plan for the Hiawatha Mine was not followed for the second quarter of 2012
2. Because a reading of no-flow is a data point, the fact that there was no flow should have been reported.
3. The fact of the violation should stand.
4. Based on Mr. Reynolds' testimony, and the actions he is taking to prevent future hindrances, the negligence points should be lowered from 10 to 8.
5. Because the data was recoverable and Ms. Abate was able to complete her reports the seriousness points should be lowered from 12 to 8.
6. Because of rapid compliance, 10 good faith points should be awarded.

ORDER

NOW THEREFORE, it is ordered that:

1. The fact of the violation is upheld.
2. The proposed assessment of \$550.00 is now finalized at \$198.00.

SO DETERMINED AND ORDERED this 13th day of February, 2013.

A handwritten signature in black ink, appearing to read 'Dana Dean', is written over a horizontal line.

Dana Dean, Associate 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/015/025
VIOLATION: 10031

ASSESSMENT CONFERENCE OFFICER: Dana Dean

	Proposed Assessment	Final Assessment
(1) History/Previous Violations	<u>3</u>	<u>3</u>
(2) Seriousness	<u>12</u>	<u>8</u>
(3) Negligence	<u>10</u>	<u>8</u>
(4) Good Faith	<u>0</u>	<u>10</u>
Total Points	<u>25</u>	<u>9</u>

TOTAL ASSESSED FINE \$198.00

NARRATIVE: The Conference Officer reduced the seriousness points by 4 because the data was recoverable and the Division Hydrologist was able to complete her report once the data was received. Negligence points were reduced by 2 in anticipation of improvements to the efficiency of the mine's water monitoring. Mr. Reynolds explained that he has implemented a new quality-check system and he does not anticipate having a similar problem from this date on.