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JON M. HUNTSMAN, JR.  
Governor

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Lieutenant Governor

**State of Utah**  
DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER  
Executive Director

**Division of Oil, Gas and Mining**

JOHN R. BAZA  
Division Director

Outgoing  
C0070013  
#3408  
K

October 29, 2009

CERTIFIED RETURN RECEIPT  
7005 2570 0000 4801 6683

Jay Marshall  
Utah American Energy, Inc.  
P. O. Box 1910  
East Carbon, Utah 84520-0910

Subject: Proposed Assessment for State Violation No. N 10045, Utah American Energy Inc.,  
Lila Canyon Mine, C/007/0013, Outgoing File

Dear Mr. Marshall:

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, Priscilla Burton, on September 23, 2009. 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:

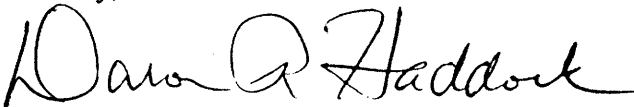
1. If you wish to informally appeal the fact of this violation, you should file a written request for an Informal Conference within thirty (30) days of receipt of this letter. This conference will be conducted by the Division Director. This Informal Conference is distinct from the Assessment Conference 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 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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**WORKSHEET FOR ASSESSMENT OF PENALTIES  
DIVISION OF OIL, GAS & MINING**

COMPANY / MINE Genwal Resources Inc., Crandall Canyon Mine

PERMIT C/015/0032      NOV / CO # N 10045      VIOLATION 1 of 1

ASSESSMENT DATE October 29, 2009

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>Cessation Order # 10035</u> | <u>05/16/2009</u> | <u>5</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 5**

**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?

Conducting activities without appropriate approvals and Loss of reclamation / revegetation potential.

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 "Appendix 5-7 of the approved plan describes burial in pits with a 3.0 factor of safety, but the mine waste is not being placed as described in the plan.**

**Chap. 2 of the approved MRP Sections 232.500, 241, and 242.100 describe salvage of subsoil to a depth of 30 inches during construction, for placement in accessible locations for use during final reclamation as part of the 4 ft of cover over the mine waste, but the subsoil salvage and monitoring has not occurred as described and the subsoil has been buried under the two pads.**

**3) Mine waste at the angle of repose had spread out onto an adjacent undisturbed land.**

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 12

**PROVIDE AN EXPLANATION OF POINTS:**

**\*\*\* According to the inspector statement "there was a loss of reclamation potential due to lack of cover to meet the four foot cover requirement for coal mine waste."**

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 0

PROVIDE AN EXPLANATION OF POINTS:

\*\*\*

TOTAL SERIOUSNESS POINTS ( A or B ) 32

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 \_\_\_\_\_

ASSIGN NEGLIGENCE POINTS 20

PROVIDE AN EXPLANATION OF POINTS:

\*\*\* According to the information in the inspector statement, " During an informal conference held in November 2005, UEI was aware of public comment on the controlled placement mine waste at the mine site and the need for subsoil cover over the mine waste. The commenters specifically requested a separate storage pile for subsoil, but were assured by UEI and the Division that the mine development waste from the rock tunnel development would be buried in pits beneath the operations pad (described in App. 5-7) and that suitable subsoil would be placed in locations where it could be retrieved for final reclamation. UEI let the contract out under a different scenario without OGM approval, prior to providing OGM with the revised plan.

UEI engineers are aware of the Utah Coal mining requirements for design, certification, and stability of refuse piles, however there was no safety factor calculation provided for the new design in the revised plan received in July 2008 or July 2009.

UEI made several commitments within the MRP to protect the subsoil resource for use as final cover (Sections 232.500; 241; and 242.100). UEI has had a contractor monitor the salvage of topsoil, but not subsoil. UEI buried useful subsoil beneath the mine waste.

**UEI is aware of the requirement to trap and retain sediment in disturbed areas. However, mine waste at the angle of repose spread out onto adjacent undisturbed islands.**

**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 0

**PROVIDE AN EXPLANATION OF POINTS:**

*\*\*\*Good faith will be evaluated upon termination of the violation.*

**V. ASSESSMENT SUMMARY**

|                                      |   |
|--------------------------------------|---|
| NOTICE OF VIOLATION # <u>N 10045</u> |   |
| I.                                   | TOTAL HISTORY POINTS <u>5</u>             |
| II.                                  | TOTAL SERIOUSNESS POINTS <u>32</u>        |
| III.                                 | TOTAL NEGLIGENCE POINTS <u>20</u>         |
| IV.                                  | TOTAL GOOD FAITH POINTS <u>0</u>          |
|                                      | TOTAL ASSESSED POINTS <u>57</u>           |
|                                      | <b>TOTAL ASSESSED FINE <u>\$ 4070</u></b> |