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Governor

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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

September 27, 2007

CERTIFIED RETURN RECEIPT  
7003 2260 0002 0247 9567

Dave Shaver, Environmental Coordinator  
Andalex Resources, Inc.  
P.O. Box 1077  
Price, Utah 84501

Subject: Proposed Assessment for Notice of Violation #10009, Andalex Resources, Inc., Centennial Mine, C/007/0019, Outgoing File

Dear Mr. Shaver:

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, Karl Houskeeper, on August 28, 2007. 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, Associate Director or assigned conference officer. 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.



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Dave Shaver  
September 26, 2007

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,



Daron R. Haddock  
Assessment Officer

Enclosure

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

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

COMPANY / MINE Andalex Resources Inc.  
 PERMIT C/007/019 NOV / CO # 10009  
 ASSESSMENT DATE September 26, 2007

ASSESSMENT OFFICER Daron R. Haddock

**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>#10000</u>	<u>9/27/2006</u>	<u>1</u>
<u>#10002</u>	<u>10/06/2006</u>	<u>1</u>
<u>#10003</u>	<u>2/08/2007</u>	<u>1</u>
<u>#10007</u>	<u>7/06/2007</u>	<u>1</u>
<u>#10008</u>	<u>8/27/2007</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 5**

**II. SERIOUSNESS (Either A or B)**

NOTE: For assignment of points in Parts II and III, the following apply:

- Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
- 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.)

- 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** na

**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** 13

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\* *Operator failed to comply with the terms and conditions of the approved mining and reclamation plan and the regulatory requirements. Failure to conduct second quarter 2007 sediment pond inspections prevented Division from assessing the status of the sediment ponds during the 2<sup>nd</sup> quarter of 2007. The inspector was hindered from being able to assess the stability and functionality of the ponds due to the lack of the required reports. The history and remoteness of this area would indicate that sedimentation impacts would be minimal, but without the completed information, impacts are hard to determine. While the 2<sup>nd</sup> quarter 2007 data is lost, the operator can resume surveys and reports in the future. Points assessed are in the middle of the range.*

**TOTAL SERIOUSNESS POINTS ( A or B )** 13

**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 negligence

ASSIGN NEGLIGENCE POINTS 8

**PROVIDE AN EXPLANATION OF POINTS:**

***\*\*\* The operator is required to conduct pond inspections and reports on a quarterly basis. The operator failed to conduct the 2<sup>nd</sup> quarter 2007 inspection. A prudent operator would understand the need to conduct inspections and provide reports. This violation was the result of indifference to the DOGM regulations or the lack of reasonable care, which equates to ordinary negligence, and will be assessed in the middle of the range.***

**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 n/a

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\* *There is no assigned abatement for not conducting the pond inspections and reports. The opportunity is lost to complete the requirements and it cannot be obtained after the fact. No points can be awarded.*

V. ASSESSMENT SUMMARY

NOTICE OF VIOLATION # N 10009

I.	TOTAL HISTORY POINTS	<u>5</u>
II.	TOTAL SERIOUSNESS POINTS	<u>13</u>
III.	TOTAL NEGLIGENCE POINTS	<u>8</u>
IV.	TOTAL GOOD FAITH POINTS	<u>0</u>
	TOTAL ASSESSED POINTS	<u>26</u>
	<b>TOTAL ASSESSED FINE</b>	<b><u>\$ 660</u></b>