



GARY R. HERBERT  
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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*

October 19, 2017

#### CERTIFIED RETURN RECEIPT

9590 9402-1618-6053-1295-98

Kyle Edwards, Resident Agent  
BRC Wellington, LLC  
P.O. Box 401  
Wellington, Utah 84542

Subject: Proposed Assessment for State Cessation Order No. 21198, Wellington Dry-Coal Cleaning Facility, C/007/0045, Carbon County, Utah

Dear Mr. Edwards:

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, **Steve Demczak**, on September 19, 2017. 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:

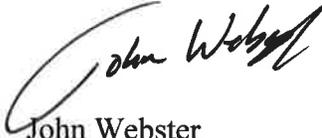
1. If you wish to informally appeal the fact of this violation, you should file a written request for an Informal Conference within thirty (30) days of receipt of this letter. This conference will be conducted by the Division Director. This Informal Conference is distinct from the Assessment Conference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



John Webster  
Assessment Officer

Enclosure

cc: OSM Compliance Report  
Sheri Sasaki, DOGM

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

COMPANY / MINE BRC Wellington, LLC/Wellington Dry-Coal Cleaning Facility

PERMIT C/007/0045      NOV / CO # 21198      VIOLATION 1 of 1

ASSESSMENT DATE October 19, 2017

ASSESSMENT OFFICER John Webster

**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>None</u>	<u></u>	<u></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 0**

**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?

Loss of reclamation 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 15**

**PROVIDE AN EXPLANATION OF POINTS:**

***\*\*\*As per information the inspector provided, the bond amount needed to be increased by 3 fold. This would lead to a likely scenario that an operator would walk away vs. do the reclamation. Points were therefore assigned at mid-point of the 'Likely' range.***

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 10**

**PROVIDE AN EXPLANATION OF POINTS:**

***\*\*\* No actual damage, potential damage would be roughly 2/3 of the site would not be reclaimed if the Division forfeited the surety and had the site reclaimed. Points were assigned slightly below midpoint due to No damage, and potential damage is limited.***

**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 N/A**

**PROVIDE AN EXPLANATION OF POINTS:**

**\*\*\***

**TOTAL SERIOUSNESS POINTS ( A or B ) 25**

**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 Negligent

ASSIGN NEGLIGENCE POINTS 8

**PROVIDE AN EXPLANATION OF POINTS:**

**\*\*\* According to the information in the inspector statement, the inspector felt that this violation occurred to lack of diligence or reasonable care. Points were assigned at mid-point of the Negligence range due to the fact the operator had been warned of the need to increase the surety.**

**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 (Immediately following the issuance of the NOV)	-11 to -20*
X	Rapid Compliance (Permittee used diligence to abate the violation)	-1 to -10
X	Normal Compliance (Operator complied within the abatement period required) (Operator complied with condition and/or terms of approved Mining and Reclamation Plan)	0

\*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 (Permittee used diligence to abate the violation)	-11 to -20*
X	Normal Compliance (Operator complied within the abatement period required)	-1 to -10*
X	Extended Compliance (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)	0

EASY OR DIFFICULT ABATEMENT? Easy Abatement

ASSIGN GOOD FAITH POINTS -15

**PROVIDE AN EXPLANATION OF POINTS:**

***\*\*\*Operator used great diligence in being able to obtain a \$500,000 surety increase within 10 days. Points were assessed at the mid-point of the Rapid compliance range due to the operator had to have begun immediately to have a significant surety increase completed within 10 days.***

V. ASSESSMENT SUMMARY

NOTICE OF VIOLATION # **21198**

I.	TOTAL HISTORY POINTS	<u>0</u>
II.	TOTAL SERIOUSNESS POINTS	<u>25</u>
III.	TOTAL NEGLIGENCE POINTS	<u>8</u>
IV.	TOTAL GOOD FAITH POINTS	<u>-15</u>
	TOTAL ASSESSED POINTS	<u>18</u>

**TOTAL ASSESSED FINE \$396.00**