

EVENT VIOLATION INSPECTOR'S STATEMENT

Company/Mine: BRC Wellington, LLC
Permit #: C/007/045

CO# 21201
Violation # 1 of 1

A. SERIOUSNESS

1. What type of event is applicable to the regulation cited? Refer to the DOGM reference list of event below and remember that **the event is NOT the same as the violation**. Mark and explain each event.

- a. Activity outside the approved permit area.
- b. Injury to the public (public safety).
- c. Damage to property.
- x d. Conducting activities without appropriate approvals.
- e. Environmental harm.
- f. Water pollution.
- g. Loss of reclamation/revegetation potential.
- h. Reduced establishment, diverse and effective vegetative cover.
- i. No event occurred as a result of the violation.
- j. Other.

Explanation: The permittee was selling coal processing waste to a trucking company at 25 cents a ton. This material was being use as road base. No testing occurred prior to sell. Is this material acid and toxic? This is a unknown. Processing waste cannot leave the permit area.

2. Has the even occurred? Yes

If yes, describe it. If no, what would cause it to occur and what is the probability of the event(s) occurring? (None, Unlikely, Likely).

Explanation: Talking to Division staff it is unlikely that the material is acid and toxic, but, without proper testing it is an unknown. Coal processing waste left the permit area has occurred.

3. Did any damage occur as a result of the violation? Yes

If yes, describe the duration and extent of the damage or impact. How much damage may have occurred if the violation had not bee discovered by a DOGM inspector? Describe this potential damage and whether or not it would extend off the disturbed and/or permit area.

Explanation: It is unknown if the material used for road base is acid and toxic. Therefore, it is assumed that the worse case the material is acid and toxic. If material is acid and toxic it could cause water and ground pollution.

B. DEGREE OF FAULT (Check the statements which apply to the violation and discuss).

- Was the violation not the fault of the operator (due to vandalism or an act of God), explain. Remember that the permittee is considered responsible for the actions of all persons working on the mine site.

Explanation: _____

- Was the violation the result of not knowing about DOGM regulations, indifference to DOGM regulations or the result of lack of reasonable care.

Explanation: The permittee maintains the material after coal processing is “product”. The regulation states that coal processing has two streams of material. The first stream is coal, and second stream is waste. The permittee received Division approval in the MRP as this material is product.

- If the actual or potential environmental harm or harm to the public should have been evident to a careful operator, describe the situation and what, if anything, the operator did to correct it prior to being cited.

Explanation: _____

- Was the operator in violation of a specific permit condition?

Explanation: _____

- Has DOGM or OSM cited the violation in the past? If so, give the dates and the type of warning or enforcement action taken.

Explanation: _____

C. GOOD FAITH

1. In order to receive good faith for compliance with an NOV or CO, the violation must have been abated before the abatement deadline. If you think this applies,

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describe how rapid compliance was achieved (give date) and describe the measures the operator took to comply as rapidly as possible.

Explanation: No action, by the permittee, has been taken until the Fact of Violation conference takes place on March 6, 2018.

2. Explain whether or not the operator had the necessary resources on site to achieve compliance.

Explanation: The permittee has the necessary resources, but, it can be difficult to retrieve all material off the permit area, since, it was sold and is on private land.

3. Was the submission of plans prior to physical activity required by this NOV / CO? No If yes, explain.

Explanation: The permittee must update the MRP and receive Division approval. The permittee must address the reclamation of coal processing waste, and operational requirements of handling coal processing waste in the MRP. The permittee can retrieve material from private land prior to receiving Division approval for updating MRP.

Stephen J. Demczak _____
Authorized Representative Signature

February 15, 2018 _____
Date

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