

**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 CESSATION
ORDER; CITATION NO. 21201,
WELLINGTON DRY-COAL
CLEANING FACILITY,
C/0070045, CARBON COUNTY,
UTAH**

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

CAUSE NO. C/0070045

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On March 6, 2018, the Division of Oil, Gas and Mining (Division) held an Informal Assessment Conference as provided for by Utah Administrative Code Rule R645-401-700 in response to the written request by operator BRC Wellington, LLC (BRC) to review the fact of violation for Cessation Order No. 21201 (CO) issued to it on February 1, 2018 for operations at the Wellington Dry-Coal Cleaning Facility (WDCC Facility), C/007/045, Carbon County, Utah.

INTRODUCTION

The Division issued the CO because BRC was selling a material produced as a byproduct of its coal separating process to Attco Trucking Company (Attco), which Attco was using for road base at Attco's off-site facility. The Division alleged that by doing so, BRC was violating Utah Administrative Code Rules R654-301-536; R654-301-542.730; R654-301-746; and R654-528.320 for failure to keep "coal processing waste" as defined by R645-100-200 on a Division permitted area.

BRC responded to the CO by requesting an Informal Assessment Conference on February 2, 2018; within the 30-day timeframe allowed by Utah Administrative Code Rule R645-401-700. BRC requested the Conference before the Division assessed a penalty associated with the violation. Thus, only the fact of the violation itself, not proposed assessment, was addressed at the Conference. At the Conference, BRC alleged that the material being sold to

Attco was not waste, but rather a product, and thus it was permissible for BRC to sell the material without regard for its final disposition. In other words, BRC does not dispute the facts surrounding this violation, but rather, the Division's interpretation of the relevant regulations and resulting CO.

PARTIES

The Conference was conducted as an informal adjudicative proceeding. Dana Dean, Associate Director of the Division's Mining Program served as the Assessment Conference Officer. Meg Osswald, Assistant Attorney General, represented the Assessment Conference Officer. Steve Demczak, Division Inspector, presented the facts and arguments in support of the CO and Daron Haddock, Division Permit Supervisor, also attended to support the reasoning for the CO. Steve Alder, Assistant Attorney General, represented the Division. Richard White and Kyle Edwards acted as the permittee representatives and presented the position and arguments on behalf of BRC. No recording or transcript of the conference was made.

FINDINGS OF FACT

Based on the information provided at the conference and found in the Division's files, and based on the fact that BRC does not dispute the Division's recounting of the facts surrounding the CO, the Conference Officer makes the following findings of fact:

1. At the WDCC Facility, BRC currently processes raw material from the Sufco Coal Mine and has historically processed raw material from multiple different coal mines.
2. BRC's process separates raw material delivered from the Sufco Coal Mine to create two main materials: a higher-quality, low ash coal that goes back to the mine operator(s) to be sold as fuel, and the material that is the subject of the Division's CO.
3. This second material is a low-quality, high-ash byproduct of BRC's process, and cannot be used as fuel without further processing or by mixing it with higher-quality material.
4. The Division received a citizen complaint in January 2018 that material from the WDCC Facility was being transported by truck and used at the separate Attco Trucking Facility as a road base.

5. Upon investigation and inspection on January 30, 2018 by Division Inspector Steve Demczak, the Division confirmed that since at least March of 2017, BRC has been selling the low-quality, high-ash material produced on site to Attco.

6. Mr. Demczak found that BRC was in fact allowing Attco to use Attco trucks to transport the material to the Attco Trucking Facility where Attco personnel were depositing the material on raw dirt to make it suitable for driving.

7. A check from Attco to BRC and BRC receipts show that BRC was selling the material to Attco for twenty-five cents per pound.

8. The check from Attco on August 8, 2017 notes that it was for "4,000 Tons Rock."

9. The receipts from BRC denote "Out By-Product Sales" with the material listed as "By-Pro Sales" from March 2017 through October 2017, and "Out L/Q/C Sales" with the material again listed as "By-Pro Sales" from November 2017 through January 2018.

10. The Division Issued the CO to BRC on February 2, 2018 for failure to keep "Coal Processing Waste" on a DOGM permitted area, ordering BRC to immediately cease selling "Coal Processing Waste" such as the material sold to Attco."

11. The CO also required that BRC recover all Coal Processing material at the Attco facility and properly dispose of it in a permitted area by April 30, 2018 and required BRC to amend its MRP to address the reclamation of Coal Processing Waste on the BRC Facility.

12. The Division also submitted photos from the Attco facility, showing the material spread across a large area with tire tracks indicating that it was being driven on, and stockpiles of the material adjacent to the driving area.

13. BRC's Mine Reclamation Plan (MRP) when the CO was issued indicated that BRC "toll processes" material from off-site clients to generate high-quality or low-quality coal and does not accept or produce coal mine waste or coal processing waste.

CONCLUSIONS OF LAW

Based on the findings of fact described above, the Assessment Conference Officer upholds the CO, finding that BRC improperly disposed of coal processing waste, based on the following conclusions of law:

I. The Material Sold to Attco Fits the Rules' Definition of Coal Mine Waste, Not Coal.

14. Utah Administrative Code Rule R645-100-200 defines Coal Mine Waste as “coal processing waste and underground development waste,” and Coal Processing Waste as “earth materials which are separated from the product coal during cleaning, concentrating or processing or preparation of coal.” *Id.*

15. Utah Administrative Code Rule R645-100-200 defines Coal as “combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D388-95.”

16. The material that BRC sent to the Attco facility does not fit the definition of coal because it is not combustible and therefore not useable as a fuel.

17. Thus, the material sold to Attco fits the definition of Coal Mine Waste under Utah Administrative Code Rule R645-100-200 because it is not combustible fuel, but rather, an “earth material” separated from coal product during processing.

II. BRC Must Amend its MRP to be Consistent With the Rules and Its Operations.

18. The MRP's representation that no coal mine waste or coal processing waste will be on site cannot be constituted to override the Rules.

19. The MRP's representations also do not constitute a variance and do not give BRC the legal right to act out of accordance with the Rules.

20. Variances are allowed only under specific circumstances as outlined by Utah Administrative Code Rule R645-302 and must be granted by the Division and outlined by the operator's MRP.

21. BRC's production of a coal waste product, rather than only high or low-quality coal is inconsistent with the MRP.

22. The MRP must be amended to reflect that coal waste product is created on site.

23. The MRP must be amended to create a Division permitted location for coal waste at the Wellington Facility, or to reflect that coal waste will be taken back by operators with Division permitted sites after processing.

III. BRC's Sale of Material to Attco Was Improper Disposal of Coal Mine Waste.

24. Utah Administrative Code Rule R645-301-528.320 requires that Coal Mine Waste be placed in permitted disposal areas approved by the Division for specific disposal purposes.

25. The Attco Facility is not permitted by the Division.

26. The Wellington Facility is not permitted to store or dispose of Coal Mine Waste.

27. Thus, BRC's sale of the non-coal product to Attco for use as a road base constitutes improper disposal of Coal Mine Waste under Utah Administrative Code Rule R645-301-528.320.

ORDER

Based on the Findings of Fact and Conclusions of Law discussed above, the fact of the violation is UPHELD under Utah Administrative Code Rules R654-301-536; R654-301-542.730; R654-301-746; and R654-528.320. Therefore, BRC must immediately recover all Coal Processing Material from the Attco Facility for proper disposal in an area permitted by the Division. BRC may either amend its MRP to create permitted areas for Coal Mine Waste at its facility (as required by the CO), or it may send the material offsite to a different facility permitted by the Division to store Coal Mine Waste. Additionally, because the CO is upheld, a penalty will be assessed according to Utah Administrative Code Rule R645-401.

ORDERED this 2nd day of April, 2018



Dana Dean, Associate Director
Utah Division of Oil, Gas and Mining
Assessment Conference Officer

NOTICE OF RIGHT TO APPEAL

BRC, as the operator of the Wellington Dry-Coal Facility, has the right to appeal the Conference Officer's Order to the Utah Board of Oil, Gas and Mining (the Board) under Utah Code § 40-10-20 and Utah Administrative Code Rule R645-410-810. To exercise this right to appeal, BRC must, "within 30 days of receipt of the decision made by the division in the informal conference, request a hearing before the Board" Utah Code § 40-10-20(2)(d). This Assessment will be final in 30 days unless appealed to the Utah Board of Oil, Gas and Mining. *See also* Utah Admin. Code R. 645-401-810. If BRC appeals this Order, the hearing before the Board will be formal, and review of the fact of violation "will be conducted by the Board under the provisions of the procedural rules of the Board (R641 Rules)." *Id.* R. 645-401-830.