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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

June 12, 2018

CERTIFIED RETURN RECEIPT  
9590 9402 1618 6053 1296 73

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

Subject: Proposed Assessment for State Violation No. C21201, BRC Wellington, LLC, Wellington Dry-Coal Cleaning Facility, C/007/0045, Task #5607

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 February 2, 2018. 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:

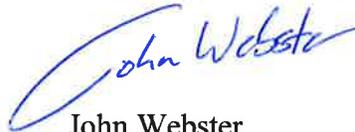
1. If you wish to informally appeal the fact of this violation, you should file a written request for an Informal Conference within thirty (30) days of receipt of this letter. This conference will be conducted by the Division Director. This Informal Conference is distinct from the Assessment Conference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

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

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

PERMIT #: \_\_\_\_\_ CO #: 21201 VIOLATION 1 of 1

ASSESSMENT DATE 06/12/2018

ASSESSMENT OFFICER John Webster

**I. HISTORY (Max. 25 pts.)**

A. Are there previous violations, which are not pending or vacated, which fall within one (1) year of today's date? YES / No

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS
<u>Yes (CO#21198)</u>	<u>10/19/2017</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 Administrative (B) violation? Event

**A. EVENT VIOLATIONS (Max 45 pts.)**

1. What is the event which the violated standard was designed to prevent?  
Environmental harm and water pollution.

2. What is the probability of the occurrence of the event which a violated standard was designed to prevent? The probability of environmental harm and water pollution remains unknown due to lack of testing. According to the inspector's statement. The inspector talked with Division staff and it was determined that that material most likely not acid and toxic. However, without proper testing that statement remains unknown.

<u>PROBABILITY</u>	<u>POINT RANGE</u>	<u>PROBABILITY</u>	<u>POINT RANGE</u>
insignificant	1-4	Likely	10-19
Unlikely	5-9	Occurred	20

**ASSIGN PROBABILITY OF OCCURRENCE POINTS** 17

**PROVIDE AN EXPLANATION OF POINTS:** According to the inspector statement, "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 an unknown. Processing waste cannot leave the permit area". Points are therefore assigned at the high end of the likely range

3. What is the extent of actual or potential damage?: Potential Damage.

**ASSIGN DAMAGE POINTS (Range 0-25)** 12

**PROVIDE AN EXPLANATION OF POINTS:** According to the inspector's statement, "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". Points are therefore assigned at the mid range for potential damage.

**B. ADMINISTRATIVE VIOLATIONS (Max 25pts)**

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? Potential  
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)** 29

**III. DEGREE OF FAULT**

LEVEL of NEGLIGENCE.	Point Range
No Negligence Negligence (Was this an inadvertent violation which was unavoidable by the exercise of reasonable care?)	0
Negligence (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?)	1 - 15
Greater Degree of Fault (reckless, knowing or intentional conduct, or economic gain to the operator for not complying)	16 - 30

STATE DEGREE OF NEGLIGENCE: Negligence

**ASSIGN NEGLIGENCE POINTS** 7

**PROVIDE AN EXPLANATION OF POINTS:** according to the inspector's statement, "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 points were assigned to the mid level of Negligent.

**IV. GOOD FAITH (Max 20 pts.)**

(Either A or B) (Does not apply to violations requiring no abatement measures, or violations not abated at the time of assessment)

**Has Violation Been Abated? YES / NO ,**

A. **EASY ABATEMENT** (The operator had onsite, the resources necessary to achieve compliance of the violated standard within the permit area.)

	<u>Point Range</u>
<b>Immediate Compliance</b> (Immediately following the issuance of the NOV)	-11 to -20
<b>Rapid Compliance</b> (Permittee used diligence to abate the violation. Violation abated in less time than allotted.)	-1 to -10
<b>Normal Compliance</b> (Operator complied within the abatement period required, or, Operator requested an extension to abatement time)	0

B. **DIFFICULT ABATEMENT** (The operator did not have the resources at hand to achieve compliance, or the submission of plans was required prior to physical activity to achieve compliance.)

	<u>Point Range</u>
<b>Rapid Compliance</b> (Permittee used diligence to abate the violation. Violation abated in less time than allotted.)	-11 to -20
<b>Normal Compliance</b> (Operator complied within the abatement period)	-1 to -10
<b>Extended Compliance</b> (Operator complied within the abatement period required, or, Operator requested an extension to abatement time) (Permittee took minimal actions for abatement to stay within the limits of the violation, or the plan submitted for abatement was incomplete.)	0

**EASY OR DIFFICULT ABATEMENT?** \_\_\_\_\_

**ASSIGN GOOD FAITH POINTS** - 0

PROVIDE AN EXPLANATION OF POINTS: N/A.

V. ASSESSMENT SUMMARY

I.	TOTAL HISTORY POINTS	<u>5</u>
II.	TOTAL SERIOUSNESS POINTS	<u>29</u>
III.	TOTAL NEGLIGENCE POINTS	<u>7</u>
IV.	TOTAL GOOD FAITH POINTS	<u>- 0</u>
	TOTAL ASSESSED POINTS	<u>41</u>
	<b>TOTAL ASSESSED FINE</b>	<b><u>\$2,310.00</u></b>