

EVENT VIOLATION INSPECTOR'S STATEMENT

Company/Mine: Consolidation Coal Co/Emery Deep Mine
 Permit #: C/015/015

NOV # 10027
 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.

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

Explanation: Emery submitted a permit amendment to construct a concrete pad for a training tent. The amendment was assigned Task #3021 was under review when the construction of concrete forms and support mesh were observed during the partial inspection of August 12, 2008. Approval of the amendment or construction was not given prior to the construction activities

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: The operator begin construction activities prior to approval by the Division. Concrete forms were in place along with support mesh inside of the forms.

3. Did any damage occur as a result of the violation? No

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: _____

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: Indifference to DOGM regulations.

- 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: Failure to obtain a permit prior to mining and reclamation activities.

- 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: N06-39-1-1 was issued on 2/15/2006 because operator/permittee built a coal sampling building and 2 small belt conveyors at 4th East Portal area without receiving Division approval. Citation 10018 was issued on January 22, 2008. Emery submitted a permit amendment to expand their storage facilities and relocate the fence at the 4th east portal site. The amendment was assigned Task #2894 and was under review by the Division. During the complete inspection at Emery on 1/22/08 the storage facilities and relocation of the fence had already been done without an approval from the Division. The operator/permittee continues to "willfully" perform construction activities without receiving Division approval.

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: The event occurred "willfully" preventing any good faith effort.

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

Explanation: _____

3. Was the submission of plans prior to physical activity required by this NOV / CO? Yes If yes, explain.

Explanation: _____

Karl B. Houskeeper
Authorized Representative

Karl B. Houskeeper
Signature

August 19, 2008
Date

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