

C/015/015 Incoming

#4766

JAN 02 2015

DIV. OF OIL, GAS & MINING

CONSOL Mining Company LLC  
1000 CONSOL Energy Drive  
Canonsburg, PA 15317  
(724) 485-4267

December 30, 2014

John Baza  
Director  
Utah Division of Oil, Gas and Mining  
1594 West North Temple, Suite 1210  
Box 145801  
Salt Lake City, Utah 84114-5801

Re: Emery Deep Mine Permit C/015/0015  
Notice of Violation (12/17/2014; citation # 15148), Termination of Notice of Violation  
(12/17/2014; citation # 15148)

Dear Mr. Baza:

This letter is to inform you of CONSOL's official receipt of the Emery Deep Mine Citation #15148 and termination of Citation #15148 that was issued on 12/17/2014 and signed by Mr. Steve Demczak on 12/23/2014. Please find a signed copy of the citation and the corresponding termination included with this letter. As discussed in CONSOL's 12/23/2014 letter to you (see attached), we ask that you vacate the Citation and corresponding Termination of Citation.

Thank you for your consideration and please contact me with any questions at (724) 485-4267.

Sincerely,

*Kerry Goodballet BMB 12/30/14*

Kerry Goodballet, P.E.  
Director of Permitting – Coal

cc: Dana Dean  
Daron Haddock  
Steve Demczak

Attachments



**Citation for Non-Compliance  
Utah Coal Regulatory Program**

1594 West North Temple, Salt Lake City, UT 84114  
Phone: (801) 538-5340 Fax: (801) 359-3940

**Citation #: 15148**

**Permit Number: C0150015**

**Date Issued: 12/17/2014**

**NOTICE OF VIOLATION**       **CESSATION ORDER (CO)**       **FAILURE TO ABATE CO**

Permittee Name: CONSOL MINING COMPANY, LLC

Inspector Number and ID: 39 SDEMCAZAK

Mine Name: EMERY DEEP MINE

Date and Time of Inspection: 12/11/2014 10:00 am

Certified Return Receipt Number: 70123460000295596144

Date and Time of Service: 12/17/2014 5:00 pm

**Nature of condition, practice, or violation:**

Failure to submit certified reports to the Division promptly after each inspection of the refuse pile.

**Provisions of Act, regulations, or permit violated:**

R645-301.514.224

**This order requires Cessation of ALL mining activities.** (Check box if appropriate.)

Condition, practice, or violation is creating an imminent danger to health or safety of the public.

Permittee is/has been conducting mining activities without a Permit.

Condition, practice, or violation is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

Permittee has failed to abate Violation(s) included in  Notice of Violation or  Cessation Order within time for abatement originally fixed or subsequently extended.

**This order requires Cessation of PORTION(S) of mining activities.**

Mining activities to be ceased immediately:  Yes  No

Abatement Times (if applicable).

Action(s) required:  Yes  No

The permittee will submit refuse pile inspections to the Division starting the 4th quarter of 2014.

**Kerry Goodballet**

(Print) Permittee Representative

*Kerry Goodballet* BMB 12/30/14

Permittee Representative's Signature - Date

**STEVE DEMCAZAK**

(Print) DOGM Representative

*Steve Demczak* 12/23/2014

DOGM Representative's Signature - Date

**SEE REVERSE SIDE Of This Form For Instructions And Additional Information**

**IMPORTANT – READ CAREFULLY**

Pursuant to the Utah Coal Mined Land Reclamation Act, Utah Code Ann. § 40-10-1 et. seq. (Act); the undersigned authorized representative of the Division of Oil, Gas, and Mining (DOGGM) has conducted an inspection and found that a Notice of Violation or Cessation Order must be issued.

This order shall remain in effect until it is modified, terminated or vacated by written notice of an authorized representative of DOGGM.

**1. PENALTIES.**

**Proposed assessment.** DOGGM assesses fines based upon a proposed recommendation by an assessment officer. If there is additional information you wish DOGGM to consider regarding the cessation order and proposed fine, please submit that to DOGGM within *15 days of the date this notice or order is served on you or your agent*. Such information will be used by the assessment officer in determining facts surrounding the violation(s) and amount of penalty. Once DOGGM has determined the proper penalty, it will serve the proposed assessment on you or your agent, no later than 30 days of the issuance of this notice or order. See Utah Admin. Code R645-401-600 et. seq.

The penalty will be final unless you or your agent file, within 15 days of receipt of the proposed assessment, a written request for an informal hearing before the assessment officer.

**Assessment.** For each violation included in this notice, a penalty of up to \$5,000 may be assessed for each separate day the violation continues.

If you fail to abate any violation within the time set for abatement or for meeting any interim step, you will be assessed an additional minimum penalty of \$750 for each day of continuing violation beyond the time set for abatement. You will be issued a Cessation Order requiring cessation of surface coal mining operations or the portion of the operations relevant to the violation.

**2. INFORMAL PUBLIC HEARING.**

On the reverse side of this page, an authorized representative has made a finding as to whether or not this notice requires cessation of mining. If this order or notice requires cessation of mining, expressly or in practical effect, you may request that an informal public hearing be held at or near the mine site. If you wish an informal public hearing be held, please contact an authorized representative from DOGGM. See Utah Admin. Code R645-400-350 et seq. Once an informal public hearing is scheduled, you will be notified of the date, time, and location of the hearing.

If this notice requires cessation of mining, it will expire within 30 days from the date you are notified unless an informal public hearing is held or waived, or the condition, practice, or violation is abated within the 30-day period.

**3. FORMAL REVIEW AND TEMPORARY RELIEF.**

You may appeal this notice or order to the Board of Oil, Gas, and Mining by submitting an application for hearing within 30 days of receipt of this notice or order. See Utah Admin. Code R645-300-164.300. Please submit the application for hearing to:

Secretary  
Board of Oil, Gas, and Mining  
1594 West North Temple, Suite 1210  
PO Box 145801  
Salt Lake City, Utah 84114-5801

If applying for a formal board hearing, you may submit with your petition for review a request for *“temporary relief”* from this notice. Procedures for obtaining a formal board hearing are contained in the Board’s Rules of Practice and Procedure and in Utah Admin. Code R645-401-800 et. seq.

**4. EFFECT ON PERMIT.**

The permit may be suspended or revoked if it is determined that a pattern of violations of the Act, regulations or permit conditions exists, and that the violations were caused by an unwarranted or willful failure to comply.

For further information, consult Utah Code Ann. § 40-10-20 through 40-10-23 and Utah Admin. Code R645-400-300 et. seq. and R645-401 et. seq., or contact the Division of Oil, Gas, and Mining at (801) 538-5340.



**Action Taken on Existing Citation  
Utah Coal Regulatory Program**

1594 West North Temple, Salt Lake City, UT 84114  
Phone: (801) 538 - 5285 Fax: (801) 359-3940

Action on Citation#: **15148**  
Permit Number: **C0150015**  
Date Cit. Issued: **12/17/2014**

MODIFICATION of     
  TERMINATION of     
  VACATION of  
 NOTICE OF VIOLATION     
  CESSATION ORDER (CO)     
  FAILURE TO ABATE CO

Permittee Name: CONSOL MINING COMPANY, LLC	Inspector Number and ID: 39 SDEM CZAK
Mine Name: EMERY DEEP MINE	Date and Time of Action: 12/17/2015 4:00 pm
Certified Return Receipt Number: 7012 3460 0002 95596144	Date and Time of Service: 12/17/2015 5:00 pm

*In accordance with the provisions of the Utah Coal Mining and Reclamation Act, Utah Code Ann. § 40-10-1 et. seq. (Act), the above referenced Citation is:*

Modified as follows:

Reason for modification:

**Terminated because:**  
The permittee must submit refuse pile reports promptly after each inspection.

Vacated because:

**Kerry Goodballet**

(Print) Permittee Representative

*Kerry Goodballet BnB 12/30/14*

Permittee Representative's Signature - Date

**STEVE DEMCZAK**

(Print) DOGM Representative

*Steve Demczak 12/23/2014*

DOGM Representative's Signature - Date

**Refer to the "Citation For Non-Compliance" for additional information**

CONSOL Mining Company LLC  
1000 CONSOL Energy Drive  
Canonsburg, PA 15317  
(724) 485-4267

December 23, 2014

John Baza  
Director  
Utah Division of Oil, Gas and Mining  
1594 West North Temple, Suite 1210  
Box 145801  
Salt Lake City, Utah 84114-5801

Re: Emery Deep Mine Permit C/015/0015  
Notice of Violation (12/17/2014; unknown citation number), Termination of Notice of  
Violation (12/17/2014; citation # 14148)

Dear Mr. Baza:

On December 18, 2014, CONSOL Mining Company LLC (CONSOL) received, via electronic mail, a copy of the attached Citations related to alleged violations at the Emery Deep Mine. The Citations include a Notice of Violation (unknown Citation number) and a Termination of the Notice of Violation (Citation #15148). For several reasons, CONSOL requests that the Utah Division of Oil, Gas and Mining (the Division) vacate these Citations immediately and without an informal hearing.

First, the Citations reference an inapplicable section of the Utah Administrative Code. The underlying Notice of Violation (unknown Citation number) cites an alleged violation of the administrative code for "Coal Mine Permitting: Permit Application Requirements" under R645-301.514. The preamble to this section of the Administrative Code states that "[t]he rules in R645-301-500 present the requirements for engineering information which is to be included in a permit application." CONSOL is not seeking a permit application and, therefore, any alleged violation of this section is not applicable to CONSOL.

Second, even if the overarching permit application section would apply, the alleged violation is inconsistent with the specific code provisions cited in the Citation. The Notice of Violation is for "[f]ailure to submit certified reports to the Division promptly after each inspection of the refuse pile" and indicates that this is a violation of R645-301.514.224. However, this specific code provision is a requirement for quarterly engineering inspections of refuse piles "throughout construction and during the following critical construction period" of "[t]he final graded and revegetated facility." The refuse pile is no longer under construction and this specific provision of the Administrative Code is not applicable.

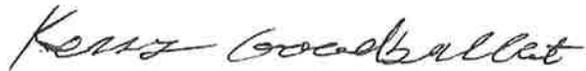
Moreover, CONSOL, along with other operators in Utah, has been submitting certified inspection

reports of its refuse pile to the Division as part of its annual report since 2006. For the last eight years, the Division has acknowledged that the annual report is the required method of submission. Nonetheless, CONSOL is willing to provide quarterly inspection reports if the State has changed its policy. If this is the case, please provide notice of new reporting requirement.

In sum, the alleged violation is not a regulatory requirement and at odds with the Division's longstanding accepted practice. CONSOL believes this warrants the immediate vacation of the Notice of Violation and the Termination of the Notice of Violation. If the Division does not agree, as a secondary request, we ask for an informal hearing on this matter before you as the Division's Director.

Thank you for your consideration and please contact me with any questions at (724) 485-4267.

Sincerely,



Kerry Goodballet, P.E.  
Director of Permitting - Coal

*BMB 12/23/14*

cc: Dana Dean  
Daron Haddock

Attachment