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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

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October 8, 2008

CERTIFIED RETURN RECEIPT
7005 2570 0000 4801 7796

Ken Fleck
Energy West Mining Company
P. O. Box 310
15 North Main Street
Huntington, Utah 84528

Subject: Proposed Assessment for State Violation No. N10029, Energy West Mining Company, Deer Creek Mine, C/015/0018, Outgoing File

Dear: Mr. Fleck

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, Karl Housekeeper, on August 13, 2008. 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.

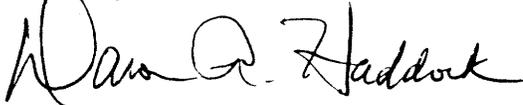


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Ken Fleck
Deer Creek Mine
C015/018
October 8, 2008

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 Vickie Southwick.

Sincerely,


for Joseph C. Helfrich
Assessment Officer

Enclosure

cc: OSM Compliance Report
Vickie Southwick, DOGM
Vicki Bailey, DOGM
Price Field Office

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OFFICIAL USE

Postage	Letter Dated 10/8/2008	
Certified Fee	Proposed Assessment NOV N10029	
Return Receipt Fee (Endorsement Required)	Deer Creek Mine	Here
Restricted Delivery Fee (Endorsement Required)	C/015/018	0034
Total Postage & Fees	\$	

KEN FLECK
P O BOX 310
15 NORTH MAIN STREET
HUNTINGTON UTAH 84528

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

COMPANY / MINE Energy West Mining Company, Deer Creek Mine

PERMIT C/015/0018 NOV / CO # 10029 VIOLATION 1 of 1

ASSESSMENT DATE October 6, 2008

ASSESSMENT OFFICER Joe Helfrich

I. HISTORY (Max. 25 pts.)

A. Are there previous violations, which are not pending or vacated, which fall one (1) year of today's date?

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS
_____	_____	_____
_____	_____	_____

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 0

According to the information in the Division's database there were no enforcement actions noted within the previous year.

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 HINDRANCE (B) violation? Event

A. EVENT VIOLATION (Max 45 pts.)

1. What is the event which the violated standard was designed to prevent?
Conducting activities without appropriate approvals
2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 20

PROVIDE AN EXPLANATION OF POINTS:

******According to the inspector statement the applicant submitted a change to the exploration permit approved under task # 2944. The applicant did not commence exploration activities until the Division completed the review of task # 2944 and notified the applicant in writing that the information in the application met the regulatory requirements of the regulations. The change requested the relocation of hole 2008-02. This application was received by the Division on July 8, 2008 and assigned task # 3012. The applicant commenced exploration drilling activities of drill hole # 2008-2 on July 14, 2008 prior to the Division completing the review and notification to the applicant that the requirements of the regulations pertinent to minor coal exploration had been adequately addressed.***

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 0

PROVIDE AN EXPLANATION OF POINTS:

******According to the inspector statement no damage occurred as a result of the violation. The Division Biologist contacted Ken Fleck and Chuck Semborski on July 11, 2008 regarding clearances for threatened and endangered plant and animal species and cultural resource clearances with the Forest Service and the SHPO. According to the information in the application no cultural resource surveys were to be conducted. The proposed drill site location was to be located on a reclaimed forest road. It was suggested that future exploration applications should include surveys and information that cover an area of adequate size to accommodate alternative drill site locations.***

On July 21, 2008, Charmane Thompson, (Archaeologist for the Manti La-Sal National Forest), was contacted regarding the proposed location of the drill hole and the possible need for an additional cultural resource survey. Charmane indicated that no additional surveys would be required and the information was forwarded to the SHPO for concurrence.

On Wednesday, July 16, 2008 the Division Biologist visited the Energy West office located in Huntington. A voice mail regarding the status of review of the exploration application was provided to Ken Fleck.

B. HINDRANCE VIOLATION (Max 25 pts.)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? _____
RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS _____

PROVIDE AN EXPLANATION OF POINTS:

TOTAL SERIOUSNESS POINTS (A or B) 20

III. NEGLIGENCE (Max 30 pts.)

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, 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, or the failure to abate any violation due to the same? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Greater degree of fault

ASSIGN NEGLIGENCE POINTS 30

PROVIDE AN EXPLANATION OF POINTS:

*** *According to the inspector statement the violation occurred as a result of indifference to the regulatory requirements that need to be addressed prior to conducting mining activities. The exploration activities commenced prior to the Division completing the review of the application.*

It should be noted that for the past thirty years the Division has reviewed minor coal exploration applications in accordance with the regulatory requirements of the SMCRA. The closure of that review has come in the form of approval or denial of the exploration application. Conducting coal exploration activities prior to that notification results in the

overwhelming possibility of non compliance with the regulations that apply to the proposed exploration activities. The mining community has accepted this form of notification as a measure of knowing that their application has met the requirements of the coal regulatory program.

IV. GOOD FAITH (Max 20 pts.)

(Either A or B)

(Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?

IF SO--EASY ABATEMENT

Easy Abatement Situation

- Immediate Compliance -11 to -20*
(Immediately following the issuance of the NOV)
- Rapid Compliance -1 to -10
(Permittee used diligence to abate the violation)
- Normal Compliance 0
(Operator complied within the abatement period required)
(Operator complied with condition and/or terms of approved Mining and Reclamation Plan)

*Assign in upper or lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

- Rapid Compliance -11 to -20*
(Permittee used diligence to abate the violation)
- Normal Compliance -1 to -10*
(Operator complied within the abatement period required)
- Extended Compliance 0
(Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete)
(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? _____

ASSIGN GOOD FAITH POINTS 0

PROVIDE AN EXPLANATION OF POINTS:

******Good faith does not apply as no abatement was required by the notice of violation.***

V. ASSESSMENT SUMMARY

NOTICE OF VIOLATION # N10029

I.	TOTAL HISTORY POINTS	<u>0</u>
II.	TOTAL SERIOUSNESS POINTS	<u>20</u>
III.	TOTAL NEGLIGENCE POINTS	<u>30</u>
IV.	TOTAL GOOD FAITH POINTS	<u>0</u>
	TOTAL ASSESSED POINTS	<u>50</u>
	TOTAL ASSESSED FINE	<u>\$ 3,300</u>