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JON M. HUNTSMAN, JR.  
Governor

GARY R. HERBERT  
Lieutenant Governor

# State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER  
Executive Director

Division of Oil, Gas and Mining

JOHN R. BAZA  
Division Director

C0150025

OK

February 10, 2009

CERTIFIED MAIL

7005 2570 0000 4801 7017

Elliot Finley  
Hiawatha Coal Company  
P.O. Box 1240  
Huntington, Utah84528

Subject: Assessments Conference for State Notice of Violation, No. N10034, Hiawatha Coal Company  
Bear Canyon Mine C/015/0025

Dear Mr. Finley:

In accordance with R645-401-700 and your request dated February 5, 2009 please be advised that an informal assessment conference for Notice of Violation No. N10034, Hiawatha Coal Company, Bear Canyon Mine C/015/0025 has been established for Wednesday, February 18, 2009 beginning at 11:00 a.m. This assessment conference is to review the Fact of Violation and the proposed penalty assessment.

Pertinent, written material you wish reviewed before the conference can be forwarded to Dana Dean, Associate Director, Mining and Assessment Conference Officer, at the address listed below.

The conference will be held in the Salt Lake City Office of the Department of Natural Resources. Please check in at the DNR front desk and then proceed to the conference room.

Sincerely,

Vickie Southwick  
Executive Secretary

vs

cc: Karl Houskeeper  
Dana Dean  
Joe Helfrich

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**OFFICIAL USE**

Postage	LETTER DATED 2/10/2009
Certified Fee	ASSESSMENT CONFERENCE
Return Receipt Fee (Endorsement Required)	VIOLATION N10034
Restricted Delivery Fee (Endorsement Required)	HIAWATHA COAL COMPANY
Total Postage & Fees	BEAR CANYON MINE C0150025

**0016**

ELLIOT FINLEY	
HIAWATHA COAL COMPANY	
P.O. BOX 1240	
HUNTINGTON UTAH84528	

PS Form 3800, June 2002

See Reverse for Instructions

*Peter W. Guyon, P.C.*  
*Attorney & Counselor at Law*

*Licensed in Utah and Nevada*

*a Professional Corporation*  
February 9, 2009

*614 Newhouse Building*  
*10 Exchange Place*  
*Salt Lake City, UT 84111*

To:  
STATE OF UTAH  
Department of Natural Resources  
DIVISION OF OIL, GAS AND MINING  
1594 West North Temple, Suite 1210  
Post Office Box 145801  
Salt Lake City, UT 84114-7458

*Telephone: (801) 322-5555*  
*Facsimile: (801) 322-5558*  
*Email: pguyon@yahoo.com*

*via first-class mail and facsimile to: (801) 359-3940*

RE: Cessation Order on Bear Canyon Mine

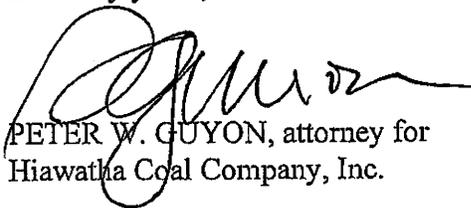
### REQUEST FOR INFORMAL HEARING

Dear Sirs:

On February 5, 2009 the Utah Division of Oil, Gas, & Mining issued the attached Cessation Order to Hiawatha Coal Company. Pursuant to DOGM Rule R-645-400-350, Hiawatha hereby requests an informal hearing.

Because the Cessation Order is causing immediate, continuing, and irreparable harm to Hiawatha, its customers, employees, and creditors, Hiawatha requests an expedited hearing.

Sincerely yours,



PETER W. GUYON, attorney for  
Hiawatha Coal Company, Inc.

PWG/me

cc: Elliot Finley

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RE: Cessation Order on Bear Canyon Mine

Dear Sirs:

Hiawatha respectfully requests that DOGM reconsider its action to issue the cessation order of February 5, 2009 based upon the following:

Utah Code Ann. §40-10-22(1)(b) and DOGM Rule R645-400-311 only allow DOGM to issue a cessation order if a permit violation or other condition or practice "[c]reates an imminent danger to the health or safety of the public [ . . . ] or is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources." R645-400-312 states:

Coal mining and reclamation operations conducted by any person without a valid coal mining permit constitute a condition or practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, unless such operations are an integral, uninterrupted extension of previously permitted operations, and the person conducting such operations has filed a timely and complete application for a permit to conduct such operations. [emphasis added]

Hiawatha is clearly engaged in mining operations that are an integral, uninterrupted extension of previously permitted operations (*i.e.*, those of C. W. Mining), and Hiawatha has filed a timely and complete application for a permit to conduct such operations. Under R645-303-300, Hiawatha is entitled to a transfer of C. W. Mining Company's permit if Hiawatha:

341. Is eligible to receive a permit in accordance with R645-300-132 and R645-300-133;
342. Has submitted a performance bond or other guarantee, or obtained the bond coverage of the original permittee, and
343. Meets any other requirements specified by the Division.

Hiawatha has met every DOGM requirement to transfer C. W. Mining Company's permit and is therefore entitled to receive a permit under DOGM regulations. Hiawatha has obtained the bond coverage of the original permittee, and the bond surety remains liable on C. W. Mining Company's reclamation bond. Hiawatha has done everything necessary to obtain a transfer of the reclamation bond into its own name, and is only awaiting the final agreement. It is Hiawatha's belief that Cumberland is waiting on the court and DOGM and that Hiawatha has provided Cumberland proof of its ability to bond. Although Hiawatha understands and believes that bankruptcy court authority is not required either for Hiawatha to obtain its own reclamation bond or for DOGM to exercise its regulatory police power to complete transfer of C. W. Mining Company's permit to Hiawatha, as a precaution Hiawatha has also filed with the bankruptcy court a Motion for Relief from Stay in the C. W. Mining Company bankruptcy, and is requesting an expedited decision on its motion, in order to obtain whatever approvals may be needed. Hiawatha has done everything else DOGM has required to transfer the permit.

Under R645-300-360, until the final transfer of C. W. Mining Company's permit, Hiawatha has assumed the liability and reclamation responsibilities of the existing permit and is entitled to conduct the coal mining and reclamation operations under the terms and conditions of the existing permit ... Under those circumstances, U.C.A. §40-10-22 and DOGM Rules allow Hiawatha to operate Bear Canyon mine under the existing permit, and Hiawatha believes DOGM lacks the statutory authority to issue a cessation order.

Obviously, this action on the part of the Division is exceedingly harmful to Hiawatha and its employees. Because of the cessation order Hiawatha was forced to lay off 70 employees on February 6, 2009. This arose from shutting down the continuous mining sections and support positions, and unless the situation changes, the layoffs can only continue. The human cost is exceedingly great to the families that rely on these paychecks. Damage continues to accrue every day that the continuous mining sections are not active, as they fall behind the longwall section.

Therefore, Hiawatha respectfully requests DOGM to reconsider its position and withdraw its cessation order.

Sincerely yours,



PETER W. GUYON

PWG/me

cc: Elliot Finley

## **Vickie Southwick - Fwd: Hiawatha adv. Aquila**

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**From:** Steve Alder  
**To:** Dana Dean; daron haddock ; John Baza  
**Date:** 2/9/2009 12:41 PM  
**Subject:** Fwd: Hiawatha adv. Aquila  
**Attachments:** Hiawatha adv. Aquila

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These were sent by FAX today, but I have these electronic copies just in case you want one or haven't seen the faxed version.

The letter objects to the action on the pretense that they have a bond but need approval of the court. I don't think so.

The request for a conference is under 645-400-350 and the conference is to be in accordance with our rules. 645-400-350 to 357. I guess we need to schedule a time ASAP at a location near the mine unless they request another location. I would prefer SLC since the trustee may want to attend and most people are nearer to SLC.