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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

Outcomes
C0150025

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November 29, 2010

CERTIFIED MAIL

700 2570 0000 4801 6003

Christopher A. Jones
Prince, Yeates & Geldzahler
City Center I, Suite 900
175 East, 400 South
Salt Lake City, Utah 84111

Subject: Findings of Fact, Conclusions, and Order for Violation #10066 CW Mining c/o Kenneth Rushton, Trustee, Bear Canyon Mine, C/015/0025

Dear Mr. Jones:

On November 18, 2010, an Informal Conference was held to review the assessment for Violation #10066. As a result of a review of all pertinent data and facts, including those presented in the Informal Conference, the attached document constitutes the findings of fact, conclusions, and order.

Within fifteen (15) days of your receipt of this letter, you or your agent may make a written appeal to the Board of Oil, Gas and Mining. To do so, you must escrow the assessed civil penalties with the Division within thirty (30) days of receipt of this letter, but in all cases prior to the Board Hearing. Failure to comply with this requirement will result in a waiver of your right of further recourse.

If no timely appeal is made, this assessed civil penalty of \$462.00 must be tendered within thirty (30) days of your receipt of this letter. Please remit payment to the Division of Oil, Gas and Mining, c/o Vickie Southwick at the address listed below.

Sincerely,

Dana Dean, P.E.
Associate Director
Assessment Conference Officer

dd/vs

Enclosures

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UTAH DIVISION OF OIL, GAS AND MINING
WORKSHEET FOR FINAL ASSESSMENT OF PENALTIES

COMPANY: CW Mining c/o Kenneth Rushton, Trustee
PERMIT: C/015/025
VIOLATION: 10066

ASSESSMENT CONFERENCE OFFICER: Dana Dean

| | Proposed Assessment | Final Assessment |
|---------------------------------|------------------------|---------------------|
| (1) History/Previous Violations | <u>1</u> | <u>1</u> |
| (2) Seriousness | <u>20</u> | <u>20</u> |
| (3) Negligence | <u>20</u> | <u>0</u> |
| (4) Good Faith | <u>0</u> | <u>0</u> |
| Total Points | <u>41</u> | <u>21</u> |

TOTAL ASSESSED FINE \$462.00

NARRATIVE: The Conference Officer reduced the negligence points by 20 because the permittee was not in physical control of the mine at the time of the violation, and have abided by all terms of the permit since taking custody in March of 2010.

**BEFORE THE DIVISION OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

---ooOoo---

**IN THE MATTER OF THE
INFORMAL ASSESSMENT
CONFERENCE for NOTICE OF
VIOLATION AND PROPOSED
ASSESSMENT; VIOLATION No.
N10066, CW MINING-C/O
KENNETH RUSHTON, BEAR
CANYON MINE, C/015/025,
CARBON COUNTY, UTAH**

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**FINDINGS of FACT,
CONCLUSIONS OF LAW
AND ORDER**

CAUSE NO. C/015/025

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On November 18, 2010, the Division of Oil, Gas and Mining (Division) held an Informal Assessment Conference as provided for by R645-401-700 Utah Administrative Code (2010) in response to a request made in behalf of Kenneth Rushton, Bankruptcy Trustee for CW Mining (Permittee) to review the fact of violation and amount assessment for Notice of Violation 10066 (NOV), issued to it on August 26, 2010 for operations at the Bear Canyon Mine, C/015/025, Carbon County, Utah.

ISSUES

The Division in its Notice of Violation found that rules R645-301-731.210, 212, 220, and 223 had been violated. These rules require that groundwater monitoring be conducted according to the plan approved under R645-301-731.200 et seq. The Division assessed a fine of \$2,310.00.

PARTIES

Dana Dean, Associate Director Division of Oil, Gas and Mining served as the hearing officer. The hearing was conducted as an informal adjudicative proceeding. April A. Abate, Division Hydrologist, presented the facts and arguments in support of the Notice of Violation, Joe C. Helfrich, Assessment Officer, presented the arguments concerning the determination of the assessment amount. Daron Haddock, Coal Program Manager, was also in attendance and participated for the Division. Christopher A. Jones represented the Trustee/Permittee and presented the position and arguments on its behalf.

No recording or transcript of the conference was made.

FINDINGS OF FACT

Based on the information provided at the conference, the statements presented by those speaking, and on information in the files of the Division the following Findings and Conclusions were made.

1. The Request for an informal assessment conference was delivered to the Division on October 19, 2010.
2. Notice of the Informal Assessment Conference was provided as required on October 21, 2010.
3. On August 18, 2010 the fourth quarter 2009 water monitoring data for the Bear Canyon Mine was officially submitted to the Division.
4. April Abate reviewed the data and found that four sites were not sampled at all, flow data was not recorded for one site, and pH data was missing from another site.
5. April Abate issued Violation NOV-10066 on August 26, 2010.
6. Mr. Jones did not contest the fact of the violation in the conference.
7. Mr. Jones expressed that his client would take responsibility and correct any problems they can control, but took issue with the application of negligence points in this case. The Trustee was not in physical custody of the mine when this violation occurred. Those operating the mine were later found by the bankruptcy judge to be "trespassers" in the turn-over order. The Trustee would have been proactive in keeping to the terms of the permit if they had been in custody of the mine.
8. Ms. Abate testified that the Trustee has done an exemplary job of complying with permit conditions since taking custody of the mine in March 2010.

CONCLUSIONS OF LAW

1. The approved water-monitoring plan for the Bear Canyon Mine was not followed for the fourth quarter of 2009.
2. The fact of the violation should stand.
3. Based on Mr. Jones' testimony, and the actions the Trustee has taken since taking over physical custody of the mine, the Trustee is found not to be negligent, and the negligence points are reduced to 0.

ORDER

NOW THEREFORE, it is ordered that:

1. The fact of the violation is upheld.
2. The proposed assessment of \$2,310 is now finalized at \$462.00.

SO DETERMINED AND ORDERED this 29th day of November, 2010.



Dana Dean, P.E. Associate Director
Division of Oil, Gas and Mining