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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

Outgoing
C0150025
#3213
K

February 8, 2011

CERTIFIED RETURN RECEIPT
7005 0390 0000 7507 4887

Elliot Finley, Resident Agent
Hiawatha Coal Company
P. O. Box 1240
Huntington, Utah 84528

Subject: Reassessment for State Cessation Order #10034, Hiawatha Coal Company, Bear Canyon Mine, C/015/0025, Outgoing File Task # 3213

Dear Mr. Finley:

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 reassessed civil penalty for the above referenced violation. The violation was issued by Division Inspector, Dana Dean, on February 5, 2009. Rule R645-401-600 et. seq. was used to formulate the penalty. By these rules, any written information which was submitted by you or your agent within fifteen (15) days of receipt of notification by the Division was considered in determining the facts surrounding the violation and the amount of penalty. On March 19, 2009 you were sent a proposed assessment which was based on the information available at the time. Since that time you have provided additional information which has now been used to formulate this revised assessment.

Rule R645-401-800, allows you to contest the penalty or the fact of the violation by submitting (a) a petition to the Board and (b) funds in an amount equal to the reassessment to the Division (to be held in escrow as provided for in R645-401-820) within 30 days of receipt of the reassessment. The penalty must be escrowed prior to commencement of the formal hearing.

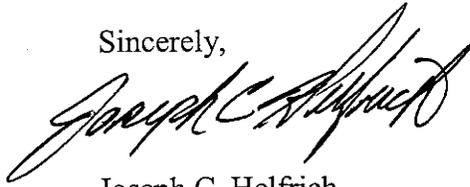
We understand that Hiawatha Coal Company has already filed an appeal to the Board; however, the reassessed penalty must be escrowed with the Division before the hearing can proceed. In lieu of this, you may choose to pay the reassessed penalty and drop the appeal at which time the Division will terminate the Cessation Order and close out the file on this issue.



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Elliot Finley
Hiawatha Coal Company
C0150025
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If you choose not to proceed with the hearing, the fact of violation will stand, the reassessed penalty(ies) will become final, and the penalty(ies) will be due and payable within thirty (30) days of the reassessment. Please remit payment to the Division, mail c/o Suzanne Steab.

Sincerely,



Joseph C. Helfrich
Assessment Officer

Enclosure

cc: OSM Compliance Report
Suzanne Steab, DOGM
Vicki Bailey, DOGM
Price Field Office

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Elliot Finley, Resident Agent
Hiawatha Coal Company
P.O. Box 1240
Huntington, UT 84528

PS Form 3800, June 2002

See Reverse for Instructions

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

COMPANY / MINE Hiawatha Coal Company/Bear Canyon Mine

PERMIT C/015/0025 NOV / CO # 10034 VIOLATION 1 of 1

REASSESSMENT DATE February 8, 2011

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
<u># N10020</u>	<u>12/01/2008</u>	<u>1</u>

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 1

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?

According to the information in the inspector statement the event was conducting mining 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 information in the inspector statement the event occurred. Hiawatha Coal Company has been operating for several months without an adequate bond in place.**

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 information in the inspector statement no damage occurred as a result of the violation.**

B. HINDRANCE VIOLATION (Max 25 pts.)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? Actual
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 The negligence points are reduced from 15 to 9

ASSIGN NEGLIGENCE POINTS 9

PROVIDE AN EXPLANATION OF POINTS:

****Additional information provided by Hiawatha Coal Company, ("E" mail to the assessment officer from Elliot Finley on 1/3/2011), indicated that Hiawatha had a purchase and sale agreement for the Bear Canyon mine with C. W. Mining, paid the maintenance fees and asserted that a bond remained in place. The Division requires that applicants seeking a permit or permit transfer need to post a bond. Some deference is granted here with respect to Hiawatha's point of view.*

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

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

*Assign in upper of 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

- X Rapid Compliance -11 to -20*
(Permittee used diligence to abate the violation)
- X Normal Compliance -1 to -10*
(Operator complied within the abatement period required)
- X 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:

****Castle Valley Resources acquired the permit and posted a bond. That in turn eliminated the need for Hiawatha to abate the cessation order.*

V. ASSESSMENT SUMMARY

NOTICE OF VIOLATION # **N 10034**

I.	TOTAL HISTORY POINTS	<u>1</u>
II.	TOTAL SERIOUSNESS POINTS	<u>20</u>
III.	TOTAL NEGLIGENCE POINTS	<u>9</u>
IV.	TOTAL GOOD FAITH POINTS	<u>0</u>
	TOTAL ASSESSED POINTS	<u>30</u>
	TOTAL ASSESSED FINE	<u>\$ 1100</u>