

EVENT VIOLATION INSPECTOR'S STATEMENT

Company/Mine Alton Coal Development LLC/Alton
Permit #: C/025/0005

NOV 18150

1. What type of event is applicable to the regulation cited? Refer to the DOGM reference list of event below and remember that **the event is NOT the same as the violation.** Mark and explain each event.

- | | | |
|--------------------------|----|--|
| <input type="checkbox"/> | a. | Activity outside the approved permit area. |
| <input type="checkbox"/> | b. | Injury to the public (public safety). |
| <input type="checkbox"/> | c. | Damage to property. |
| <input type="checkbox"/> | d. | Conducting activities without appropriate approvals. |
| <input type="checkbox"/> | e. | Environmental harm. |
| <input type="checkbox"/> | f. | Water pollution. |
| <input type="checkbox"/> | g. | Loss of reclamation/revegetation potential. |
| X | h. | Reduced establishment, diverse and effective vegetative cover. |
| <input type="checkbox"/> | i. | No event occurred as a result of the violation. |
| X | j. | Other. The threat of predation |

Explanation: There are 2 events that are germane to this violation, both involve the failure to decrease the threat of predation and establish a diverse and effective vegetative cover. The events, specifically, were the failure to effectuate these goals by the season deadlines of February 2014 and February 2015.

2. Have the events occurred? Yes

If yes, describe it. If no, what would cause it to occur and what is the probability of the event(s) occurring? (None, Unlikely, Likely).

Explanation: The objectives of a Pinyon/Juniper lop and scatter project, (that is reduce the threat of predation and establish, diverse and effective vegetative cover or stimulation of grass and forb growth) can be easily accomplished in areas where the Pinyon/Juniper has begun to invade a dominate sagebrush vegetative community if the stumps are no greater than 6" in height and the limbs are cut to a height of 24" or less and scattered well enough to allow light to stimulate vegetative growth. The text on page 3 and photos attached to the April 14, 2015 inspection report document the existence of stumps greater than 6" in height and matted limbs greater than 24" in height indicating that the noted events had occurred.

Did any damage occur as a result of the violation?

If yes, describe the duration and extent of the damage or impact. How much damage may have occurred if the violation had not been discovered by a DOGM

inspector? Describe this potential damage and whether or not it would extend off the disturbed and/or permit area.

Explanation: Historically this type of treatment yields positive results almost instantaneously once the raptor perches are removed and the light can get to the bowl area beneath the trees. The establishment of vegetation will have been delayed approximately 2 years assuming the project is completed in the Fall of 2015. The threat of predation would encompass the 355acre parcel and the damage from the two events would extend off the permit area.

B. DEGREE OF FAULT (Check the statements which apply to the violation and discuss).

- Was the violation not the fault of the operator (due to vandalism or an act of God), explain. Remember that the permittee is considered responsible for the actions of all persons working on the mine site.

Explanation: _____

- Was the violation the result of not knowing about DOGM regulations, indifference to DOGM regulations or the result of lack of reasonable care.

Explanation: The permittee has expressed a fundamental outward indifference to the Title V coal rules from the time the first NOV was issued on 6/18/2013 for failing to complete their mitigation obligation until present and it is still evidenced by their consistent recalcitrance in addressing sage grouse mitigation.

- If the actual or potential environmental harm or harm to the public should have been evident to a careful operator, describe the situation and what, if anything, the operator did to correct it prior to being cited.

Explanation: The resident agent and the company's sage grouse consultant are competent biologists and were aware of the risks posed to the birds by failing to perform the mitigation program to the proper best technology standards. The permittee's agents were present at the October 24th, 2014 meeting where the harm was discussed and explained by the Division of Wildlife Resources habitat biologist.

- Was the operator in violation of a specific permit condition?

Explanation: The following text is an excerpt from page 3 of the April 14, 2015 inspection report. It demonstrates that the permittee knowingly failed to comply with the requirements of the MRP and coal rules demonstrating a greater degree of negligence.

“ACD has twice failed to complete sage-grouse mitigation work for the 355-acre project on time. The September 19, 2013 BLM letter authorized the “removal of pinyon and juniper trees within the 355 acres.” At an October 24, 2013 meeting where ACD’s skilled biologists were present, the Division of Wildlife Resources (DWR) explained what standards were necessary for the mitigation work to benefit the sage grouse population. On October 28, 2013, the Division of Oil, Gas and Mining (DOG M) approved an amendment to the Mining Reclamation Plan (MRP), which included a requirement that the stump height of any felled tree would not exceed six (6) inches. ACD failed to meet this standard by the beginning of the 2014 February-to-July mating season. The BLM later clarified what standard it required on its land in its February 28, 2014 letter to DOGM. On March 21, 2014, DOGM later incorporated an amendment to the MRP where ACD admitted that “[a]fter assessment of the project in early 2014 by the BLM, it was decided that additional work needed to be done in the appropriate season of 2014 as per the letter dated 3/3/2014 from [the BLM]. . . .” Again, ACD failed to complete the additional work required to meet those standards that the BLM, DWR, and DOGM have provided to ACD by the end of the working season of 2014 and 2015. At the beginning of the 2015 February-to-July mating season, the 355-acre project has still not been mitigated to an adequate standard”.

- X Has DOGM or OSM cited the violation in the past? If so, give the dates and the type of warning or enforcement action taken.

Explanation: NOV 10123 was issued on 6/18/2013 for the permittee’s failure to complete mitigation as required by the approved MRP. The Division offered to dismiss the NOV if the permittee would implement a Lop and scatter mitigation project on a 355 acre parcel of BLM property. The permittee accepted, the violation was dismissed and the project was never completed as required by the MRP.

C. GOOD FAITH

1. In order to receive good faith for compliance with an NOV or CO, the violation must have been abated before the abatement deadline. If you think this applies, describe how rapid compliance was achieved (give date) and describe the measures the operator took to comply as rapidly as possible.

Explanation:

2. Explain whether or not the operator had the necessary resources on site to achieve compliance.

Explanation: The permittee performed some of the work, but failed to meet the proper standards. So it is the unfortunate circumstance where the work was started and not finished. Because there is little to no benefit until the standards are completely satisfied, the partial work does little more than demonstrate that the permittee had the resources to meet the standards. In addition to that, the permittee could have provided funds which they had to DWR to complete the work under the Watershed Restoration Initiative program.

3. Was the submission of plans prior to physical activity required by this NOV / CO? If yes, explain.

Explanation: The following text is an excerpt from page 3 of the April 14, 2015 inspection report:

"ACD must do one of two things:

(1) Provide an amendment to the MRP that expressly includes the standards provided by DWR, BLM, and DOGM by May 18, 2015. That amendment must include a deadline to complete the work to the above standards by October 31, 2015 or eight (8) weeks after DWR or DOGM has confirmed that it is a safe time to begin mitigation work, whichever date is earlier.

(2) Establish and fund a project with the Utah Partners in Conservation Development (UPCD) by July 1, 2015 to finish the work on this 355-acre area.

In addition, ACD must provide an amendment to the MRP by May 18, 2015 that gives specific and detailed plans for the 240-acre mitigation project for the calendar year 2015, with a deadline of December 31, 2015".

On May 18, 2015 the Division received a response to these abatement requirements. The response did not include an amendment to the MRP that gave specific and detailed plans for the 240-acre mitigation project for the calendar year 2015, with a deadline of December 31, 2015. On June 17th the NOV was extended to June 23rd. The permittee met that deadline and the abatement measures were adequate to terminate the NOV on July 14, 2015.

Event Violation Inspector's Statement

NOV/CO # 18150
Violation # 1 of 1

Joe Helfrich
Authorized Representative


Signature

05/20/2015
Date

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