Suzanne Steab <suzannesteab@utah.gov>

Response to Ten Day Notice X-16-140-545-004

Dana Dean <danadean@utah.gov> Wed, Apr 6, 2016 at 4:54 PM
To: "Boehms, Alan" <aboehms@osmre.gov>, John Spencer Shumate <jshumate@osmre.gov>
Cc: Daron Haddock <daronhaddock@utah.gov>, John Baza <johnbaza@utah.gov>, Steve Alder <stevealder@utah.gov>, Melissa Reynolds <mreynolds@utah.gov>, Steve Christensen <stevechristensen@utah.gov>, OGMCOAL DNR <ogmcoal@utah.gov>, Suzanne Steab <suzannesteab@utah.gov>

Hello Allen and Spencer,

Please see the attached response to the Ten Day Notice. I am placing the hard copy in the mail this afternoon as well.

Please let me know if you have any questions.

Thank you,
Dana

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

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2 attachments

TDN Response.pdf
978K

Signed Response.pdf
9968K

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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

April 6, 2016

Alan Boehms, Manager
Office of Surface Mining
Denver Field Branch
1999 Broadway, Suite 3320
Denver, CO 80202

SUBJECT: Ten Day Notice #X16-140-545-004 (Bear Canyon Mine).

Dear Mr. Boehms,

The Utah Division of Oil, Gas and Mining (Division) received a Ten Day Notice (TDN) issued by the Office of Surface Mining, Reclamation and Enforcement (OSMRE) on March 21, 2016. The TDN was issued as a result of noncompliant conditions identified by OSMRE at the Bear Canyon Mine during the course of the 2015 and 2016 Independent Partial Oversight Inspections. The OSMRE Oversight Inspection Reports are understood to identify the issues that OSMRE requires the Division to address in response to the TDN.

The Division requested additional time to conduct an inspection of the mine and thereafter formulate a thorough response. The time for responding was extended to April 6, 2016.

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UTAH DNR OIL, GAS & MINING

Background and Issues

The May 13, 2015 Oversight Inspection of the Bear Canyon Mine identified numerous conditions of noncompliance. As a result, the Division's inspector issued four Notices of Violation (NOVs): NOV # 19151, NOV # 19152, NOV # 19153, and NOV # 19154 to Castle Valley Mining, LLC (operator of the Bear Canyon Mine) on June 18, 2015. The Division and OSMRE each filed an inspection report detailing their observations and findings. OSMRE was subsequently notified that three of the violations (NOV # 19151, NOV # 19152, and NOV # 19154) were vacated, and the fourth (NOV # 19153) was terminated on September 10, 2015. "For this reason, OSMRE selected the Bear Canyon Mine as part of the EY 2016 OSMRE Independent Oversight Inspection schedule," OSMRE March Inspection Report at 1, and proceeded with an Oversight Inspection on March 3, 2016.

After the March inspection, OSMRE issued the TDN to the Division. The TDN provides a list of seven "conditions believed to have been violated" but the TDN does not identify the locations of the violations. The accompanying inspection report, described as a "compilation of the EY 2015 and EY 2016 inspection reports," includes observations that primarily address the violations observed during the 2015 inspection. The report states these violations "are considered still applicable". *Id.* at 1. This inspection report concludes: "As a result of the conditions observed during this inspection, OSMRE has issued TDN # X16-141-545-004 to DOGM for noncompliance of the following Rules and noncompliance issues:

1. Failure to maintain inlets to sediment ponds (Rule R645-301-742.123);
2. Failure to control non-coal waste (Rule R645-301-528.331);
3. Encroachment of the Stream Buffer Zone (Rule R645-301-731.600);

4. Failure to maintain support facilities and maintain sediment control structures so as to prevent contribution of suspended solids to the undisturbed drainage (Rules R645-301-521.170, 742.200, 742.423.2, and 742.423.3)" *Id.* at 6.

These four issues are identical to the enforcement issues as listed in OSMRE's 2015 inspection report and the four NOVs issued by the Division at the conclusion of the 2015 Inspection.

Summary of the Response

The Division's Response will focus on the four NOV issues described in OSMRE's March inspection report. It will review the conditions when the Division issued the original NOVs, when the NOVs were vacated or terminated, as described in the OSMRE March 3, 2016 Inspection Report, and as observed by the Division on its March 29, 2016 Inspection. The Division will also address the appropriateness of the inspector's decision to vacate or terminate the NOVs. After considering the current status of these violations based on the Division's March 2016 inspection, the Division will describe what actions it is taking to correct any violations, including reinstating NOVs and requiring additional abatement requirements, and issuing a new NOV. Finally, the Response will address OSMRE's comments regarding what it viewed as a "reluctance" of the Division inspector who attended the March Inspection to issue NOVs for noncompliance issues, and OSMRE's concerns that Division inspectors are generally reluctant to issue NOVs and ensure that program compliance is achieved.

If this response fails to address all of the issues included in the TDN, the Division asks that OSMRE provide further clarification of additional questions, and will be glad to provide any additional response required.

Under 30 C.F.R. § 842.11, the Division is required to take appropriate action to cause the possible violations to be corrected, or to show good cause for such failure. Appropriate action includes

enforcement or other actions under the State program to cause the violations to be corrected. 30 C.F.R. § 842.11(b)(1)(ii)(B)(3). Good cause includes showing the violations do not exist under the approved state program. 30 C.F.R. § 842.11(b)(1)(ii)(B)(4)(i). Based on its review of the record of inspections and actions taken by the Division and operator, and after viewing the conditions at the Bear Canyon Mine during its inspection on March 29, 2016, the Division is taking the following actions, which it believes will cause the problems identified by the TDN to be corrected:

A. The Division finds that the NOVs issued after the 2015 OSMRE Oversight Inspection were improperly vacated or terminated. Accordingly, these NOVs are being modified to reinstate the violations. Where abatement has not yet been fully achieved, the operator will be advised of the additional abatement actions required, and of dates for completion of those abatement actions.

B. The reinstated NOVs shall be subject to penalties, and the operator will be afforded all rights to proceed with informal conferences to appeal the fact of violation or penalty as existed as of the date they were vacated.

C. The Division observed conditions beyond those identified by OSMRE that warranted a separate NOV. While investigating OSMRE's prior finding of coal fines being deposited below the conveyor system, the Division observed that, due to problems with the conveyor system in addition to those noted by OSMRE, a new and substantial amount of coal waste had been deposited in undisturbed areas. Although clean-up had begun for a portion of the coal waste, NOV # 21171 was issued since the coal was deposited as a result of a separate and additional failure of the conveyor system.

The March inspection report included comments suggesting that the Division has violated the Act by telling inspectors to avoid issuing NOVs. Again, in order to meet the requirements for a TDN response, the Division can show good cause for an alleged failure, which includes demonstrating that

violation does not exist under the State program. 30 C.F.R. § 842.11. The Division has never admonished inspectors to restrain from issuing violations when an inspection reveals that an enforcement action is warranted. On the contrary, inspectors are advised to issue NOVs whenever they see violations. However, there have been occasions when violations have been vacated or rescinded upon review by counsel or supervisors because the NOVs were considered unsupportable or without justification. These instances have been rare, were within the appropriate oversight required by supervisors and counsel, and were justified. The NOVs involved in such oversight actions are not comparable to the violations identified in the 2015 Bear Canyon oversight inspections. However, it appears that such actions may have been misunderstood or misconstrued by Division inspectors.

The Division has sought to improve the effectiveness of its enforcement program during 2015. Specifically, the Division has instituted two additional training programs for inspectors: a one-day program conducted by an outside mediator, and a three-day program conducted by OSMRE. These programs were intended to improve the quality of enforcement by the Division's inspectors. However, information gathered during the investigations undertaken to respond to this TDN has revealed that further training of inspectors and better communication between supervisors and inspectors is needed and further training is warranted to assure that program compliance is achieved.

This TDN Response includes the following attachments:

- Division Inspection Report for the March 29, 2016 inspection
- Modifications of the NOVs reinstating the vacated NOVs and clarifying what additional abatement, if any, is required.
- NOV # 21171, issued as a result of conditions observed during that March 29, 2016 inspection.

Analysis of NOVs and Current Conditions

The following analysis addresses the specific NOVs, reports by the Division and OSMRE inspectors, and the Division's observations at the follow-up inspection.

A. NOV # 19151: Failure to maintain inlets to sediment ponds. (Rule R645-301-742.123)

This NOV noted violations at each of four sediment ponds at Bear Canyon Mine. The noncompliance for each pond, described in the inspection reports, is discussed below. The vacation and termination of the NOV is analyzed at the end of this review of the violations and current conditions.

1. Sediment Control Pond A.

The NOV noted that there was an eroded area at the inlet to pond A that was in need of repair, and that there were coal wastes on the embankment. The abatement set forth in the NOV required the operator to clean and re-establish riprap at the inlet and move waste material to a coal waste stockpile from the pond embankment. For the inlet of sediment pond A, OSMRE argued that excessive sediment was creating a "paving effect," and that there was excessive erosion due in part from the use of the inlet as a clean-out ramp.

Pictures attached to the Division's August 26, 2015 inspection report show that the inlet has new riprap material and that the area where there was a pile of coal waste appears to have been excavated and the coal wastes removed. Thus, the conditions resulting in the violation for Pond A may have been abated as of that date.

The March 3, 2016 OSMRE inspection notes that the pond inlet was repaired and that the excavated material was mostly removed. The inspector noted that there was new erosional damage at the spillway and again stated that sediment had created a paving effect at the inlet. At its March 29th inspection, the Division found that the coal waste was satisfactorily removed and new riprap had been

installed on the inlet and found to be adequate. The portion of the NOV regarding pond A can be terminated.

2. Sediment Control Pond B.

The 2015 NOV and Division inspection report for Pond B mentions two problems: runoff from the road creating an erosion problem at the inlet, and lack of design plans for the CVP inlet culvert. The OSMRE inspection report noted four problems: the significant erosion to pond inlet, lack of grouted riprap, the lack of an approved plan for the corrugated pipe inlet, and concerns for short circuiting. At the time of the Division's August 26, 2015 inspection, the photographs show that the inlet erosion problem had been repaired by placing new riprap materials at the inlet. The Division noted that the MRP for Pond B had been modified in response to an earlier NOV (# 10068) to provide for the culvert discharge into the pond. Accordingly, the NOV was modified to eliminate the requirement to update the MRP. The Division has verified that the revision to the MRP was approved. The OSMRE inspector did not include this issue as a violation in the 2016 Inspection report or in the TDN.

The March 2016 Inspection by OSMRE noted that the spillway was repaired, but not grouted. The Division found the same conditions during its March 29, 2016 inspection. The Appendix to the permit does require grouted riprap for the #1 inlet. Thus, all abatement required by the NOV for pond B has been completed with the exception of grouting inlet #1, and the NOV is reinstated to require correction of this issue.

3. Sediment Control Pond C.

The NOV for Pond C required the operator to clean-out and re-establish a rip-rapped inlet channel and to repair the erosion on the out-slope of the leach field upstream from the inlet channel. The Division's inspection report noted that there was a question about whether the MRP required

modification for what was thought to be an additional inlet. The 2015 OSMRE Inspection report stated that a paving effect had occurred at the inlet, so the inlet was not functioning properly.

The August 26, 2015 inspection pictures show that the riprap in the inlet was re-established, the erosion from the out-slope of the leach field was repaired which eliminated what was thought to be a second inlet, and a check dam was added to reduce erosion. This action resulted in the modification of the NOV to eliminate the update to the MRP.

The March OSMRE inspection report again noted that a paving effect had occurred at the inlet. It also described the check dam, but indicated that OSMRE was unsure whether the feature is included in the MRP. The Division's March 2016 inspection found the inlet to be rip-rapped and in a proper condition, and the area below the leach field to have been repaired. The additional drainage feature is not included in the operator's MRP. Rather, the operator chose to install it as a precautionary measure, which does not constitute a violation. Thus, all abatement required by the original NOV was completed. Therefore, no violation currently exists with respect to Sediment Pond C.

4 . Sediment Control Pond D.

The NOV for Pond D noted an eroded inlet channel resulting from drainage from pad #3 area. There appeared to be some confusion about an additional inflow to the pond. The Division inspection noted that there seemed to be a required update to the MRP to show an additional inlet. This required update to the MRP was later eliminated by modifying the NOV, because the additional inlet was erosional and not meant to exist. The May 2015 OSMRE report said the new inlet was the result of significant erosion and noted that the pond inlet should have been protected using grouted riprap.

The August inspection pictures show that the erosion was repaired and riprap was placed at the inlet from the pad #3. The OSMRE March 3, 2016 inspection report again notes that erosion had created

an additional inlet and that the inlet should have been grouted. The OSMRE March report also objected to slurry, snow, and non-coal waste on the embankment, and that snow storage areas were not being used. On March 29, 2016 the non-coal waste had been removed, and the Division did not observe snow or slurry on the embankment. The Division did observe the inlet from pad #3 was in need of repair, as erosion was again cutting into the pad and riprap was not in good condition.

The NOV appears to have been abated by the August 2015 inspection, except for the lack of grouted riprap on the inlet from pad #3. The Division notes this pond either is poorly designed or needs additional attention, and will address the requirements to protect the inlet with grouted riprap to prevent further erosion in the modified NOV.

5. Vacation of NOV # 19151

NOV #19151 was vacated on September 10, 2015 and provided only a general statement applying to the entire NOV. Specifically, it stated that the NOV was being vacated because, at the time of the May oversight inspection, "the Division's inspector and hydrologist had not yet identified conditions that the operator should have attended to in order to avoid a violation." The Division recognizes that this rationale is not proper for vacating an NOV, because it does not change the fact that the violation occurred. Indeed the facts that constituted the violation were documented by OSMRE photographs, and are not denied by the Division inspector.

The prior inspection reports are silent on the need for a hydrologist to make any recommendations on how to avoid violations. A hydrologist should not be required to advise the operator to repair the riprap and erosional problems. The abatement required by the NOV did not discuss working with the Division's hydrologist, but only required repairing erosion and re-establishing riprap. In any event, a plan to address sediment pond repairs in the future would not preclude a finding of

noncompliance with the required plans at the time of the inspection. Finally, the July visit with the hydrologist did not include any reference to revising sediment pond designs or operations.

The Division finds that there was not a valid reason for vacating the NOV. Therefore, the NOV will be modified to reinstate the violations, and the abatement required will be amended to reflect current on-the-ground conditions.

B. NOV # 19152: Failure to control non-coal waste. (Rule R645-301-528.331)

This NOV identified the presence of non-coal waste throughout the mining permit area and outside of the permit area in the stream buffer zone. The abatement required removing the non-coal wastes from the four sediment ponds, stream buffer zone, and the outslope of pad #3 and ensuring that non-coal waste at portal #4 and within the disturbed and adjacent area be properly stored. The 2015 OSMRE inspection report noted that the waste was not excessive in one particular area, but that it was a problem throughout the mine area. The abatement date for this NOV was extended until August 17th at the operator's request. The Division's August 26, 2015 photos show no evidence of non-coal waste in the sediment ponds, the stream buffer zone, or on the outslope of pad #3. However, the photos do indicate that some non-coal waste might not have been properly stored.

The March 2016 OSMRE Inspection observed that non-coal wastes were still a problem and provided a list of non-coal waste items observed, which included an old truck and routine trash. At the time of the Division's March 29, 2016 inspection, the non-coal wastes were generally absent except for some trash in Sediment Pond B. There are some items included as non-coal waste in OSMRE's inspection—such as the old truck body and pre-law coal waste–that the Division does not consider a violation. The truck body and the bony coal has been in that location since before this mine began operations and are not the liability of this operator. Generally the site appeared clean. The operator

removed non-coal waste from all drainages and has placed trash barrels around the office, which were being put to use.

This NOV was also vacated on September 10, 2015. The reasons provided were because (a) permittee had made progress between December 2014 and May 13, 2015 to remove large items, and (b) the small trash that remained was like the trash found at the Deer Creek mine during 6 inspections and there, no NOV was warranted. The Division finds that the reasons given do not negate the conditions observed and documented by OSMRE at the 2015 inspection and again at the 2016 inspection. The removal of some large items would not negate a violation in any event if there was excessive small trash. The second justification is obviously not valid and is discussed in more detail in the Division's response concerning allegations that the Division has told inspectors to not issue violations. The Division is modifying this this NOV to reinstate it because a violation existed in May of 2015 and there was no valid reason for vacating the NOV. In its modification reinstating the NOV, the Division has determined that the abatement requirements have been met and the NOV can be terminated. However, it is still subject to the penalty and the same rights to appeal as existed as of the date of vacation.

C. NOV # 19153: Encroachment of the Stream Buffer Zone (Rule R645-301-731.600)

This NOV stated that the operator had encroached into the stream buffer zone. The required abatement included removing materials from storage areas that had spilled into the buffer zone, removing hoses and other equipment used to decant pond A to pond B, and submitting plans for the clean-up of coal or coal fines in the stream buffer zone. Because the operator had begun removing the materials and coal fines by July, the inspector modified the NOV to no longer require plans to be submitted. This indicates that the ultimate goal of the NOV was to have the coal and coal fines removed from the stream buffer zone. OSMRE's May 2015 inspection report indicated three concerns regarding

disturbance within the stream buffer zone: a wooden structure, a mine employee cutting limbs along a footpath, and non-coal waste items including pump hoses and a bag of Calcium Chloride.

OSMRE's March 2016 inspection described similar issues related to encroachment of the stream buffer zone. While OSMRE indicated that the pump hoses had been removed, it stated that other disturbances had not been addressed. OSMRE's inspection also described coal fines that have been deposited into the stream buffer zone. When the Division conducted its inspection on March 29, it observed that many of the problems described by OSMRE had been remedied, and that one issue is not a violation under the State program. The non-coal waste items that were in the stream buffer zone had been removed, as had the wooden structure. However, the footpath referenced in OSMRE's report was actually created by a resident who lives nearby, and is not part of mining or reclamation activities at the mine. As such, the footpath does not present a violation on the part of the operator. Finally, the Division observed that the coal and coal fines are still located within the stream buffer zone.

At an informal conference held in August, the fact of this violation was upheld. Then, the NOV was terminated on September 10, 2015 because the permittee had met the abatement requirements outlined in the NOV. It seems that, by August 26, the non-coal waste items that the Division considers to have been in violation of this rule had been removed. Thus, it may have been appropriate to terminate the NOV with respect to those items. However, the abatement required for the coal and coal fines in the stream buffer zone had the underlying goal of having the operator clean up that material. Therefore, it may not have been appropriate to terminate the NOV with respect to the coal and coal fines. As discussed in Section E, the coal and coal fines in the stream buffer zone will be addressed by a new NOV. Because the other items that did encroach in the stream buffer zone have been removed, NOV #19153 will keep its "terminated" status.

D. NOV #19154: Failure to maintain support facilities and sediment control structures.

This NOV addressed the operator's failure to maintain the overland conveyor system and sediment control structures, and described the coal and coal fine slurry and sediment that had been deposited into the undisturbed drainage adjacent to Bear Creek. This section will discuss each in turn, going through both the Division's and OSMRE's observations at the May 2015 and March 2016 inspections, and the vacation of the NOV.

1. Failure to maintain support facilities (Rule R645-301-521.170)

The NOV noted that the operator had failed to maintain the overland conveyor from the #3 portal, and required the operator to repair the conveyor cover system and the coal slurry leaks. The abatement also included submitting plans to clean up the coal and coal fine slurry and sediment that had gone into the drainage of Bear Creek. Because the operator was in the process of cleaning up the drainage in July, the NOV was modified to no longer require the operator to submit plans for this cleanup. The 2015 OSMRE Inspection also stated that the overland conveyor was missing a side panel, which led to a significant amount of coal to fall into the undisturbed drainage flowing to Bear Creek.

OSMRE's March 2016 Inspection indicated that the overland conveyor was still missing a side panel. It also described other sections of the conveyor that had fallen into disrepair, which allowed more coal to fall into the undisturbed drainage of Bear Creek. During the March 29, 2016 inspection, the Division also observed broken side panels and support bars throughout the length of the overland conveyor. This had caused several of the pans beneath the conveyor to bend, which could allow even more coal and coal fines to fall into the drainage below. This indicates the overland conveyor system was never fixed as required by the NOV, and that it is still in need of significant repairs.

This NOV was vacated on September 10, 2015. The portion that related to the overland conveyor was vacated because the operator was "aware of the repairs that were required to prevent the coal slurry from entering the undisturbed drainage of Bear Creek." In addition, the materials needed to make the repairs had been purchased, but simply had not been received. The Division does not agree that this was an appropriate reason to vacate this portion of the NOV. The fact that the operator knows what it needs to do to complete abatement and is simply awaiting the arrival of materials does not negate the fact that a violation occurred. Here, when side panels and support bars to the overland conveyor broke and the operator did nothing to fix them, a violation occurred. This NOV will be modified to omit the requirement to maintain the overland conveyor system because this will now be part of the abatement for the newly issued NOV #21171. The reinstated NOV will not address the coal and coal fines that have gone into the undisturbed drainage nor the maintenance required on the overland conveyor because, as discussed in Section E below, the Division will issue a new NOV for those violations.

2. Failure to maintain sediment control structures (Rules R645-301-742.200 (siltation structures), -742.423.2 (drainage pipes and culverts), and -742.423.3 (drainage ditches))

This portion of the NOV stated that the operator failed to maintain sediment control structures on the #4 portal access road and one of the culverts so as to prevent contributions of additional suspended solids to the undisturbed drainage adjacent to Bear Creek. To abate this portion, the operator had to repair the sediment control structures and eroded embankments on the access road to the #4 portal. The 2015 OSMRE inspection stated that the drainage beneath the main haul road had not been maintained. It explained that the permit requires the maintenance of erosion control matting, but that no matting was observed at the inspection. OSMRE also expressed concern that ASCAs along the access road had

not been maintained, which led to cutting around the sides of the ASCAs. In addition, OSMRE identified a damaged culvert on the road leading to Portal #4.

During the March inspection, OSMRE stated that it was unable to determine whether the culvert on the access road leading to Portal #4 had been repaired. OSMRE's inspection report also discusses a dilapidated silt fence within the boundary of the stream buffer zone and states that the drainage pipe that crosses under the main haul road has not been maintained. Although many of the ASCAs had been repaired, some were still in poor condition. OSMRE expressed concern that the operator had removed a silt fence without replacing it, and that the Division has allowed this to take place. Finally, OSMRE noted that numerous culverts had been clogged with snow and mud.

The Division's March 29, 2016 inspection confirmed some of OSMRE's concerns. The Division observed that at least one culvert along the access road to Portal #4 has been crushed, and that several others are partially blocked by mud and other material. In addition, the ASCA on the same access road is in need of repair, as piping is currently occurring around the side of the ASCA.

The sediment control structures portion of the NOV was vacated because the operator had maintained a majority of the ditches associated with the run-off controls for the road. However, the vacation noted that two ASCAs and several culverts also needed to be repaired, and stated that "a violation is not warranted under these circumstances." The Division does not agree with this reasoning for vacating the NOV. Even if a portion of the abatement had been conducted by September 10, 2015, that does not negate the fact that there was a violation for failing to maintain those ditches in the first place. Further, where two ASCAs and numerous culverts are still in need of repair, vacating an NOV is improper. Therefore, the Division is modifying this NOV to reinstate the violations. The abatement

required will include repairing the damaged culverts and clearing them of materials that are causing blockage and repairing the ASCAs that are not properly maintained.

E. New NOV # 21171.

The Division recognizes that some coal and coal fines have been in the drainage of Bear Creek since the May 2015 inspection. As discussed above, it was improper to vacate NOV #19154, which required the operator to clean up the coal and coal fines that had fallen into the undisturbed drainage. The Division finds that additional coal has been deposited into the undisturbed drainage area since the May 2015 inspection. Further, coal has fallen beneath the conveyor in another location, due to breaks in the panels and support bars of the conveyor system. The Division considers these spills serious, and is issuing a new NOV to the operator to deal with these violations. Because a new deposit occurred since 2015, the Division is providing the operator with additional abatement time to remedy the situation. A Division assessment officer will assess additional penalties for this new NOV.

Response to OSMRE's Observation of a Reluctance to Issue Notices of Violation

The March 3, 2016 OSMRE Independent Oversight Inspection Report made two observations concerning an apparent reluctance of Division Inspectors to issue NOVs. The first comment pertained to the reluctance of the inspector who accompanied the OSMRE inspector on March 3 to issue NOVs at the time of the inspection. However, the only reason that inspector was reluctant to issue NOVs was because he is not the assigned inspector for Bear Canyon Mine and it would not have been proper for him to issue NOVs. This is especially true where he had not attended the previous oversight inspection to which this was the follow-up. The Division supports this action by the inspector. Absent a condition of imminent harm or other emergency, it is the policy of the Division for inspectors not assigned to a

particular mine to defer such actions to the regular assigned inspector. This particular inspector attended the 2016 Oversight inspection because the assigned inspector was not available that day and the Division needed a representative to attend.

The second comment relates to OSMRE's concern that Division inspectors in general seem to be reluctant to issue NOVs to ensure that program compliance is achieved. In support of this concern, OSMRE quoted language indicating that an inspector was not issuing an NOV because the deficiency in question was minor. The language suggests that the Division has issued an admonition to all inspectors regarding violations "for minor deficiencies in the context of the operations." This is not the case. The language was most likely taken from an inspection report written by another inspector during the 2015 time period. The Division has determined during its investigation and response to the TDN that this inspector used the quoted language over a period of several months as a reason for not issuing NOVs for non-coal waste violations at the SUFCO mine. This appears to have been a reaction to an earlier decision by the Division Director. that vacated NOV # 13157 and NOV # 13156 issued for failure to control or maintain non-coal waste at the SUFCO Mine and for failure to maintain a current insurance form at the mine. One reason for the vacation was that they were "minor deficiencies in the context of the operations." A third NOV issued the same day by the same inspector for failure to display an identification sign at the point of public access to an overflow sedimentation pond was vacated by the inspector prior to the hearing after discovering a sign nearby.

These three NOVs were issued less than two weeks after the informal conference was held for five NOVs that had been written by another inspector at the same mine one month earlier. Those five NOVs all related one storm-event and resulting runoff problems. At the informal conference held October 29, 2014 two of the NOVs were vacated, two were upheld, and one was vacated subject to

required remedial action. Thus, the Director's decision and language used in vacating NOV #13157 at the SUFCO mine less than a month later was in the context of the issuance of these numerous violations and what appeared to be a relationship problem between the inspector and operator. The Director felt the context of the many violations some of which were quite technical, warranted better communications between the inspector and the operator. The inspector's use of this language at the SUFCO mine to justify not issuing violations for six months of non-coal waste problems was not approved by the Division. The inspector either misunderstood or misconstrued the decision and misapplied it for other reasons.

The inspector of the Bear Canyon Mine was the person responsible for reviewing the SUFCO inspection reports. Rather than discussing or questioning the application of the decision language to these ongoing and uncorrected conditions he apparently adopted the language for similar use when deciding to vacate NOV #10152 at the Bear Canyon Mine. The Division also agrees that there has been an apparent reluctance by the inspector assigned to Bear Canyon Mine to issue NOVs at this mine. It is believed that the inspector did not see his inaction as failing to ensure program compliance, but rather as a means to work with the operator to achieve compliance. The Division has not given any admonition to its inspectors to refrain from issuing violations. Rather, during the period in question, the Division has provided training and made changes in the NOV review process to provide greater confidence that an inspector's judgment will be supported when writing an NOV. In the case of the NOVs issued to Bear Canyon Mine in 2015, the one violation that was addressed at an informal conference was upheld. Again, the inspector's decision to later terminate that NOV was not proper.

The Division was not aware of the use that had been made of the January 20, 2015 decision or the specific language inserted into the inspection reports. The Division was aware of a degree of discord

that had developed as a result of the SUFCO NOV decisions and other events. In an effort to improve the relationship between supervisors and inspectors, the Division scheduled a one day training and discussion with an outside mediator for all inspectors, attorneys, and supervisors. The meeting was intended to discuss the issues related to inspections and enforcement. This meeting was held in August of 2015 prior to the vacation of the Bear Canyon NOVs. The vacating of the NOVs and reliance on the prior language suggests that this training did not sufficiently address the issue of inspector discretion to write violations. A second training session conducted by OSMRE for all inspectors occurred in January of 2016 for four days. In light of the 2016 Oversight inspection and the observations that there was an apparent reluctance to write NOVs, additional actions are apparently needed.

The Division acknowledges there is problem that involves an apparent reluctance of some inspectors to issue violations and will continue to pursue further training as needed to insure that violations are written as appropriate.

Conclusion

The Division believes that the response provided above satisfies the requirements of 30 C.F.R. § 842.11. The Division appreciates the attention of OSMRE in calling its attention to the violations that exist at Bear Canyon Mine. In reinstating some NOVs and issuing a new NOV, the Division has addressed the violations identified with appropriate action. Further, the Division does not have a policy admonishing its inspectors not to issue NOVs, but this TDN and the opportunity to respond has provided insights into how the Division can improve enforcement actions. The Division will continue to take action to address the oversight of inspectors to ensure program compliance at all of its coal mines.

The Division also welcomes comments or inquiry from OSMRE and stands ready to provide additional information if requested to do so.

Sincerely,

John R. Baza
Director, Division of Oil, Gas and Mining

GARY R. HERBERT
Governor

GREG BELL
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

Inspection Report

Permit Number:	C0150025
Inspection Type:	COMPLETE
Inspection Date:	Tuesday, March 29, 2016
Start Date/Time:	3/29/2016 10:00:00 AM
End Date/Time:	3/29/2016 2:00:00 PM
Last Inspection:	Thursday, March 10, 2016

Inspector: Joe Helfrich,

Weather: Windy & cold 38

InspectionID Report Number: 5482

Accepted by: JHELFRIC
4/5/2016

Representatives Present During the Inspection:	
Company	Jaren Jorgensen
OGM	Dana Dean
OGM	Daron Haddock
OGM	Joe Helfrich
OGM	Steve Alder
OGM	Melissa Reynolds

Permitee: **CASTLE VALLEY MINING LLC**
Operator: **CASTLE VALLEY MINING LLC**
Site: **BEAR CANYON MINE**
Address: **2352 NORTH 7TH STREET, UNIT B, GRAND JUNCTION CO 81501**
County: **EMERY**
Permit Type: **PERMANENT COAL PROGRAM**
Permit Status: **ACTIVE**

Current Acreages

10,991.83	**Total Permitted**
35.02	**Total Disturbed**
	Phase I
	Phase II
	Phase III

Mineral Ownership

- [x] Federal
- [ ] State
- [ ] County
- [x] Fee
- [ ] Other

Types of Operations

- [x] Underground
- [ ] Surface
- [ ] Loadout
- [ ] Processing
- [ ] Reprocessing

Report summary and status for pending enforcement actions, permit conditions, Division Orders, and amendments:

The purpose of this site visit was to inspect the alleged noncompliance areas listed in the ten day notice # X-16-140-545-004 issued to DOGM by OSM on 3/16/2016 and conduct a complete inspection of the remaining areas at the mine site. The Division's response to the TDN which includes modification and reinstatement of the NOVs that were the subject of the TDN is included as an attachment to this document. Other attachments include:
The cover letter from Alan Boehms; A copy of the TDN; OSM's Minesite Evaluation;
OSM's Oversight Inspection Report;
Page 7F-68 from appendix 7F; Page 7K-3; Page 7K-12A from appendix 7K and;
Photos taken during the inspection.
NOV 19151 is being reinstated with a 30 day abatement period to grout the inlets to the sediment ponds or revise the appropriate portion fo the MRP based on current site conditions.
NOV 19152 is being reinstated and will be terminated.
NOV 19153 is being modified
NOV 19154 is being reinstated and modified to address sediment control only with a 30 day abatement
NOV 21171 is being issued and requires clean up of coal from the drainage and stream buffer zones.

Inspector's Signature Daron R. Haddock for Joe Helfrich,
Inspector ID Number: 1

Date Tuesday, April 05, 2016

Note: This inspection report does not constitute an affidavit of compliance with the regulatory program of the Division of Oil, Gas and Mining.

1594 West North Temple, Suite 1210, PO Box 145801, Salt Lake City, UT 84114-5801
telephone (801) 538-5340 • facsimile (801) 359-3940 • TTY (801) 538-7458 • www.ogm.utah.gov

UTAH DNR OIL, GAS & MINING

REVIEW OF PERMIT, PERFORMANCE STANDARDS PERMIT CONDITION REQUIREMENTS

1. *Substantiate the elements on this inspection by checking the appropriate performance standard.*
   a. *For COMPLETE inspections provide narrative justification for any elements not fully inspected unless element is not appropriate to the site, in which case check Not Applicable.*
   b. *For PARTIAL inspections check only the elements evaluated.*
2. *Document any noncompliance situation by reference the NOV issued at the appropriate performance standard listed below.*
3. *Reference any narratives written in conjunction with this inspection at the appropriate performace standard listed below.*
4. *Provide a brief status report for all pending enforcement actions, permit conditions, Divison Orders, and amendments.*

	Evaluated	Not Applicable	Comment	Enforcement
1. Permits, Change, Transfer, Renewal, Sale	☑	☐	☑	☐
2. Signs and Markers	☑	☐	☑	☐
3. Topsoil	☑	☐	☑	☐
4.a Hydrologic Balance: Diversions	☑	☐	☑	☑
4.b Hydrologic Balance: Sediment Ponds and Impoundments	☑	☐	☑	☑
4.c Hydrologic Balance: Other Sediment Control Measures	☑	☐	☑	☐
4.d Hydrologic Balance: Water Monitoring	☑	☐	☑	☐
4.e Hydrologic Balance: Effluent Limitations	☑	☐	☑	☐
5. Explosives	☐	☑	☐	☐
6. Disposal of Excess Spoil, Fills, Benches	☐	☑	☐	☐
7. Coal Mine Waste, Refuse Piles, Impoundments	☑	☐	☑	☐
8. Noncoal Waste	☑	☐	☑	☑
9. Protection of Fish, Wildlife and Related Environmental Issues	☑	☐	☐	☐
10. Slides and Other Damage	☐	☑	☐	☐
11. Contemporaneous Reclamation	☑	☑	☐	☐
12. Backfilling And Grading	☑	☑	☐	☐
13. Revegetation	☑	☐	☑	☐
14. Subsidence Control	☑	☑	☐	☐
15. Cessation of Operations	☑	☑	☑	☐
16.a Roads: Construction, Maintenance, Surfacing	☑	☐	☑	☐
16.b Roads: Drainage Controls	☑	☐	☑	☑
17. Other Transportation Facilities	☐	☑	☐	☐
18. Support Facilities, Utility Installations	☑	☐	☑	☑
19. AVS Check	☑	☐	☑	☐
20. Air Quality Permit	☑	☐	☑	☐
21. Bonding and Insurance	☑	☐	☑	☐
22. Other	☐	☑	☐	☐

1. Permits, Change, Transfer, Renewal, Sale

Thre 5 year permit renewal for the mine was completed effective 11/2/2015 and expires 11/2/2020. There is one pending amendment currently under review by the Division, the Bear Canyon access road task # 5109.

2. Signs and Markers

The sign at the entrance was clearly visible and contained the required information.

3. Topsoil

The toe of the topsoil pile located across the drainage from the access road to the #4 portals has been relocated to other areas on the existing pile to allow for the construction of an access road to BTCA area B (as described on page 7K-3 of appendix 7K) and the conveyor coal spill area. The toe of the pile and relocated soil will need to be seeded this fall with the seed mix noted in the approved MRP.

4.a Hydrologic Balance: Diversions

The silt fence that had been removed from the diversion below sediment pond A was actually preventing sediment from flooding storm water from entering the diversion and not from preventing sediment from the undisturbed diversion from entering Bear Creek. It is not specifically required by the MRP so it was removed. Admitedly it did have some value and therefore it was replaced. The culverts and ditches noted in the TDN were opened once the warming tempertures provided ample working conditions. Not all of the sediment control features (staw bale dikes and culverts) had been repaired, therefore NOV 19154 is being reinstated.

4.b Hydrologic Balance: Sediment Ponds and Impoundments

The inlet to pond D was functioning correctly allowing run-off from the pad to enter the pond at the time of the inspection. However, according to the MRP the inlet to pond D and inlet #1 to pond B require grouting. Since grout was not evident, NOV # 19151 was reinstated and the operator will be required to grout the inlets or he will need to modify the MRP to show that grout is not required on the inlets. The four ponds were inspected on March 30, 2016. There were no hazzards or signs of structural weakness noted in the ponds. The sage and rabbit brush will be removed from the emergency spillway in pond B.

4.c Hydrologic Balance: Other Sediment Control Measures

The stream buffer zone items noted in the TDN have been addressed. The old car body parts and bony coal are pre-law items and not considered surface disturbing activities.

4.d Hydrologic Balance: Water Monitoring

Water monitoring data for the 4th quarter of 2015 and Jan and Feb of 2016 were available for inspection. Water monitoring points for the first quarter of 2016 include BC 1, 2, 3 and 4, CK 1 and 2 and SBC 3, 4, 5 ,9a and 17. Hard copies of the data were available for inspection and the data has been submitted electronically into the Division's data base. No exceedences of the required parameters were noted.

4.e Hydrologic Balance: Effluent Limitations

Hard copies of the DMR's for January and February were inspected. The mine water discharge point 004 is the only point of 5, (the other 4 are sediment pond outfalls) that discharges. The required monitoring parameters for the effluent limitations are in compliance with the UPDES permit.

7. Coal Mine Waste, Refuse Piles, Impoundments

The coal fines that had been removed from sediment pond A had been placed on the coal stockpile.

8. Noncoal Waste

The non-coal waste items noted in the TDN have been addressed. Because a number of noncoal waste items were identified in the March 3, 2016 inspection NOV #19152 is reinstated, however it is also terminated since the abatement has been accomplished as evidenced during this inspection.

13. Revegetation

No revegetation has occurred since the previous inspection. Areas where topsoil has been altered will be seeded this fall.

15. Cessation of Operations

The mine is currently active.

16.a Roads: Construction, Maintenance, Surfacing

The roads throughout the site are in good repair and functioning properly. A short temporary access road to the topsoil BTCA area B and conveyor coal spill is being constructed according to the recommendations provided by the Division's soils scientist.

16.b Roads: Drainage Controls

The snow ,ice and dirt that had clogged the culverts and ditches noted in the TDN and along the access road to the #4 portal had been removed. Some culverts and erosion control structures still require additional mainenance. NOV #19154 was reinstated in order to ensure that the maintenance is completed.

18. Support Facilities, Utility Installations

Rhino Energy contacted the Division in February of 2016 requesting technical assistance to determine an access route to the topsoil BTCA area B and coal spill from the conveyor. Manual labor (rope & bucket) had been ongoing since July of 2015 in an effort to remove the coal on the hill side underneath the conveyor until weather conditions compromised the ability to continue the clean up of the coal. Some time thereafter a second spill occurred. Conditions were not permissable to enter the area until the first week of March. On March 10th a site visit was conducted to determine a site location for access to the coal spill. In February the permittee had also made contractural arrangements to rent a large shop-vac vehicle to resume clean-up efforts in the areas up stream from the conveyor crossing. The vehicle is due to arrive at the mine the week of April 4th. Coal and coal fines slurry is very much evident in the drainage beneath the conveyor and in the stream buffer zone along the undisturbed drainage of Bear Creek. NOV #21171 was issued which requires the repair of the overland conveyor and the clean up of all of the coal within 60 days.

19. AVS Check

The ownership and control information for the parent company (Rhino Energy) has been updated and submitted with the annual report for the calendar year 2015.

20. Air Quality Permit

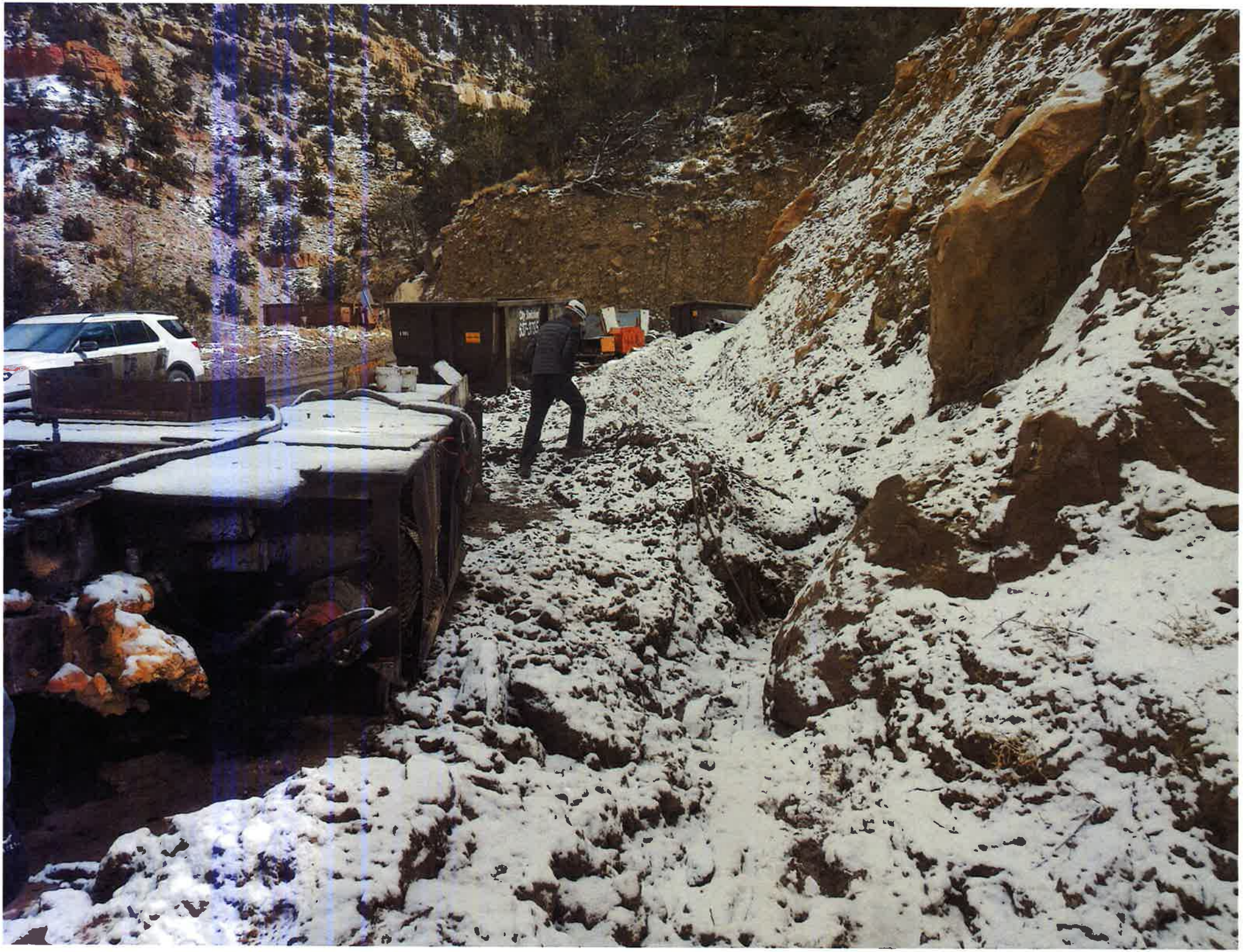
The air quality permit DAQE-GN0102400005-10 was transferred into Castle Valley Mining LLC. on 09/20/2010.

21. Bonding and Insurance

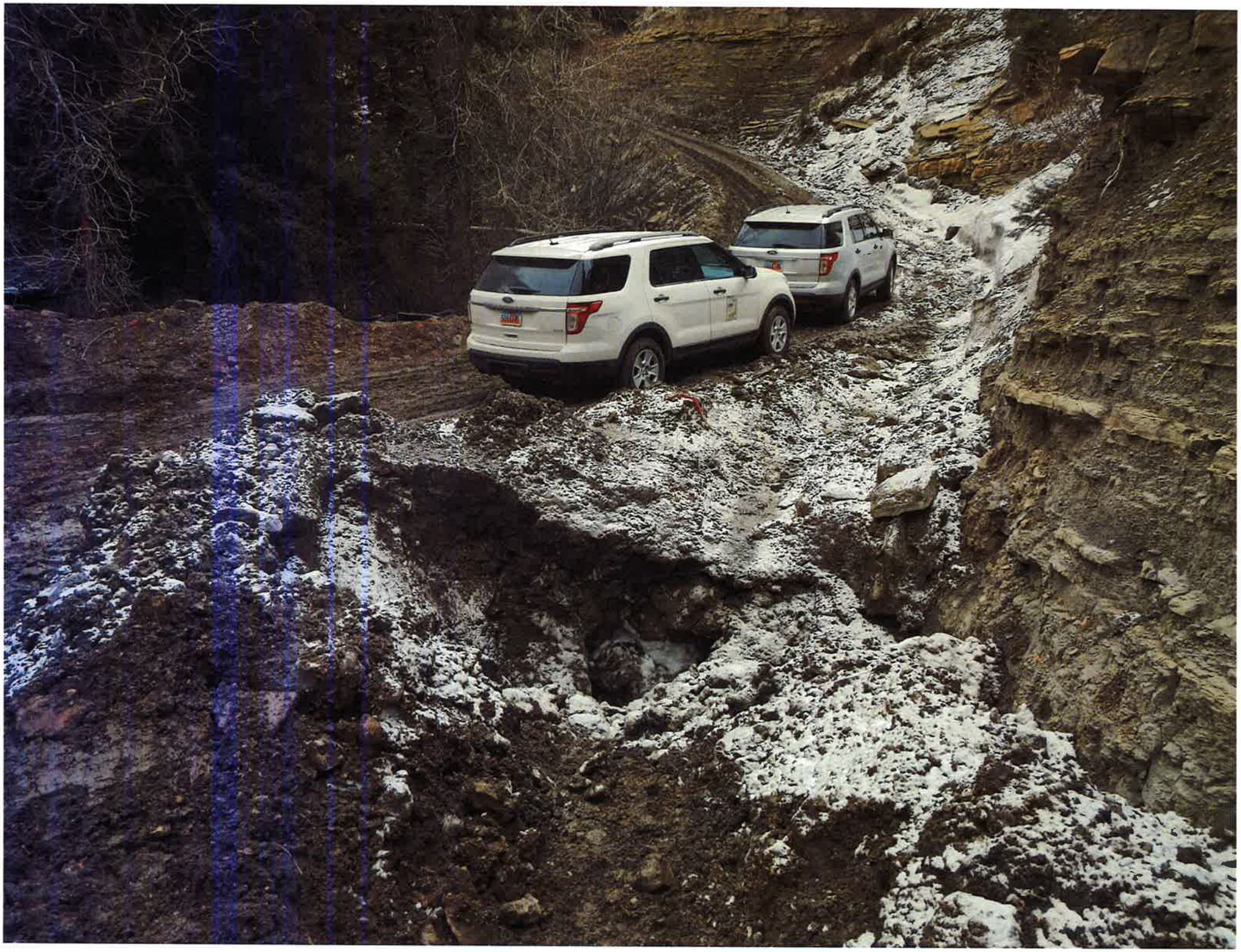
Surety Bond # 929518448 is posted in the amount of $2,210,000 for Castle Valley Mining LLC. The liability insurance expires 6/1/2016.

RHINO

STREAM
BUFFER
ZONE



STEVE ALDER



Action Taken on Existing Citation
Utah Coal Regulatory Program

1594 West North Temple, Salt Lake City, UT 84114
Phone: (801) 538 - 5285 Fax: (801) 359-3940

Action on Citation#:	19151
Permit Number:	C0150025
Date Cit. Issued:	06/18/2015

☑ MODIFICATION of ☐ TERMINATION of ☐ VACATION of

☑ NOTICE OF VIOLATION ☐ CESSATION ORDER (CO) ☐ FAILURE TO ABATE CO

Permittee Name: CASTLE VALLEY MINING LLC	Inspector Number and ID:	28	DHaddock
Mine Name: BEAR CANYON MINE	Date and Time of Action:	04/06/2016	
Certified Return Receipt Number:	Date and Time of Service:	04/06/2016	

In accordance with the provisions of the Utah Coal Mining and Reclamation Act, Utah Code Ann. § 40-10-1 et. seq. (Act), the above referenced Citation is:

☑ **Modified as follows:**

This NOV although vacated on 9/10/2015 is hereby reinstated. All rights of appeal and for requesting informal conferences or hearings are also reinstated. The proposed assessment is also reinstated. The abatement requirement is modified to require the inlet of pond D and the #1 inlet of pond B to be constructed using grouted rip-rap or modify the MRP to show that grout is not required on the inlets. The abatement is now due within 30 days of the receipt of this reinstated NOV.

Reason for modification:

In response to an oversight inspection and associated TDN the Division has further reviewed this action and conducted its own inspection and determined that the NOV was inappropriately vacated.

☐ **Terminated because:**

☐ **Vacated because:**

(Print) Permittee Representative	Daron Haddock (Print) DOGM Representative
Permittee Representative's Signature - Date	Daron R. Haddock 4/6/16 DOGM Representative's Signature - Date

Refer to the "Citation For Non-Compliance" for additional information

Citations Home Page

Citation for Non-Compliance
Utah Coal Regulatory Program

1594 West North Temple, Salt Lake City, UT 84114
Phone: (801) 538-5340 Fax: (801) 359-3940

Citation #: 19151
Permit Number: C0150025
Date Issued: 06/18/2015

☑ NOTICE OF VIOLATION ☐ CESSATION ORDER (CO) ☐ FAILURE TO ABATE CO

Permittee Name: CASTLE VALLEY MINING LLC		Inspector Number and ID:	1 JHELFRIC
Mine Name: BEAR CANYON MINE		Date and Time of Inspection:	05/13/2015
Certified Return Receipt Number: 70123460000295596472		Date and Time of Service:	06/18/2015

Nature of condition, practice, or violation:
The permittee has not maintained the inlets to sediment ponds A, B, C, and D in accordance with Appendix 7F of the approved mining and reclamation plan (MRP).

Provisions of Act, regulations, or permit violated:
R645-301-742.123

☐ **This order requires Cessation of ALL mining activities.** (Check box if appropriate.)

☐ Condition, practice, or violation is creating an imminent danger to health or safety of the public.	☐ Permittee is/has been conducting mining activities without a Permit.
☐ Condition, practice, or violation is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.	☐ Permittee has failed to abate Violation(s) included in ☐ Notice of Violation or ☐ Cessation Order within time for abatement originally fixed or subsequently extended.

☐ **This order requires Cessation of PORTION(S) of mining activities.**

Mining activities to be ceased immediately: ☐ Yes ☑ No	Abatement Times (if applicable).
	30 days, no later than 5:00 Pm Friday
	July 17th for the submittal of plans for
	ponds B & D and repair of inlets for ponds
	A & C.

Action(s) required: ☑ Yes ☐ No
Sediment Pond A: Clean and reestablish the rip-rapped inlet channel the has been eroded and place the waste material on the appropriate coal stockpile pad.
Sediment Pond B: Refer to # 4b of the attached DOGM inspection report.
Sediment pond C: Clean and reestablish the rip-rapped inlet channel the has been eroded. Repair the erosion on the outslope of the leachfield upstream of pond C.
Sediment Pond D: Refer to # 4b of the attached DOGM inspection report.

Jaren Jorgensen	JOE HELFRICH
(Print) Permittee Representative	(Print) DOGM Representative
Permittee Representative's Signature - Date	DOGM Representative's Signature - Date

SEE REVERSE SIDE Of This Form For Instructions And Additional Information

Original – DOGM Files Copy – Permittee Form DOGM NOV/CO Revised – August, 2006

Action Taken on Existing Citation
Utah Coal Regulatory Program

1594 West North Temple, Salt Lake City, UT 84114
Phone: (801) 538 - 5285 Fax: (801) 359-3940

Action on Citation#:	19152
Permit Number:	C0150025
Date Cit. Issued:	06/18/2015

☑ MODIFICATION of ☐ TERMINATION of ☐ VACATION of

☑ NOTICE OF VIOLATION ☐ CESSATION ORDER (CO) ☐ FAILURE TO ABATE CO

Permittee Name: CASTLE VALLEY MINING LLC	Inspector Number and ID:	28	DHaddock
Mine Name: BEAR CANYON MINE	Date and Time of Action:	04/06/2016	
Certified Return Receipt Number:	Date and Time of Service:	04/06/2016	

In accordance with the provisions of the Utah Coal Mining and Reclamation Act, Utah Code Ann. § 40-10-1 et. seq. (Act), the above referenced Citation is:

☑ **Modified as follows:**

This NOV although vacated on 9/10/2015, is hereby reinstated. All rights of appeal and for requesting conferences or hearings are also reinstated. The proposed assessment is also reinstated.

Reason for modification:

In response to an oversight inspection and associated TDN the Division has further reviewed this action and conducted its own inspection and determined that the NOV was inappropriately vacated. A number of noncoal waste items were identified in the March 3, 2016 inspection that had not been properly stored or disposed of.

☐ **Terminated because:**

☐ **Vacated because:**

(Print) Permittee Representative	Daron Haddock (Print) DOGM Representative
Permittee Representative's Signature - Date	Daron Haddock 4/6/16 DOGM Representative's Signature - Date

Refer to the "Citation For Non-Compliance" for additional information

Citations Home Page

Citation for Non-Compliance
Utah Coal Regulatory Program

1594 West North Temple, Salt Lake City, UT 84114
Phone: (801) 538-5340 Fax: (801) 359-3940

Citation #: 19152
Permit Number: C0150025
Date Issued: 06/18/2015

☑ NOTICE OF VIOLATION ☐ CESSATION ORDER (CO) ☐ FAILURE TO ABATE CO

Permittee Name:	CASTLE VALLEY MINING LLC	Inspector Number and ID:	1 JHELFRIC
Mine Name:	BEAR CANYON MINE	Date and Time of Inspection:	05/13/2015
Certified Return Receipt Number:	70123460000295596472.	Date and Time of Service:	06/18/2015

Nature of condition, practice, or violation:
The permittee has not placed and stored non-coal waste in a controlled manner in a designated portion of the permit area.

Provisions of Act, regulations, or permit violated:
R645-301-528.331

☐ **This order requires Cessation of ALL mining activities.** (Check box if appropriate.)

☐ Condition, practice, or violation is creating an imminent danger to health or safety of the public.	☐ Permittee is/has been conducting mining activities without a Permit.
☐ Condition, practice, or violation is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.	☐ Permittee has failed to abate Violation(s) included in ☐ Notice of Violation or ☐ Cessation Order within time for abatement originally fixed or subsequently extended.

☐ **This order requires Cessation of PORTION(S) of mining activities.**

Mining activities to be ceased immediately: ☐ Yes ☑ No	Abatement Times (if applicable).
	30 days, no later than Friday, July 17th.

Action(s) required: ☑ Yes ☐ No
Remove the non-coal waste from the following areas: The four sediment ponds (A-D), stream buffer zones, outslope of portal pad 3. Ensure that non-coal waste from any other areas within and adjacent to the distirbed area and outslopes of the access road to the #4 portal is properly stored.

Jaren Jorgensen	JOE HELFRICH
(Print) Permittee Representative	(Print) DOGM Representative
	Joseph C. Helfrich
Permittee Representative's Signature - Date	DOGM Representative's Signature - Date

SEE REVERSE SIDE Of This Form For Instructions And Additional Information

Action Taken on Existing Citation
Utah Coal Regulatory Program

1594 West North Temple, Salt Lake City, UT 84114
Phone: (801) 538 - 5285 Fax: (801) 359-3940

Action on Citation#:	19152
Permit Number:	C0150025
Date Cit. Issued:	06/18/2015

☐ MODIFICATION of ☑ TERMINATION of ☐ VACATION of

☑ NOTICE OF VIOLATION ☐ CESSATION ORDER (CO) ☐ FAILURE TO ABATE CO

Permittee Name: CASTLE VALLEY MINING LLC	Inspector Number and ID:	28	DHaddock
Mine Name: BEAR CANYON MINE	Date and Time of Action:	04/06/2016	
Certified Return Receipt Number:	Date and Time of Service:	04/06/2016	

In accordance with the provisions of the Utah Coal Mining and Reclamation Act, Utah Code Ann. § 40-10-1 et. seq. (Act), the above referenced Citation is:

☐ **Modified as follows:**

Reason for modification:

☑ **Terminated because:**
During the March 29, 2016 inspection conducted by the Division, it was determined that the noncoal waste items previously identified in the March 3, 2016 inspection and associated TDN have now been adequately addressed or removed.

☐ **Vacated because:**

(Print) Permittee Representative	**Daron Haddock** (Print) DOGM Representative
Permittee Representative's Signature - Date	Daron A. Haddock 4/6/16 DOGM Representative's Signature - Date

Refer to the "Citation For Non-Compliance" for additional information

Action Taken on Existing Citation
Utah Coal Regulatory Program

1594 West North Temple, Salt Lake City, UT 84114
Phone: (801) 538 - 5285 Fax: (801) 359-3940

Action on Citation#:	19153
Permit Number:	C0150025
Date Cit. Issued:	06/18/2015

☑ MODIFICATION of ☐ TERMINATION of ☐ VACATION of

☑ NOTICE OF VIOLATION ☐ CESSATION ORDER (CO) ☐ FAILURE TO ABATE CO

Permittee Name: CASTLE VALLEY MINING LLC	Inspector Number and ID:	28	DHaddock
Mine Name: BEAR CANYON MINE	Date and Time of Action:	04/06/2016	
Certified Return Receipt Number:	Date and Time of Service:	04/06/2016	

In accordance with the provisions of the Utah Coal Mining and Reclamation Act, Utah Code Ann. § 40-10-1 et. seq. (Act), the above referenced Citation is:

☑ **Modified as follows:**

The abatement action required by this NOV is changed to omit the requirements for the clean-up of coal and or coal fines in the buffer zone.

Reason for modification:

The requirement to clean up coal and coal fines from the buffer zone area is now covered under a newly issued notice of violation and is no longer needed under this violation as it would be duplicative. Further this violation was terminated effective September 9, 2015 as the other abatement requirements of the NOV had been completed at that time.

☐ **Terminated because:**

☐ **Vacated because:**

(Print) Permittee Representative	Daron Haddock (Print) DOGM Representative
Permittee Representative's Signature - Date	Daron R. Haddock 4/6/16 DOGM Representative's Signature - Date

Refer to the "Citation For Non-Compliance" for additional information

Citations Home Page

Citation for Non-Compliance
Utah Coal Regulatory Program

1594 West North Temple, Salt Lake City, UT 84114
Phone: (801) 538-5340 Fax: (801) 359-3940

Citation #: 19153
Permit Number: C0150025
Date Issued: 06/18/2015

☑ NOTICE OF VIOLATION ☐ CESSATION ORDER (CO) ☐ FAILURE TO ABATE CO

Permittee Name:	CASTLE VALLEY MINING LLC	Inspector Number and ID:	1 JHELFRIC
Mine Name:	BEAR CANYON MINE	Date and Time of Inspection:	05/13/2015
Certified Return Receipt Number:	70123460000295596472	Date and Time of Service:	06/18/2015

Nature of condition, practice, or violation:
Encroachment of the stream buffer zone at the Bear Canyon mine.

Provisions of Act, regulations, or permit violated:
R645-301-731.600

☐ **This order requires Cessation of ALL mining activities.** (Check box if appropriate.)

☐ Condition, practice, or violation is creating an imminent danger to health or safety of the public.	☐ Permittee is/has been conducting mining activities without a Permit.
☐ Condition, practice, or violation is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.	☐ Permittee has failed to abate Violation(s) included in ☐ Notice of Violation or ☐ Cessation Order within time for abatement originally fixed or subsequently extended.

☐ **This order requires Cessation of PORTION(S) of mining activities.**

Mining activities to be ceased immediately: ☐ Yes ☑ No	Abatement Times (if applicable).
	30 days, no later than 5:00 PM Friday
	July 17th.

Action(s) required: ☑ Yes ☐ No
Remove materials from storage areas that have spilled over into the stream buffer area.
Remove the hoses and or other equipment used to decant pond A to pond B.
Submit plans for an alternative route to decant pond A into pond B.
Submit plans for the clean-up of the coal and or coal fines in the buffer zone.
The plans must be complete and adequate and implemented upon approval.

Jaren Jorgensen	JOE HELFRICH
(Print) Permittee Representative	(Print) DOGM Representative
	Joseph C. Helfrich
Permittee Representative's Signature - Date	DOGM Representative's Signature - Date

SEE REVERSE SIDE Of This Form For Instructions And Additional Information

Action Taken on Existing Citation
Utah Coal Regulatory Program

1594 West North Temple, Salt Lake City, UT 84114
Phone: (801) 538 - 5285 Fax: (801) 359-3940

Action on Citation#:	19153
Permit Number:	C0150025
Date Cit. Issued:	06/18/2015

☐ MODIFICATION of ☑ TERMINATION of ☐ VACATION of

☑ NOTICE OF VIOLATION ☐ CESSATION ORDER (CO) ☐ FAILURE TO ABATE CO

Permittee Name: CASTLE VALLEY MINING LLC	Inspector Number and ID:	1	JHELFRIC
Mine Name: BEAR CANYON MINE	Date and Time of Action:	09/10/2015	9:27 am
Certified Return Receipt Number:	Date and Time of Service:	09/10/2015	9:27 am

In accordance with the provisions of the Utah Coal Mining and Reclamation Act, Utah Code Ann. § 40-10-1 et. seq. (Act), the above referenced Citation is:

☐ **Modified as follows:**

Reason for modification:

☑ **Terminated because:**
The permittee has met the abatement requirements outlined in the NOV. Good faith is warranted in terms diligence exercised in abating the violation.

☐ **Vacated because:**

Jaren Jorgensen	**JOE HELFRICH**
(Print) Permittee Representative	(Print) DOGM Representative
	Joseph C. Helfrich 9/10/15
Permittee Representative's Signature - Date	DOGM Representative's Signature - Date

Refer to the "Citation For Non-Compliance" for additional information

Action Taken on Existing Citation
Utah Coal Regulatory Program

1594 West North Temple, Salt Lake City, UT 84114
Phone: (801) 538 - 5285 Fax: (801) 359-3940

Action on Citation#:	19154
Permit Number:	C0150025
Date Cit. Issued:	06/18/2015

☑ MODIFICATION of ☐ TERMINATION of ☐ VACATION of

☑ NOTICE OF VIOLATION ☐ CESSATION ORDER (CO) ☐ FAILURE TO ABATE CO

Permittee Name: CASTLE VALLEY MINING LLC	Inspector Number and ID:	28	DHaddock
Mine Name: BEAR CANYON MINE	Date and Time of Action:	04/06/2016	
Certified Return Receipt Number:	Date and Time of Service:	04/06/2016	

In accordance with the provisions of the Utah Coal Mining and Reclamation Act, Utah Code Ann. § 40-10-1 et. seq. (Act), the above referenced Citation is:

☑ **Modified as follows:**

The NOV although vacated on 9/10/2015 is hereby reinstated. All rights of appeal and for requesting informal conferences or hearings are also reinstated. The proposed assessment will be recalculated based on the changes to this NOV. The abatement action required by this NOV is changed to omit the requirement to repair the overland conveyor cover system and coal slurry leaks as well as omit the requirement to clean-up the coal and coal fine slurry and sediment from the undisturbed drainage adjacent to Bear Creek. The requirement to repair the sediment control structures and eroded embankment on the access road to the #4 portal remains in place. The abatement is now due within 30 days of the receipt of this reinstated NOV.

Reason for modification:

In response to an oversight inspection and associated TDN the Division has further reviewed this action and conducted its own inspection and determined that the NOV was inappropriately vacated. The requirement to repair the overland conveyor cover system and coal slurry leaks and to clean up the coal and coal fine slurry and sediment in the undisturbed drainage adjacent to Bear Creek is now covered under a newly issued notice of violation and is no longer needed under this violation as it would be duplicative.

☐ **Terminated because:**

☐ **Vacated because:**

(Print) Permittee Representative	Daron Haddock (Print) DOGM Representative
Permittee Representative's Signature - Date	Daron R. Haddock 4/6/16 DOGM Representative's Signature - Date

Refer to the "Citation For Non-Compliance" for additional information

Citations Home Page

Citation for Non-Compliance
Utah Coal Regulatory Program

1594 West North Temple, Salt Lake City, UT 84114
Phone: (801) 538-5340 Fax: (801) 359-3940

Citation #: 19154
Permit Number: C0150025
Date Issued: 06/18/2015

☑ NOTICE OF VIOLATION ☐ CESSATION ORDER (CO) ☐ FAILURE TO ABATE CO

Permittee Name:	CASTLE VALLEY MINING LLC	Inspector Number and ID:	1 JHELFRIC
Mine Name:	BEAR CANYON MINE	Date and Time of Inspection:	05/13/2015
Certified Return Receipt Number:	70123460000295596472	Date and Time of Service:	06/18/2015

Nature of condition, practice, or violation:
The permittee has failed to properly maintain support facilities (overland conveyor from the #3 portal), sediment control structures on the #4 portal access road and undisturbed culvert # C7U so as to prevent contributions of additional suspended solids to the undisturbed drainage adjacent to bear creek and Bear creek.

Provisions of Act, regulations, or permit violated:
R645-301-521.170
R645-301-742.200
R645-301-742.423.2
R645-301-742.423.3

☐ **This order requires Cessation of ALL mining activities.** (Check box if appropriate.)

☐ Condition, practice, or violation is creating an imminent danger to health or safety of the public.	☐ Permittee is/has been conducting mining activities without a Permit.
☐ Condition, practice, or violation is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.	☐ Permittee has failed to abate Violation(s) included in ☐ Notice of Violation or ☐ Cessation Order within time for abatement originally fixed or subsequently extended.

☐ **This order requires Cessation of PORTION(S) of mining activities.**

Mining activities to be ceased immediately: ☐ Yes ☑ No	Abatement Times (if applicable).
	60 days no later than 5:00 PM Monday
	August 17th.

Action(s) required: ☑ Yes ☐ No
Repair the overland conveyor cover system and coal slurry leaks in accordance with the approved MRP.
Repair the sediment control structures and eroded embankments on the access road to the #4 portal.
Submit plans for the clean-up of coal and coal fine slurry and sediment in the undisturbed drainage adjacent to Bear creek.
Plans must be complete and adequate and implemented upon approval.

Jaren Jorgensen	JOE HELFRICH
(Print) Permittee Representative	(Print) DOGM Representative
Permittee Representative's Signature - Date	DOGM Representative's Signature - Date

SEE REVERSE SIDE Of This Form For Instructions And Additional Information

Action Taken on Existing Citation
Utah Coal Regulatory Program

1594 West North Temple, Salt Lake City, UT 84114
Phone: (801) 538 - 5285 Fax: (801) 359-3940

Action on Citation#:	19154
Permit Number:	C0150025
Date Cit. Issued:	06/18/2015

☑ MODIFICATION of ☐ TERMINATION of ☐ VACATION of

☑ NOTICE OF VIOLATION ☐ CESSATION ORDER (CO) ☐ FAILURE TO ABATE CO

Permittee Name: CASTLE VALLEY MINING LLC		Inspector Number and ID:	1 JHELFRIC
Mine Name: BEAR CANYON MINE		Date and Time of Action:	07/28/2015
Certified Return Receipt Number:		Date and Time of Service:	07/28/2015

In accordance with the provisions of the Utah Coal Mining and Reclamation Act, Utah Code Ann. § 40-10-1 et. seq. (Act), the above referenced Citation is:

☑ **Modified as follows:**
Plans will not be required to abate the NOV.

Reason for modification:
The permittee is in the process of cleaning up the undisturbed drainage. Revisions to the ASCAS on the access road to the #4 portal may be required as as-builts.

☐ **Terminated because:**

☐ **Vacated because:**

Jaren Jorgensen	**JOE HELFRICH**
(Print) Permittee Representative	(Print) DOGM Representative
	Joseph C Helfrich 7/28/15
Permittee Representative's Signature - Date	DOGM Representative's Signature - Date

Refer to the "Citation For Non-Compliance" for additional information

Citation for Non-Compliance
Utah Coal Regulatory Program

1594 West North Temple, Salt Lake City, UT 84114
Phone: (801) 538-5340 Fax: (801) 359-3940

Citation #: 21171
Permit Number: C0150025
Date Issued: 04/06/2016

☑ NOTICE OF VIOLATION ☐ CESSATION ORDER (CO) ☐ FAILURE TO ABATE CO

Permittee Name: CASTLE VALLEY MINING LLC	Inspector Number and ID:	28	DHADDOCK
Mine Name: BEAR CANYON MINE	Date and Time of Inspection:	03/29/2016	10:00 am
Certified Return Receipt Number:	Date and Time of Service:	04/06/2016	

Nature of condition, practice, or violation:
The permittee has failed to properly maintain support facilities (overland conveyor from the #3 portal) to prevent contributions of additional suspended solids to the undisturbed drainage along Bear Creek and encroachment of the stream buffer zone. Coal and coal fine slurry have been allowed to encroach into the stream buffer zone and undisturbed areas beneath the conveyor.

Provisions of Act, regulations, or permit violated:
R645-301-526.200 through R645-301-526.222
R645-301-731.600

☐ **This order requires Cessation of ALL mining activities.** (Check box if appropriate.)

☐ Condition, practice, or violation is creating an imminent danger to health or safety of the public.	☐ Permittee is/has been conducting mining activities without a Permit.
☐ Condition, practice, or violation is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.	☐ Permittee has failed to abate Violation(s) included in ☐ Notice of Violation or ☐ Cessation Order within time for abatement originally fixed or subsequently extended.

☐ **This order requires Cessation of PORTION(S) of mining activities.**

Mining activities to be ceased immediately: ☐ Yes ☑ No	Abatement Times (if applicable).

Action(s) required: ☑ Yes ☐ No
Repair the overland conveyor cover system and coal slurry leaks in accordance with the approved MRP.
Clean up the coal and coal fine slurry in the drainage beneath the conveyor and from the stream buffer zone.
Complete the repairs and clean up within 60 days of the receipt of this NOV.

	DARON HADDOCK
(Print) Permittee Representative	(Print) DOGM Representative
	Daron R Haddock 4/6/16
Permittee Representative's Signature - Date	DOGM Representative's Signature - Date

SEE REVERSE SIDE Of This Form For Instructions And Additional Information

United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
Western Region Office
1999 Broadway, Suite 3320
Denver, CO 80202-3050

March 16, 2016

Daron Haddock
Coal Program Manager
Utah Division of Oil Gas and Mining
P.O. Box 145801
Salt Lake City, UT 84114-5801

Dear Mr. Haddock,

I have enclosed copies of the OSMRE's Ten Day Notice (TDN) issued to the Utah Division of Oil, Gas and Mining on March 16, 2016. TDN X16-140-545-004 has been issued as a result of noncompliance OSMRE and DOGM identified during the course of the 2015 and 2016 Independent Partial Oversight inspections.

If you have any questions regarding the violations, please contact Spencer Shumate, Natural Resources Specialist, Denver Field Division, at (303) 293-5046 or jshumate@OSMRE.gov.

Sincerely,

Alan Boehms, Manager
Denver Field Branch

Attachments: Bear Canyon Mine TDN

UNITED STATES DEPARTMENT OF THE INTERIOR
Office of Surface Mining
Reclamation and Enforcement

TEN-DAY NOTICE

Number X16-140-545-004 TV 7

Originating Office: Denver Regional Office
US DOI, Office of Surface Mining
1999 Broadway, Suite 3320
Denver, CO 80202

Telephone Number: (303) 293-5000

Ten-Day Notice to the State of **Utah**

You are notified that, as a result of Other (e.g. a federal inspection, citizen information, etc.) the Secretary has reason to believe that the person described below is in violation of the Act or a permit condition required by the Act. If the State Regulatory Authority fails within ten days after receipt of this notice to take appropriate action to cause the violation(s) described herein to be corrected, or to show cause for such failure and transmit notice of your actino to the Secretary through the originating office designated above, then a Federal inspection of the surface coal mining operation at which the alleged violation(s) is occurring will be conducted and appropriate enforcement action as required by Section 521(a)(1) of the Act will be taken.

Permittee: **CASTLE VALLEY MINING LLC** County: **EMERY**
(Or Operator if No Permit)

Mailing Address: **424 LEWIS HARGETT CIRCLE SUITE 250, , LEXINGTON, KY 40503**

Permit Number: **C0150025** Mine Name: **BEAR CANYON**

☐ Surface
☑ Underground
☐ Other

01 NATURE OF VIOLATION AND LOCATION:

Diverting runoff using protected channels or pipes through disturbed areas so as not to cause additional erosion.

Section of State Law, Regulation or Permit Condition believed to have been violated: **R645-301-742.123**

02 NATURE OF VIOLATION AND LOCATION:

Noncoal mine wastes generated during mining activities will be placed and stored in a controlled manner in a designated portion of the permit area

Section of State Law, Regulation or Permit Condition believed to have been violated: **R645-301-528.331**

03 NATURE OF VIOLATION AND LOCATION:

Encroachment of the Stream Buffer Zone

Section of State Law, Regulation or Permit Condition believed to have been violated: **R645-301-731.600**

Remarks or Recommendations:

On May 13, 2015, OSMRE conducted an Independent Partial Oversight inspection at Castle Valley, LLC (Bear Canyon Mine). Upon completion of the 2015 inspection, it was understood that DOGM would issue four violations to Bear Canyon for noncompliance. DOGM issued NOV #19151, 19152, 19153, and 19154 to Bear Canyon Mine on June 18, 2015. Conversely, OSMRE was notified on September 10, 2015 of DOGM's decision to vacate three out of the four NOV's (#19151, 19152, 19154) and terminate #19153. As a result, OSMRE scheduled the EY 2016 Independent Partial Oversight inspection at Bear Canyon to follow up on the aforementioned noncompliance issues identified in 2015.

Date of Notice: **03/16/2016** Signature of Authorized Rep.: John S. Shumate

Print Name and ID: **John Shumate ID# 545**

Revised October 1, 1998

UNITED STATES DEPARTMENT OF THE INTERIOR
Office of Surface Mining
Reclamation and Enforcement

TEN-DAY NOTICE

Number X16-140-545-004 TV 7

Originating Office: Denver Regional Office
US DOI, Office of Surface Mining
1999 Broadway, Suite 3320
Denver, CO 80202

Telephone Number: (303) 293-5000

Ten-Day Notice to the State of **Utah**

04 NATURE OF VIOLATION AND LOCATION:

Each permit application will describe each road, conveyor, and rail system to be constructed, used, or maintained within the proposed permit area.

Section of State Law, Regulation or Permit **R645-301-521.170**
Condition believed to have been violated:

05 NATURE OF VIOLATION AND LOCATION:

Siltation Structures. Siltation structures shall be designed in compliance with the requirements of R645-301-742

Section of State Law, Regulation or Permit **R645-301-742.200**
Condition believed to have been violated:

06 NATURE OF VIOLATION AND LOCATION:

Drainage pipes and culverts will be constructed to avoid plugging or collapse and erosion at inlets and outlets.

Section of State Law, Regulation or Permit **R645-301-742.423.2**
Condition believed to have been violated:

07 NATURE OF VIOLATION AND LOCATION:

Drainage ditches will be designed to prevent uncontrolled drainage over the road surface and embankment. This includes the use of trash racks or basins to aid in drainage control.

Section of State Law, Regulation or Permit **R645-301-742.423.3**
Condition believed to have been violated:

NATURE OF VIOLATION AND LOCATION:

Section of State Law, Regulation or Permit
Condition believed to have been violated:

NATURE OF VIOLATION AND LOCATION:

Section of State Law, Regulation or Permit
Condition believed to have been violated:

Date of Notice: **03/16/2016** Signature of Authorized Rep.: John S. Shumate

Print Name and ID: **John Shumate ID# 545**

Revised October 1, 1998

U.S. DEPT. OF THE INTERIOR
OFFICE OF SURFACE MINING
Mine Site Evaluation
State Program

1. Permittee/Person	CASTLE VALLEY MINING LLC
2. Address	424 LEWIS HARGETT CIRCLE SUITE 250
3. City	LEXINGTON
4. State	KY
5. Zip Code	40503
6. Phone Number	(859) 519-3637
7. Operator Name, if Different than Permittee	
8. Mine Name	BEAR CANYON
9. Permit Number	C0150025
10. Permit Type	PP
11. Field Visit Date (mm-dd-yyyy)	3/3/2016
12. Purpose	OPI
13. SRA Present	Y
14. Permit Status	A
15. Site Status	AP
16. Facility Type	B
17. OSM Office #	140
18. CCID #	
19. Land Code	F
20. M.S.H.A. ID #	42-01697
21. State Abbrev.	UT
22. County/Burrough	EMERY
23. AVS Permittee Entity ID Number	250853
24. State Office	

25. Hours

8.0	a. Permit Review
4.0	b. Site Visit Time
8.0	c. Travel Time
8.0	d. Report Writing

26. Signature Block

Signature: John S. Shumate

Printed Name: John Shumate, ID#545

Date: 3/16/2016

27. Reviewing Official:

Signature: Alan Bodkom

Review Date: 03-16-2016 (mm-dd-yyyy)

Is Supplemental MSE Page Used Y/N: Y

Permit Type - Item 10 IP = Interim Program PP = Permanent Program NP = No Permit

Purpose Type Codes - Item 12
Oxx...Oversight
Axx ..Assistance
RFx .Reclamation Fees
Fxx...Federal Actions
CCR..Citizen Complaint Referral (non-site visit
CC.....Citizen Complaint (initial site visit)
CCF...Assistance

Joint Inspection - Item 13 A joint inspection is when a state inspector accompanies an OSM inspector at any time during the review of the mine site

Permit Status - Item 14
- A Active: Coal mining activities occurring or permitted but not yet disturbed.
- IN Inactive (Permanent Program Permit): Phase II completed or Temporary Cessation of Operations. (Interim Program Permit): Coal mining completed and reclamation activities initiated.
- BR Bond Release: Reclamation completed and State Regulatory Authority(RA) has released all of the bond (Phase III Release).
- AB Abandoned: All surface and underground coal mining activities have ceased and operator has left the site without completing reclamation as defined in 30 CFR 840:11(g)
- AB1 Bond Forfeiture: Bond forfeiture officially in process or completed and reclamation in progress or not yet commenced.
- AB2 Partially Reclaimed Forfeiture: Forfeited site where all bonds have been used to reclaim site, but site not reclaimed to Program standards.
- AB3 Reclaimed Forfeiture: Forfeited site that has been reclaimed to Program standards
- NA Not Applicable: When site is unpermitted.

Site Status - Item 15
- ND No Disturbance: No coal mining and reclamation operations have been started.
- EX Coal Exploration: Coal exploration operations have started and where coal mining operations have not begun.
- AP Active Coal Producing: Coal surface mining activities are occurring.
- AN Active Non-Producing: Active non-producing facility such as tipple or preparation plant.
- NM No Mining: The Permit Status is active, site is not in Temporary Cessation, no surface coal mining activity, and site not regraded.
- MC Mining Complete: No mining activity on site, site regraded and awaiting bond release.
- TC Temporary Cessation: The RA has granted cessation of mining pursuant to 30 CFR 816/817:13(b).
- P1 Phase I Release: At least Phase I bond release granted for entire permitted area. For interim permits, partial bond release.
- P2 Phase II Release At least Phase II bond release for the entire permitted area.
- P3 Phase III Release: Reclamation completed and the RA has released all bond.
- NS Non-Site Visit: Status of site not determined.
- FP Forfeiture Pending: The RA is pursuing actions to revoke the permit, collect the performance bond(s), and/or reclamation of forfeited site is in progress.
- FR Forfeited and Reclaimed Forfeiture reclamation completed.
- FO Abandoned Site: Abandoned site that is permitted but there is no bond.
- WC Wildcat: Coal mining and reclamation operations have or are taking place and the activity is not covered by the required permits from the RA.

Facility Type Codes - Item 16
- A....Surface
- B...Underground
- C... Preparation Plant
- D ...Ancillary (Haulroad, Conveyor, and/or Rails
- E... Refuse and/or Impoundment
- F....Loading Facility and/or Tipple
- G....Stockpiles
- H...Exploration Permits
- I ..Notice of Intent to Explore
- J...,Exempt 16 and 2/3
- K...Government Financed Construction Exemption
- L .Remining site permitted under 30 CFR 785.25

Small Business Regulatory Enforcement Fairness Act (SBREFA)
Your Comments are Important

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you are a small business (a business with 500 or fewer employees including those of affiliates) and wish to comment on the enforcement or compliance activities of OSM, call 1-888-REG-FAIR (1-888-734-3247)

U.S. DEPT. OF THE INTERIOR
OFFICE OF SURFACE MINING
Mine Site Evaluation

Permittee/ Person	CASTLE VALLEY MINING LLC	Permit Number	C0150025	Field Visit Date	3/3/2016	State Program Continuation Page

28. Performance Standard Categories

Codes:1=Compliance, 2=Noncompliance, 3=Not Planned, 4=Not Started, 5=Noncompliance Identified Elsewhere, 6=Previously Cited, 7=Permit Defect

A. Administrative
1. 1 Mining within Valid Permit
2. ____ Mining within Bonded Area
3. 2 Terms & Conditions of Permit
4. ____ Liability Insurance
5. ____ Ownership and Control
6. ____ Temporary Cessation
7. ____ AML Rec. Fees - Non-Respondent
8. ____ AML Rec Fees - Failure to Pay

B. Hydrologic Balance
1. 2 Drainage Control
2. ____ Inspections & Certifications
3. 2 Siltation Structures
4. ____ Discharge Structures
5. 2 Diversions
6. ____ Effluent Limits
7. ____ Ground Water Monitoring
8. ____ Surface Water Monitoring
9. ____ Drainage - Acid-Toxic Materials
10. ____ Impoundments
11. 2 Stream Buffer Zones

C. Topsoil & Subsoil
1. ____ Removal
2. ____ Substitute Materials
3. ____ Storage and Protection
4. ____ Redistribution

D. Backfilling & Grading
1. ____ Exposed Openings
2. ____ Contemporaneous Reclamation
3. ____ Approximate Original Contour
4. ____ Highwall Elimination
5. ____ Steep Slopes (includes downslope)
6. ____ Handling of Acid and Toxic Materials
7. ____ Stabilization (rills and gullies)

E. Excess Spoil Disposal
1. ____ Placement
2. ____ Drainage Control
3. ____ Surface Stabilization
4. ____ Inspections & Certifications

F. Coal Mine Waste (Refuse Piles/Impoundments)
1. ____ Drainage Control
2. ____ Surface Stabilization
3. ____ Placement
4. ____ Inspections & Certifications
5. ____ Impounding Structures

G. Use of Explosives
1. ____ Blaster Certification
2. ____ Distance Prohibitions
3. ____ Blast Survey/Schedule
4. ____ Warnings & Records
5. ____ Control of Adverse Effects

H. ____ Subsidence Control Plan

I. Roads
1. ____ Road Construction
2. ____ Certification
3. 2 Drainage
4. ____ Surfacing and Maintenance
5. ____ Reclamation

J. Signs & Markers
1. ____ Signs
2. ____ Markers

K. ____ Distance Prohibitions

L. Revegetation
1. ____ Vegetative Cover
2. ____ Timing

M. ____ Postmining Land Use

N. Other

General Performance Category		
____	____	____
____	____	____
____	____	____

Performance Standard Categories
30 CFR Counterparts

A. Administrative
1. Valid Permit — 773.11
2. Mining within Bonded Area — 773.11
3. Terms & Conditions of Permit — 773.17
4. Liability Insurance — 800.60
5. Ownership and Control — 778.13
6. Temporary Cessation — 842.11(e) & 816/817.131
7. AML Rec. Fees – Non-Respondent — 870.15(b)
8. AML Rec. Fees – Failure to Pay — 870.15(a)

B. Hydrologic Balance — (816/817.41-57)
1. Drainage Control — 45
2. Inspections & Certifications — 39(a)(10)
3. Siltation Structures — 46
4. Discharge Structures — 47
5. Diversions — 43
6. Effluent Limits — 42
7. Ground Water Monitoring — 41(c)
8. Surface Water Monitoring — 41(e)
9. Drainage–Acid - Toxic Materials — 41(f)
10. Impoundments — 49
11. Stream Buffer Zones — 57

C. Topsoil & Subsoil — (816/817.22)
1. Removal — 22(a)
2. Substitute Materials — 22(c)
3. Storage and Protection — 22(c)
4. Redistribution — 22(d)

D. Backfilling & Grading — 816/817.95-107)
1. Exposed Openings — 816/817.13, 14, 15, & 823.11 & 21
2. Contemporaneous Reclamation — 100
3. Approximate Original Contour — 102(a)(1)
4. Highwall Elimination — 102(a)(2)
5. Steep Slopes (includes downslope) — 107
6. Handling of Acid & Toxic Materials — 102(c)
7. Stabilization (rills and gullies) — 95(b)

E. Excess Spoil Disposal — (816/817.71-74)
1. Placement — 71(e)
2. Drainage Control — 71(f)
3. Surface Stabilization — 71(g)
4. Inspections & Certifications — 71(h)

F. Coal Mine Waste (Refuse Piles/Impoundments) — 816/817.81-84)
1. Drainage Control — 83(a)
2. Surface Stabilization — 83(b)
3. Placement — 83(c)
4. Inspections and Certifications — 83(d)
5. Impounding Structures — 84

G. Use of Explosives — (816/817.61-68)
1. Blaster Certification — 61(c)
2. Distance Prohibitions — 61(d)
3. Blast Survey/Schedule — 62-64
4. Warnings & Records — 66 & 68
5. Control of Adverse Effects — 67

H. Subsidence Control Plan — (817.121-122)

I. Roads — (816/817.150-151)
1. Road Construction — 150(c)
2. Certification — 151(a)
3. Drainage — 150(b)-151(d)
4. Surfacing and Maintenance — 150(e)-151(d)
5. Reclamation — 150(f)

J. Signs & Markers — 816/817.11)
1. Signs — 11(a),(b),&(c)
2. Markers — 11(a),(b),(d),(e),&(f)

K. Distance Prohibitions — (761.11)

L. Revegetation — (816/817.111-116)
1. Vegetative Cover — 111 & 116
2. Timing — 113

M. Postmining Land Use — (816/817.133)

OSM Action
1) Deferred to State Action
2) TDN Issued
3) NOV Issued
4) FTA-CO Issued
5) IH-CO Issued
6) IO-CO Issued (Imminent Danger to Public)
7) Previously cited by RA, abatement pending
8) Abated during or before OSM inspection
9) Follow-up of Federal Action
0) Off-site impact with no violation

Off-Site Impacts
For each type of impact and resource affected, enter "N, D, or J" to describe the degree of off-site impact:
N - Minor Occurrence
D - Moderate Occurrence
J - Major Occurrence

Revised October 1, 2010

U.S. DEPT. OF THE INTERIOR
OFFICE OF SURFACE MINING
Mine Site Evaluation

Permittee/ Person: CASTLE VALLEY MINING LLC | Permit Number: C0150025 | Field Visit Date: 3/3/2016 | State Program Continuation Page

A Specific State Law/Regulations Violated: R645-301-742.123

B. Description: Diverting runoff using protected channels or pipes through disturbed areas so as not to cause additional erosion.

C Performance Standard: B3 | D. Abated (Y/N): N

E OSM Action: 2 | F. OSM Action Number: X16-140-545-004 | Viol#: 01

G Optional | H. Any Off-Site Impacts (Y/N): N

I Latitude: 0385249 | J Longitude: 1104207 | K Elevation:

L. Off-Site Impacts

	People	Land	Water	Structures
Blasting				
Stability				
Hydrology				
Encroachment				
Other				

A Specific State Law/Regulations Violated: R645-301-528.331

B. Description: Noncoal mine wastes generated during mining activities will be placed and stored in a controlled manner in a designated portion of the permit area

C Performance Standard: E1 | D. Abated (Y/N): N

E OSM Action: 2 | F. OSM Action Number: X16-140-545-004 | Viol#: 02

G Optional | H Any Off-Site Impacts (Y/N): N

I. Latitude: 0385249 | J. Longitude: 1104207 | K. Elevation:

L. Off-Site Impacts

	People	Land	Water	Structures
Blasting				
Stability				
Hydrology				
Encroachment				
Other				

A Specific State Law/Regulations Violated: R645-301-731.600

B. Description: Encroachment of the Stream Buffer Zone

C. Performance Standard: B11 | D. Abated (Y/N): N

E OSM Action: 2 | F. OSM Action Number: X16-140-545-004 | Viol#: 03

G Optional | H. Any Off-Site Impacts (Y/N): Y

I. Latitude: 0385249 | J. Longitude: 1104207 | K. Elevation:

L. Off-Site Impacts

	People	Land	Water	Structures
Blasting				
Stability				
Hydrology				
Encroachment		D	D	
Other				

A Specific State Law/Regulations Violated: R645-301-521.170

B Description: Each permit application will describe each road, conveyor, and rail system to be constructed, used, or maintained within the proposed permit area.

C. Performance Standard: AN | D. Abated (Y/N): N

E OSM Action: 2 | F. OSM Action Number: X16-140-545-004 | Viol#: 04

G Optional | H Any Off-Site Impacts (Y/N): N

I. Latitude: 0385249 | J. Longitude: 1104207 | K Elevation:

L. Off-Site Impacts

	People	Land	Water	Structures
Blasting				
Stability				
Hydrology				
Encroachment				
Other				

OSM Action
1) Deferred to State Action
2) TDN Issued
3) NOV Issued
4) FTA-CO Issued
5) IH-CO Issued
6) ID-CO Issued (Imminent Danger to Public)
7) Previously cited by RA, abatement pending
8) Abated during or before OSM Inspection
9) Follow-up of Federal Action
0) Off-site impact with no violation

Off-Site Impacts
For each type of impact and resource affected, enter "N, D, or J" to describe the degree of off-site impact:
N - Minor Occurrence
D - Moderate Occurrence
J - Major Occurrence

Revised October 1, 2015

U.S. DEPT. OF THE INTERIOR
OFFICE OF SURFACE MINING
Mine Site Evaluation

Permittee/ Person	CASTLE VALLEY MINING LLC	Permit Number	C0150025	Field Visit Date	3/3/2016	State Program Continuation Page

A Specific State Law/Regulations Violated: R645-301-742.200

B Description: Siltation Structures Siltation structures shall be designed in compliance with the requirements of R645-301-742

C. Performance Standard: B3 D. Abated (Y/N): N

E OSM Action: 2 F. OSM Action Number: X16-140-545-004 Viol#: 05

G Optional: H Any Off-Site Impacts (Y/N): N

I. Latitude: 0385249 J Longitude: 1104207 K Elevation:

L. Off-Site Impacts

	People	Land	Water	Structures
Blasting				
Stability				
Hydrology				
Encroachment				
Other				

A Specific State Law/Regulations Violated: R645-301-742.423.2

B. Description: Drainage pipes and culverts will be constructed to avoid plugging or collapse and erosion at inlets and outlets

C Performance Standard: B1 D Abated (Y/N): N

E OSM Action: 2 F. OSM Action Number: X16-140-545-004 Viol#: 06

G Optional: H Any Off-Site Impacts (Y/N): N

I. Latitude: 0385249 J Longitude: 1104207 K Elevation:

L. Off-Site Impacts

	People	Land	Water	Structures
Blasting				
Stability				
Hydrology				
Encroachment				
Other				

A Specific State Law/Regulations Violated: R645-301-742.423.3

B. Description: Drainage ditches will be designed to prevent uncontrolled drainage over the road surface and embankment. This includes the use of trash racks or basins to aid in drainage control

C Performance Standard: B1 D. Abated (Y/N): N

E OSM Action: 2 F. OSM Action Number: X16-140-545-004 Viol#: 07

G Optional: H Any Off-Site Impacts (Y/N): N

I Latitude: 0385249 J. Longitude: 1104207 K Elevation:

L. Off-Site Impacts

	People	Land	Water	Structures
Blasting				
Stability				
Hydrology				
Encroachment				
Other				

A. Specific State Law/Regulations Violated:

B. Description:

C Performance Standard: D. Abated (Y/N):

E. OSM Action: F. OSM Action Number: Viol#:

G Optional: H. Any Off-Site Impacts (Y/N):

I Latitude: J. Longitude: K. Elevation:

L. Off-Site Impacts

	People	Land	Water	Structures
Blasting				
Stability				
Hydrology				
Encroachment				
Other				

OSM Action
1) Deferred to State Action
2) TDN Issued
3) NOV Issued
4) FTA-CO Issued
5) IN-CO Issued
6) ID-CO Issued (Imminent Danger to Public)
7) Previously cited by RA, abatement pending
8) Abated during or before OSM Inspection
9) Follow-up of Federal Action
0) Off-site Impact with no violation

Off-Site Impacts
For each type of impact and resource affected, enter "N, O, or J" to describe the degree of off-site impact:
N - Minor Occurrence
O - Moderate Occurrence
J - Major Occurrence

Revised October 1, 2010

Bear Canyon Mine Partial Oversight Inspection Report
Utah Division of Oil, Gas and Mining (DOGM) Permit ID # C/015/0025

Date:
Wednesday, March 3, 2016

Participants:
Kenny Defa, Castle Valley Mining, LLC-Bear Canyon
Karl Houskeeper, Division of Oil, Gas, and Mining (DOGM)
Spencer Shumate, Office of Surface Mining Reclamation and Enforcement (OSMRE) Badge #541

Weather:
At the time of inspection, the weather conditions were clear, and sunny.

Background:
On May 13, 2015, OSMRE conducted an Independent Partial Oversight inspection at Castle Valley, LLC- Bear Canyon Mine. Upon completion of the 2015 inspection, it was understood that DOGM would issue four violations to Bear Canyon for non-compliance. DOGM issued NOV#19151, 19152, 19153, and 19154 to Bear Canyon Mine on June 18, 2015.

Conversely, OSMRE was notified on September 10, 2015 of DOGM's decision to vacate three out of the four NOV's (NOV# 19151, 19152, 19154) and terminate #19153.

See Appendix A for a copy of DOGM's inspection report.
See Appendix B for a copy of DOGM's NOV's written to Bear Canyon.
See Appendix C for a copy of DOGM's Notice to Vacate/Terminate NOV's.

For this reason, OSMRE selected the Bear Canyon Mine as part of the EY 2016 OSMRE Independent Oversight inspection schedule. The inspection began at the mine site office where we met with Kenny Defa. Jaren Jorgenson is normally the mine site representative that would accompany the inspector(s); however, Jaren was unavailable due to a safety training he was attending at an offsite location. The field inspection began at approximately8:00 am and concluded with a closeout discussion at approximately 12:00 pm.

The following information is a compilation of OSMRE's EY 2015 and EY 2016 Independent Oversight inspection reports. Because of DOGM's previous actions, and current inaction, to address on-the-ground violations of its approved regulatory program, compliance issues identified in inspection report are considered still applicable.

See Appendix D for a copy of inspection photos.

Signs and Markers:
The entrance to the Bear Canyon permit displayed the proper mine identification signs but several instances were noted where stream buffer zone signs were either 1) missing, 2) not visible because of poor placement and 3) not visible because the sign was completely turned

around facing the wrong direction (i.e., not visible from the road-only visible if you are standing in the stream buffer zone).

Roads:
As noted during the 2015 inspection, all haul roads were generally in good repair, with the exception a damaged culvert identified near the junction of the main access road leading to Portal #4 and the primary tipple road. It was noted that the culvert had been exposed and a hole had been breached, thus allowing for deposition of coal fines and sediment to enter the undisturbed Bear Creek drainage. During the 2016 inspection, a determination could not be made as to whether or not this culvert had been replaced. This section of the road was not indicative to what you would expect to see after removal and replacement of a drainage culvert.

Surface Facilities:
Inspection of the overland conveyer revealed that there was still a missing side panel that was identified during the May 13, 2015 inspection. In addition to the missing side panel, several sections of the conveyer are in disrepair, thus allowing more coal and coal fines to fall out into the designated stream buffer zone. Significant amounts of coal fines were observed. It also appears that much of the overland conveyer has not been constructed as required by the approved designs. Appendix 7K and Figure 7K-1 of the approved permit provides specification for construction and maintenance regarding the overland conveyer.

***Welding Shop* Area**
As noted in the 2015 inspection, the grated "grease trap" (4'x4') needs cleaning. The grease trap located on the pad of the welding shop area is full of grease and petroleum like substance. During the 2016 inspection, it was apparent that this grease trap over flowed at some point in time and completely blew out the berm directly adjacent to it. OSMRE notes that the undisturbed Bear Creek drainage is no more than twenty feet down gradient of where the erosion is occurring. This is important to note because there are not adequate BMP's in place to provide protection to the undisturbed area. Although there is a poorly maintained drainage on the west side of the road (same side the blow out occurred) the drainage is obstructed with miscellaneous noncoal waste, thus adding potential for untreated drainage to enter Bear Creek. Inspection of the stream buffer zone at this location is indicative of coal fine deposition.

Hydrologic Balance/Sediment Control:
ASCA (Approved Sediment Control Alternatives)
Along the portal access road, below Portal #3, was a dilapidated silt fence within the boundary of the stream buffer zone. It is apparent that the silt fence is not functioning as designed due to the lack of maintenance. As a result, any untreated drainage/surface runoff from the overhead conveyer (directly above this area) and disturbed area is able to comingle with the undisturbed Bear Creek drainage.

The Drainage pipe that crosses under the main haul road (down gradient from Portal #3) has not been maintained nor constructed as designed. Appendix 7-K provides that erosion control matting will be maintained to prevent further erosion. No erosional matting was observed at the time of inspection. As a result, there is significant erosion in this area. During the 2015 inspection, it was noted that there was a dried, sludgy mud material on the out slope of the Portal

#3 access road. Conversation with Jaren Jorgenson indicated that it was likely the result of regular maintenance during snow removal on the haul road. Further review of the approved permit (Appendix 7K-12A) provides reference to approved snow storage areas, none of which is where the material was observed. It is evident that repair/maintenance efforts have been conducted at several of the ASCAS that lead to the East portals. However, many of these ASCAS are still in need of repair/maintenance.

There are several reaches along primary haul roads and/or ancillary roads where berms have not been maintained, thus allowing untreated drainage (i.e., coal fines) to encroachment areas of the stream buffer zone.

Sediment Pond A

The pond was inspected for overall stability and functionality. This included the inlet structure, principle spillway, and emergency spillway. Significant erosion to the pond inlet was observed during the 2015 inspection. Further review of the permit (Appendix 7-F) indicates that the pond inlet and cleanout access ramp are "one in the same" and if erosional features develop, they will be maintained. As noted during the OSMRE 2015 inspection, pond cleanout material was being stored on the pond embankment rather than hauled to the approved sediment pond waste area (*Chapter 7, R645-301-700 Hydrology, and Page 7-104).*

OSMRE notes that the pond inlet appears to be in much better shape than what was observed during the 2015 inspection. As to the excavated material being stored at pond A, it does appear that some work has been done but it is clear the job has not been completed since it was noted in September 2015.

A significant erosional feature was also identified at pond A on the outslope side of the emergency spillway. Although this was not identified during the previous inspection, it does not seem to be a new development.

Sediment Pond B

The pond was inspected for overall stability and functionality. This included the inlet structure, principle spillway, and emergency spillway. Significant erosion to the pond inlet was observed during the 2015 inspection. Further review of the permit (Appendix 7-F) indicates that Pond B is designed with TWO inlets, one of which shows that grouted riprap will be used. Additionally, the design information found at Appendix 7-F does not account for the corrugated pipe used as the other inlet. Furthermore, there is concern of potential "short-circuiting" as it relates to the close proximity of the principle spillway-decant structure.

It is apparent that repair work for the eroded inlet has been performed since OSMRE's 2015 inspection; however, the maintenance is still not in accordance with the approved permit, as it has not been grouted.

Sediment Pond C

The pond was inspected for overall stability and functionality. This included the inlet structure, principle spillway, and emergency spillway. A paving effect has occurred at the pond inlet, thus the inlet is not able to function as designed.

This is the same observation that OSMRE noted in the 2015 inspection. However, there has been a drainage feature constructed (up gradient of the ponds inlet) in the direction of the bathhouse that appears to be a ditch that includes a check-dam. Conversation with DOGM and the mine site representative were inconclusive on the details for of the new design. Therefore, it is unclear as to what this feature is.

Sediment Pond D

This pond was inspected for overall stability and functionality. This included the inlet structure, principle spillway, and emergency spillway. As was noted in the 2015 inspection report, erosion has created an additional inlet at pond D. Appendix 7-F states, in part, that the pond inlet will be protected using grouted riprap. Snow/slurry sludge/ and other noncoal waste was observed on the pond embankment. Further review of the approved permit (Appendix 7K-12A) provides reference to approved snow storage areas, none of which is where the material was observed. OSMRE notes the pond is not functioning as designed, at the time of inspection.

Diversions/Drainage

As noted in the DOGM's May 13, 2015 inspection report, the silt fence located in drainage at the base of sediment pond A is completely buried (directly below where erosional feature was identified at the emergency spillway) and needs to be replaced. OSMRE notes the same silt fence in the 2016 inspection has been removed but no replacement of this BMP have occurred. The importance of this silt fence is intended to filter excessive sediment loading from entering the undisturbed Bear Creek drainage. Conversely, the operator removed the BMP rather than replace/maintain it. Because of the excessive sediment loading in this drainage, the excessive trash and the significant erosion up gradient of the undisturbed drainage, it is concerning to OSMRE that DOGM has allowed complete removal of this important BMP siltation structure. Generally, removal of sediment control structures are only authorized once a demonstration has been made to prove it is no longer necessary.

Culverts

As noted in OSMRE's 2015 inspection, a lack of maintenance regarding clogged culverts appears to be a systemic issue throughout the mine site. Numerous culvert inlets along the portal access road contained snow and mud mixtures. This was observed to be the case during the 2016 inspection. Notwithstanding, culvert C-4D was identified as clogged with sediment in 2015 and the comparative picture that was taken during the 2016 inspection depicts that there has been zero maintenance conducted.

Inlet C-6D was also reported during the 2015 inspection as 75% full of sediment. This inlet is on the pad area of the welding shop and directly adjacent to the grease trap that is used to catch fluids and sediment from vehicle washouts.

<u>Stream Buffer Zone:</u>

OSMRE notes several areas that were marked "Stream Buffer Zone-Do Not Disturb" throughout the permit area. Conversely, the markers were well within the 100ft of mine disturbance that is allowed by R645-301-731.600. Specifically, the disturbance identified within the Stream Buffer Zones included during the 2015 inspection was noted as the following:

1. A wooden structure that appeared to be some sort of "fort" or "hideout";
2. A mine employee cutting limbs along a footpath with a sawzall;
3. Various non-coal waste items ranging from gear lubricant, coal, pump hoses, metals and a bag of Calcium Chloride.

Further review of the approved permit (Chapter 7, R645-331-731.600 Hydrology, Page 7-61F) states that:

Anywhere that mining and reclamation activities are conducted within 100 feet of a perennial stream runoff and sediment control structures exist to protect water quality. These areas are designated, as "Stream Buffer Zone do not Disturb.

The pump hoses have been removed from the SBZ. However, the other disturbances that were identified in 2015 (i.e., wooden fort, footpath, coal fines) have not been addressed.

Noncoal Waste

Noncoal waste was observed consistently throughout the inspection of the mine permit area during the 2015 inspection, as well as this inspection. To be clear, no particular area was considered to be "excessive," but cumulatively trash items were noted throughout the entire inspection at various areas of the Bear Canyon Mine. The following bullet points are intended to provide specifics of where noncoal waste was observed during the 2016 inspection:

- Bradish cloth and Styrofoam along ancillary access road near welding shop (road that leads to pond A).
- Various trash items around bathhouse area
- Various trash items in drainage that connects to undisturbed drainage (between Pond B and Pond A).
- Wood debris in and around pond B;
- Wooden cable spool at pond A embankment;
- Misc. cable along pond A embankment;
- Wooden pallets, misc. metal and wire, cables, pipes and rubber throughout drainage behind welding shop;
- Ice melt bag in roadside drainage near load out area;
- Approximately half a dozen large wooden containers being used as storage adjacent to ("hunting cabin").
- Plastic sheeting, empty quickrete bag and Styrofoam in pond D;
- Plastic sheeting on outslope of haul road (just down gradient of Portal #3 area);
- Large pile of noncoal waste(appears to a combination of woody debris, sludge/mud from where the pad was cleared of snow) stored on the embankment of pond D;
- Various noncoal items including old conveyor belts, pipes, and metal along the ancillary road just up-gradient from switchback below Portal #3;
- Old truck cab and door in stream buffer zone (adjacent to coal stockpile area)

Enforcement Actions / Programmatic Compliance:
After issuing enforcement actions for violations observed during the DOGM/OSMRE 2015 independent oversight inspection (NOV# 19151, 19152, 19153 and 19154), DOGM subsequently vacated # 19151, 19152, 19154 and terminated # 19153. These same violations were again observed during this inspection. Although the DOGM inspector agreed the conditions observed during the inspection warranted enforcement actions, he was reluctant to issue such.

In support of the fact that DOGM inspectors seem to be reluctant to ensure that program compliance is achieved, OSMRE has identified the following language in various DOGM inspection reports/conference hearings that give the impression to be the basis for why DOGM is not implementing enforcement action when inspections reveal that an enforcement action is warranted:

> The Division Inspector is following the admonition given by the Division Director/Informal Conference Officer for the Citation. The actions or conditions for which the NOV were written were such minor deficiencies in the context of the operation, that they do not constitute a violation of the MRP and did not justify an NOV being issued. The matter would have been more properly addressed by a communication from the inspector to the operator about conditions that the operator should attend to...

As a result of the conditions observed during this inspection, OSMRE has issued TDN # X16-141-545-004 to DOGM for noncompliance of the following Rules and noncompliance issues:

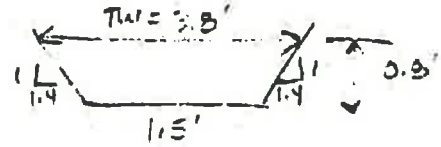
1. Failure to maintain inlets to sediment ponds (Rule R645-301-742.123);
2. Failure to control noncoal waste (Rule R645-301-528.331);
3. Encroachment of the Stream Buffer Zone (Rule R645-301-731.600);
4. Failure to maintain support facilities and maintain sediment control structures so as to prevent contribution of suspended solids to the undisturbed drainage (Rules R645-301-521.170, 742.200, 742.423.2, and 742.423.3)

Pond B - Inlets

* Inlet 1 : Adjacent to Road - grouted riprap.

min slope = max slope = 6'/9' = .67

BW = 1.5'



Q peak = 1.68 cfs to pond. Inlet 1 receives approx. 80% of this. ∴ flow in = 1.34 cfs.

resulting depth = 0.11 ft. OKAY
resulting velocity = 7.34 ft/s OKAY since this inlet is grouted riprap.

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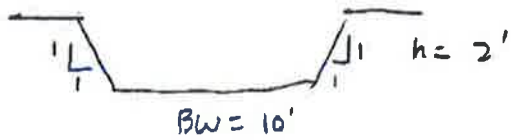
* Inlet 2 : North side of road

min slope = max slope = 4'/13' = .31

Q in = 0.34 cfs



resulting depth = .02 ft OK
resulting velocity = 1.72 ft/s OK

Velocity considered non-scouring.

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Pond D Inlet cross-section

The slope of the channel inlet is 1'/3' = 0.33.

With a peak flow of 1.03 cfs, the resulting depth of flow = 0.14 ft.
The resulting velocity = 6.62 fps.

To prevent erosion, a grouted riprap will be used to line the inlet.

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BTCA Area H – Snow Storage Areas.

This ASCA consists of of 8 areas where snow removed from the roads will be stored while it melts. The areas are shown on Plates 7-1 and a description of the roads treated by the areas is described below.

Area 1. This area stores snow from the primary haul road.
Area 2. This area stores snow from the #3 mine access road between the WHR turnoff and the bin.
Area 3. This area stores snow from the #3 mine access road between the bin and the switchback above the bin.
Area 4. This area stores snow from the #3 mine access road starting at the switchback above the bin and going up to halfway between the switchback above the bin and the WHR TS turnoff.
Area 5. This area stores snow from #3 mine access road starting halfway between the switchback above the bin and the WHR Tank Seam turnoff and going up to the WHR Tank Seam turnoff.
Area 6. This area stores snow from the #3 Mine pad and the road between the #3 mine pad and the WHR tank seam turnoff.
Area 7. This area stores snow from the road from the WHR Tanks Seam turnoff to the last switchback below the #4 pad.
Area 8. This area stores snow from the #4 mine pad the the access road between the last switchback and the # 4 pad.

Run-off from these areas will only be treated while snow is stored there. The treatments for each of the areas is described below.

Area 1 will drain into Sediment Pond B.
Area 2 will be drain into Catch Basin 1.
Area 3 will be treated by either silt fences or straw bails placed in ditch D-25U.
Area 4 will be treated by a silt fence placed at the outlet of ditch D-30U
Area 5 will be treated by a silt fence placed at the outlet of ditch D-34U
Area 6 will drain into Sediment Pond D.
Area 7 treated by a silt fence placed at the outlet of ditch D-37U
Area 8 will drain into Catch Basin 3.

Snow is mostly air so it can be compressed up to 90% once it falls. The amount of compression snow undergoes during plowing is almost impossible to calculate until after the snow has fallen because it is dependent upon temperature, aging of snow, humidity, amount of conditioning, moisture content, pressure applied to it, and the amount of traffic that has already driven on the snow. Despite this fact we have done our best to guess the conditions of the snow that we will receive. For our calculations we used the average snow pack of 30 inches as described in Appendix 7L Gentry Mountain CHIA. We assumed the plowing process only carried 75% of the snow to the storage area. 10% would remain behind either side cast against the berm and the mountain side or compacted as a layer of ice above the road surface, and 15% would melt due to salt treatment and heat from the sun. We then assumed 80% compaction during the plowing process and the the piles we be between 8 and 10 feet high with a 45° slope. We did not account for any melting of the pile between snow storms. A table detailing the results is shown below.

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BTCA Area A - Ball Park Topsoil Pile

The ball park located on Plate 7-1A covers approx 1.3 acres. Runoff volume from this area is calculated to be approx 0.08 acre ft. This area is well downstream from the sediment pond structures and is isolated from all other facilities. Sediment and erosion control is performed using straw bale dikes and/or silt fences which are installed and maintained on the south east side, in-line with the natural flow from the area.

BTCA Area B - Topsoil Stockpile

The main topsoil storage pile, located on Plate 7-1C covers approx 0.1 acres. Runoff volume from this area is calculated to be less than 0.01 acre ft. Although this area is located upstream from sediment pond B it is located on the opposite side of an undisturbed drainage ditch, D-9U. The area is encircled by an 18 in. berm which totally contains the runoff.

BTCA Area C - Downcast Ravine Below The Hiawatha Portal

This area lies between the portal access road and the storage pad below. It is approx 60 ft wide and 260 ft long, covering approx 0.36 acres and is located within area AU-12. See Plate 7-1C.

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