0006

C/015/032
cc: Steve C.

State of Utah
JON M. HUNTSMAN, JR.
Governor

GARY HERBERT
Lieutenant Governor

Department of
Environmental Quality

William J. Sinclair
Acting Executive Director

DIVISION OF WATER QUALITY
Walter L. Baker, P.E.
Director

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Walter L. Baker,
Executive Secretary

February 26, 2009

CERTIFIED MAIL
(Return Receipt Requested)

Mr. Bruce Hill, President & CEO
UtahAmerican Energy, Inc. (UEI)
Genwal Resources, Inc.
P.O. Box 910
East Carbon, UT 84520

Dear Mr. Hill:

Subject: Notice of Violation and Order, Docket No. I09-02, UPDES Permit No. UT0024368
West Ridge Resources, Inc., West Ridge Mine.

Enclosed is the Notice of Violation and Order (Order), Docket Number I09-02, issued to you by the Utah Water Quality Board and Division of Water Quality (DWQ). This Order has been issued in response to continued violations of the total iron effluent limitation requirements of your UPDES Permit for the above referenced facility.

A response is required within 30 calendar days of your receipt of the Order. After receiving your response DWQ will contact you with a proposed settlement agreement or to arrange a settlement meeting. Your continued cooperation with resolving this matter is appreciated.

If you have any questions or wish to discuss anything related to the Order, please contact Jeff Studenka of this office at (801) 538-6779, or by e-mail at jstudenka@utah.gov.

Sincerely,

Utah Water Quality Board

Walter L. Baker, P.E.
Executive Secretary

WLB: JAS: mc

Enclosure

cc (w/ encl.): Bill Sinclair, Department of Environmental Quality
Laura Lockhart, Office of Attorney General
Darcy O'Connor, EPA Region VIII
Claron Bjork, SE Utah District Health Department
Dave Ariotti, DEQ SE District Engineer
Daron Haddock, Division of Oil Gas & Mines
Dale Harber, US Forest Service
Dave Shaver, UEI West Ridge Mine

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IN THE MATTER OF GENWAL RESOURCES, INC. Crandall Canyon Mine, PO Box 910 East Carbon, Utah 84520	NOTICE OF VIOLATION AND COMPLIANCE ORDER DOCKET NUMBER I09-02

A. STATUTORY AUTHORITY

This **NOTICE OF VIOLATION and COMPLIANCE ORDER (NOV/CO)** is issued by the UTAH WATER QUALITY BOARD (the **BOARD)** under the Utah Water Quality Act, as amended, Utah Code Ann. §§ 19-5-101 to 19-5-123 (the **ACT**), including Utah Code Ann. §§ 19-5-104, 19-5-106, 19-5-111 and 19-5-115. This **NOV/CO** is also issued in accordance with the Utah Administrative Procedures Act, Utah Code Ann. §§ 63-46b-0.5 to 63-46b-23. The **BOARD** has delegated to the Executive Secretary of the **BOARD (EXECUTIVE SECRETARY)** authority to issue such **NOTICES AND ORDERS** in accordance with 19-5-106(8) of the Utah Code.

B. APPLICABLE STATUTORY AND REGULATORY PROVISIONS

1. It is unlawful for any person to discharge a pollutant into waters of the state or to cause pollution which constitutes a menace to public health and welfare, or is harmful to wildlife, fish or aquatic life, or impairs domestic, agricultural, industrial, recreational, or other beneficial uses of water, or placing or causing to be placed any wastes in a location where there is probable cause to believe that it will cause pollution, per Utah Code Ann. § 19-5-107(1)(a). Waters of the State means "all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of the state.", per Utah Code Ann. § 19-5-102(18)(a).

2. It is unlawful for any person to make any discharge not authorized under an existing valid discharge permit, Utah Code Ann. § 19-5-107(3)(a).

3. Utah Administrative Code R 317-8-4.1(1)(a) requires compliance with all conditions of said permit cited below and states that any permit noncompliance is a violation of the **Act** and is therefore grounds for enforcement action.

4. Part I.D. of the **GENWAL RESOURCES, INC.** Utah Pollutant Discharge Elimination System (UPDES) permit # UT0024368 requires monthly monitoring of effluent flows, total suspended solids (TSS), total iron, oil & grease, pH, dissolved oxygen, and total dissolved solids (TDS).

5. Part I.D. of the **GENWAL RESOURCES, INC.** UPDES permit # UT0024368 requires the effluent concentrations to comply with the following provisions:

a. TSS monthly average shall not exceed 25 mg/L.
b. TSS weekly average shall not exceed 35 mg/L.
c. TSS daily maximum shall not exceed 70 mg/L.
d. Total iron daily maximum shall not exceed 1.3 mg/L.
e. Oil & grease daily maximum shall not exceed 10 mg/L.
f. The pH daily minimum shall not be less than 6.5 standard units.
g. The pH daily maximum shall not be more than 9.0 standard units.
h. The dissolved oxygen monthly average shall not be less than 4.0 mg/L.
i. TDS daily maximum shall not exceed 1200 mg/L.

C. FINDINGS OF FACT

1. **GENWAL RESOURCES, INC.** (hereinafter **GENWAL**) owns and maintains an inactive bituminous coal underground mining facility located in Crandall Canyon, approximately 15 miles northwest of Huntington City in Emery County, Utah.

2. **GENWAL** was issued UPDES Permit # UT0024368 on December 1, 2005 that was subsequently modified on February 22, 2007, which allows and controls discharge from the industrial facility.

3. Effluent samples not meeting permit requirements, as reported by **GENWAL** on Discharge Monitoring Reports (DMRs) for outfall 002, are summarized in the following table:

Month & Year	Total Iron (mg/L)
October 2008	1.335
December 2008	1.569
January 2009	1.783
February 2009	2.454

D. VIOLATIONS

Based on the foregoing Findings of Fact, **GENWAL** has violated the following:

1. Utah Code Ann. § 19-5-107(1)(a) for discharging "...a pollutant into waters of the state or to cause pollution which constitutes a menace to public health and welfare, or is harmful to wildlife,

fish or aquatic life, or impairs domestic, agricultural, industrial, recreational, or other beneficial uses of water, or placing or causing to be placed any wastes in a location where there is probable cause to believe that it will cause pollution.", as listed and described in Findings of Fact, paragraph C.3.

2. Utah Code Ann. § 19-5-107(3)(a), Utah Administrative Code R 317-8-4.1 (1)(a), and Part I.D of UPDES Permit # UT0024368 for violations of effluent discharge limits as listed and described in the Findings of Fact paragraph C.3.

E. ORDER

Any compliance schedules submitted by the *violator* as required by this Order must be submitted by the deadlines established in this Order and approved by the Executive Secretary. Once compliance schedules are approved by the Executive Secretary, the compliance schedule must be implemented according to the deadlines and requirements established in the compliance schedule(s) and/or this Order. Once approved, timeframes and requirements of any compliance schedule become binding on the *violator.*

Based on the foregoing **FINDINGS OF FACT** and **VIOLATIONS**, and pursuant to Utah Code Ann. § 19-5-107 and 19-5-111, **GENWAL** is hereby **ORDERED** to:

1. Immediately initiate all action required to come into compliance with all applicable provisions of the Utah Water Quality Act, the Water Quality rules in the Utah Administrative Code, and UPDES permit # UT0025640.

2. Submit to the **EXECUTIVE SECRETARY,** within 30 days of receipt of this **NOV/CO,** a report which includes, but is not limited to the following:

    a. An account of the conditions and events leading up to, and surrounding the un-permitted discharges described above,
    b. Actions taken to remedy the situation surrounding the un-permitted discharges, and precautions taken to prevent future releases,
    c. The current condition and status of the releases,
    d. Any documented or reported damages to the water body or beneficial uses thereof,
    e. Report any un-permitted discharges not identified above,
    f. A plan to remediate any residual contaminants or damage from the spill, if any such exist.

F. NOTICE

This **NOV/CO** is effective immediately. **GENWAL** may contest this **NOV/CO** by submitting a Request for Agency Action in writing as specified in Utah Administrative Code R 317-8-3. Any

such Request must be received by the Executive Secretary within 30 days of the **NOV/CO**'s issuance or the **NOV/CO** shall become final.

Compliance with the provisions of this **ORDER** is mandatory. The information requested will be considered in the evaluation of the extent of your compliance with the Water Quality Act and its underlying regulations and permit. Failure to respond fully and truthfully, or to adequately justify such failure to respond, may subject **GENWAL** to further civil penalties or criminal fines under Utah Code Ann. § 19-5-115.

All reports required under the Permit must be accompanied by the following certification, which is to be signed in accordance with Utah Administrative Code R 317-8-3.4(4): "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who managed the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations."

Utah Code Ann. § 19-5-115 provides that violation of the **ACT** or a related order may be subject to a civil penalty of up to $10,000 per day of violation. Under certain circumstances of willfulness or gross negligence, violators may be fined up to $25,000 per day of violation.

Signed this 26th day of February, 2009.

Utah Water Quality Board

Walter L. Baker, P. E.
Executive Secretary

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