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State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas and Mining

JOHN R. BAZA
Division Director

May 9, 2013

CERTIFIED MAIL 70101670000148103324

David Hibbs, Resident Agent
Genwal Resources, Inc.
P.O. Box 910
East Carbon, Utah 84520-0910



SUBJECT: REVISED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
ORDER FOR NOV 10105, CRANDALL CANYON MINE, C/015/0032,
TASK ID #4295

Dear Mr. Hibbs:

On April 10, 2013, an informal conference was held at the Utah Department of Natural Resources to review the fact of violation and proposed assessment for Notice of Violation No. 10105, which was issued on March 18, 2013. As a result of a review of all pertinent data and facts, including those presented in the informal conference, the attached document constitutes the Findings of Fact, Conclusions of Law, and Order.

Pursuant to Utah Code Ann. § 40-10-22(3)(a) and Utah Admin. Code R645-401-800, you will have 30 days from the date of the Final Order to request a hearing before the Board of Oil, Gas, and Mining. A hearing may be requested by filing a written appeal with Julie Ann Carter, Board Secretary, P.O. Box 145801, Salt Lake City, Utah 84114-5801. If you have questions regarding the filing, she can be contacted at juliecarter@utah.gov or (801) 538-5277.

If you have questions or concerns please contact me at (801) 538-5334.

Sincerely,

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

JRB:er



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

In the Matter of the Informal Conference for the Fact of Violation and Proposed Assessment for Notice of Violation 10105, Genwal Resources, Inc., Crandall Canyon Mine	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER Cause No. C/015/0032
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PROCEDURAL HISTORY

1. On March 18, 2013, the Utah Division of Oil, Gas and Mining (“Division” or “DOGM”) issued Notice of Violation No. 10105 (“NOV”) to Genwal Resources, Inc. (“Genwal”) for failing to maintain adequate storage capacity within the primary sediment pond at the Crandall Canyon Mine.
2. On March 26, 2013, Genwal timely requested an informal conference before the Division to review the fact of the violation and proposed assessment for the NOV.
3. On April 10, 2013, the Division held an informal conference pursuant to Utah Admin. Code R645-401-700 to review the NOV. The hearing took place at the Department of Natural Resources Building, 1594 West North Temple, Salt Lake City, Utah.
4. John Baza, Director of the Division, served as the Hearing Officer for the conference.
5. Steve Christensen, Inspector for the Division, facilitated the Division’s presentation of arguments. Mr. Christensen and the Division were represented by Steven F. Alder and Cameron B. Johnson, Assistant Utah Attorneys General.
6. Joe Helfrich, Assessment Officer for the Division, presented arguments in support of the proposed assessment of \$990.00.
7. Jay Marshall, employee of Genwal, was present on behalf of Genwal. Genwal was represented by attorney Denise Dragoo of Snell and Wilmer.

FINDINGS OF FACT

Based on the information presented at the informal conference, and in information contained in the Division’s files, I make the following Findings of Fact:

8. The Crandall Canyon Mine Sedimentation and Drainage Control Plan (the “Plan”), incorporated into the Mining and Reclamation Plan (the “MRP”) at Appendix 7-4, provides that the primary sedimentation pond at Crandall Canyon Mine (the “Pond”)

“has been sized to meet the requirements of R645-301-742.221.33 (DOGM), which stipulates that sedimentation ponds be capable of containing or treating the 10-year 24-hour precipitation event.” Plan, at 29.

9. The Plan also provides that the Pond was designed to contain “3 years of sediment storage capacity.” Plan, at 36, Item 3.4(a).
10. Table 12 of the Plan sets forth maximum allowable elevation limits for both sediment and water in the Pond. It requires sediment levels to remain below 7770’ and requires water levels to remain below 7773.2’. The sediment from the Pond must be cleaned out if it reaches 7769’.
11. Metal rods were placed in the Pond to indicate whether the maximum sediment and water levels in the Pond had been reached, and whether the sediment in the Pond needed to be cleaned out. Red tape was placed around one of the rods to mark the sediment cleanout level. The metal rods are not identified on Plate 7-3, Crandall Canyon Mine Genwal Pond (As-Built).
12. During a field inspection of the Crandall Canyon Mine on May 15, 2012, DOGM inspectors indicated to Genwal that the sediment level was too high. DOGM directed Genwal to clean out the sediment from the Pond because the sediment had exceeded the cleanout level.
13. On March 14, 2013, DOGM Inspector Steve Christensen visited the Crandall Canyon Mine and conducted a field inspection. Christensen determined that Genwal had failed to maintain adequate storage capacity within the Pond, and therefore issued an NOV on March 18, 2013. *See* NOV, March 18, 2013.
14. On April 5, 2013, Christensen modified the NOV “in order to be consistent with NOV #10046. NOV #10046 was issued to Genwal Resources, Inc. on 10/29/2009 for failure to maintain sediment levels below the approved 60% clean out elevation and maximum sediment elevation as approved in the [MRP].” NOV Modification, April 5, 2013.
15. Christensen noted that the NOV was issued because Genwal was required to clean the Pond every three years and the Pond had not been cleaned in over three years. Christensen pointed out that in addition to normal sedimentation, additional iron-sludge material had been deposited in the Pond from approximately May 2011 to late 2012.
16. Christensen noted that the NOV was issued because the “10-year, 24-hour marker was no longer visible” during his March 14 inspection. *See* Event Violation Inspector’s Statement, at 2, April 3, 2013. The NOV was based on photographs and visual inspection of the water and sediment levels, but no measurements were taken at the time of the inspection.
17. To support the argument that the levels in the Pond were over limits, Christensen offered evidence that Genwal submitted a report to the Division in January 2013 that

indicated the water elevation in the Pond was at 7780', approximately 7' over the maximum allowable water level.

18. The NOV required Genwal to complete several actions within 45 days of receipt of the NOV. Those actions included decanting the water from the Pond, removing all accumulated sediment and sludge material, establishing sediment cleanout markers, establishing maximum water level markers, and revising the MRP.
19. At the informal conference on April 10, 2013, Genwal argued that, contrary to the statements in the NOV, sediment levels at the Pond are in compliance with the Plan and the MRP.
20. Genwal argued that although it submitted a report to the Division in January 2013 that indicated water elevation was at 7780' (approximately 7' over the maximum allowable water level), this was a mistake and the report was revised to reflect the correct elevation of 7773.2'.
21. Genwal argued that while the Division had taken no measurements, Genwal had actually conducted a survey which showed that the red tape was located at 7772.1', not 7773.2'. Therefore, according to Genwal, because the red tape was located 1.1' below the maximum water level of 7773.2' and because photographs taken on March 19, 2013 showed that the red tape was visible above the water/ice level in the Pond, the water level was in compliance with the Plan incorporated into the MRP.
22. Genwal argued that the sediment level was in compliance because photographs taken on April 8, 2013 showed that the sediment level in the Pond was below the sediment cleanout level.

CONCLUSIONS OF LAW

23. Utah Admin. Code R645-301-742.221 requires a coal mine operator, if using a sedimentation pond as part of its mining activities, to design, construct, and maintain the pond to “[p]rovide adequate sediment storage volume;” to “[c]ontain or treat the 10-year, 24-hour precipitation event (‘design event’)[;]” to “[p]rovide periodic sediment removal sufficient to maintain adequate volume for the design event[;]” and to “[e]nsure against excessive settlement[.]”
24. The testimony and evidence submitted by the Division suggests that, at the time of the inspection on March 14, 2013, the water or sediment levels in the Pond were out of compliance with Utah Admin. Code R645-301-742.221 and the Plan incorporated into the MRP. However, because no actual measurements were taken and the testimony and evidence are based on only a visual inspection, the testimony and evidence are not conclusive.
25. The testimony and evidence submitted by Genwal suggests that, at some time after the Division’s inspection on March 14, 2013, the water and sediment levels in the Pond

were in compliance with Utah Admin. Code R645-301-742.221 and the Plan incorporated into the MRP. Survey and other measurements establish that the water and sediment levels in the Pond were below the maximum allowable levels.

26. Genwal violated the Plan in the MRP and Utah Admin. Code R645-301-742.221.37 by failing to clean the Pond for over three years.

ORDER

1. The NOV shall be vacated if Genwal, within 30 days from the date of this order:
 - a. Decants all water from the sediment pond and removes all accumulated sediment and sludge material in accordance with the approved UPDES Permit;
 - b. Establishes a minimum of three sediment cleanout markers within the Pond. Each of the markers must be easily viewed and clearly mark the sediment cleanout level of 7,769’.
 - c. Establishes a reliable 10-year, 24-hour design storm reference marker (i.e. the maximum allowable water level marker) within the Pond. The marker must be easily viewed and clearly mark the maximum allowable water level of 7,773.2’.
 - d. Revises Plate 7-3, Crandall Canyon Mine Genwal Pond (As-Built) of the approved MRP to clearly identify the locations of the sediment markers and the 10-year, 24-hour design storm reference marker.
 - e. Revises Appendix 7-4 and Appendix 7-65 of the approved MRP with a narrative that discusses the sediment markers and 10-year, 24-hour design storm event marker. The discussion must include a commitment that cleanout operations will be initiated at the Pond if the sediment level reaches or approaches the sediment markers, and that at no time will the water level in the Pond be allowed to surpass the 10-year, 24-hour design storm event marker.
2. The requirements set forth in the immediately preceding paragraph shall be fulfilled to the Division’s satisfaction.
3. If Genwal fails to fulfill these requirements the NOV shall be affirmed.

SO ORDERED this 9th day of May, 2013.



John Baza
Director
Division of Oil, Gas and Mining
Informal Conference Officer

RIGHTS OF APPEAL

Forty-five days after the date of this Order (on or about June 24, 2013), the Informal Conference Officer will issue a Final Order either affirming or vacating the NOV, according to the conditions set forth in this Order.

Pursuant to Utah Code Ann. § 40-10-22(3)(a) and Utah Admin. Code R645-401-800, you will have 30 days from the date of the Final Order to request a hearing before the Board of Oil, Gas, and Mining. A hearing may be requested by filing a written appeal with Julie Ann Carter, Board Secretary, P.O. Box 145801, Salt Lake City, Utah 84115-5801. If you have questions regarding the filing, she can be contacted at juliecarter@utah.gov or (801) 538-5277.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Revised **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** for NOV 10105, CRANDALL CANYON MINE, C/015/0032, TASK ID #4295 to be mailed by email, First Class or Certified Mail with postage prepaid, this 24th day of May, 2013, to the following:

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PS Form 3800, August 2006

See Reverse for Instructions