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C0250005  
Internal  
# 3987  
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**HINDRANCE TO ENFORCEMENT VIOLATIONS**  
**INSPECTOR'S STATEMENT**

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

NOV # 10092  
Violation # 1 of 1

A. **HINDRANCE TO ENFORCEMENT:** (Answer for hindrance violations only such as violations concerning record keeping, monitoring, plans and certification).

Describe how violation of this regulation actually hindered enforcement by DOGM and/or the public and explain the circumstances.

Explanation: **Sage Grouse Trapping:** The permittee failed to trap sage grouse at the Hoyt's Ranch and Alton leks during the 2011 trapping season. By not doing so the Division, DWR and the consulting biologist were hindered from determining if the birds were moving back and forth between the leks which is critical to the sustainability of the leks. They were also hindered from determining if there were any impacts to the dozen or so birds on the Alton lek from the first year of mining activities. Unbeknownst to the Division DWR decided not to issue a trapping permit, (COR). This was apparently communicated to Dr. Petersen and ACD. However ACD never contacted the Division in light of the fact that ACD had an approved plan that included a trapping program.

**Establishing a Connectivity Corridor with DWR:** By not participating in the removal of the Pinyon / Juniper trees from the sage-brush corridor the sage grouse are hindered from establishing connectivity between leks, in this case the Hoyt's Ranch and Alton leks. The project was cancelled for the year 2011 due to lack of funding. ACD decided not to participate in the project but did not contact the Division to discuss alternative options.

**DWR Representation in the Employee Awareness Program:** By not having DWR's biologist participate in the employee awareness program the Division, DWR and the consulting biologist were hindered from determining if there were impacts to deer and elk during periods of critical migration from traffic at the mine and on highway 89 and state roads 14 and 20. ACD decided not to include DWR in their employee awareness program and did not contact the Division to discuss alternative options.

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

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

Explanation: \_\_\_\_\_

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

Explanation: The permittee simply decided not to comply with their permit and commitments they had previously agreed to through permit amendments and consultation with the DWR and DOGM. \_\_\_\_\_

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

Explanation: \_\_\_\_\_

- X Was the operator in violation of any conditions or stipulations of the approved MRP?

**Explanation:** The permittee was cited for their failure to comply with Attachment A Special condition 6 of the permit that reads as follows: *Satisfactory compliance with the Alton Sage-Grouse Habitat Protection plan is required.*

*Alton Coal Development, LLC will use best technology currently available to achieve the objectives of the plan in order to minimize the disturbances and adverse impacts to the sage grouse and related habitat and to enhance those resources where practicable. ACD will cooperate with the Division in consultation with the state and federal wildlife agencies to develop reasonable practices and methods as are determined to be necessary to implement the plan and to measure success and to achieve the goals of the plan.*

- Has DOGM or OSM cited a same or similar violation of this regulation in the past? If so, give the dates and the type of enforcement action taken.

Explanation: \_\_\_\_\_

**C. GOOD FAITH**

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

Explanation: Compliance with the abatement requirements of the NOV have not been completed at this time. \_\_\_\_\_

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

Explanation: Dr. Steven Petersen is employed by ACD to conduct research and implement the protection and enhancement plan for the sage grouse at the Coal Hollow mine. \_\_\_\_\_

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

Explanation: The abatement of the NOV requires the permittee to submit a detailed sage grouse trapping and monitoring proposal for 2012. The plan needs to be reviewed by the Division and consulting wildlife agencies, approved by the Division and implemented by the permittee.

  
\_\_\_\_\_  
Authorized Representative

  
\_\_\_\_\_  
Signature

December 20, 2011  
Date