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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

Outgoing
C0250005
#3820
OK

June 2, 2011

CERTIFIED RETURN RECEIPT

7005 0390 0000 7507 4955

Kirk Nicholes
Alton Coal Development
463 North 100 West, Suite 1
Cedar City, Utah 84720

Subject: Proposed Assessment for State Violation No. N 10084, Coal Hollow Mine,
C/025/0005, Task ID #3820, Outgoing File

Dear Mr. Nicholes:

The undersigned has been appointed by the Division of Oil, Gas & Mining as the Assessment Officer for assessing penalties under R645-401.

Enclosed is the proposed civil penalty assessment for the above referenced violation. The violation was issued by Division Inspector, Kevin Lundmark, on May 2, 2011. Rule R645-401-600 et. seq. has been utilized to formulate the proposed penalty. By these rules, any written information which was submitted by you or your agent within fifteen (15) days of receipt of this Notice of Violation has been considered in determining the facts surrounding the violation and the amount of penalty.

Under R645-401-700, there are two informal appeal options available to you:

1. If you wish to informally appeal the fact of this violation, you should file a written request for an Informal Conference within thirty (30) days of receipt of this letter. This conference will be conducted by the Division Director. This Informal Conference is distinct from the Assessment Conference regarding the proposed penalty.

2. If you wish to review the proposed penalty assessment, you should file a written request for an Assessment Conference within thirty (30) days of receipt of this letter. If you are also requesting a review of the fact of violation, as noted in paragraph 1, the Assessment Conference will be scheduled immediately following that review.

If a timely request for review is not made, the fact of violation will stand, the proposed penalty(ies) will become final, and the penalty(ies) will be due and payable within thirty (30) days of the proposed assessment. Please remit payment to the Division, mail c/o Suzanne Steab.

Sincerely,

A handwritten signature in black ink, appearing to read "JCH" with a stylized flourish.

Joseph C. Helfrich
Assessment Officer

Enclosure

cc: OSM Compliance Report
Suzanne Steab, DOGM
Vicki Bailey, DOGM
Price Field Office

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Kirk Nicholes
Alton Coal Development LLC
463 North 100 West, Suite 1
Cedar City, Utah 84720

Street, Apt
or PO Box

City, State

PS Form 3800, June 2002

See Reverse for Instructions

**WORKSHEET FOR ASSESSMENT OF PENALTIES
DIVISION OF OIL, GAS & MINING**

COMPANY / MINE Coal Hollow Mine

PERMIT C/015/0025 NOV / CO # N 10084

VIOLATION 1 of 1

ASSESSMENT DATE June 2, 2011

ASSESSMENT OFFICER Joe Helfrich

I. HISTORY (Max. 25 pts.)

- A. Are there previous violations, which are not pending or vacated, which fall one (1) year of today's date?

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS
_____	_____	_____

1 point for each past violation, up to one (1) year
5 points for each past violation in a CO, up to one (1) year
No pending notices shall be counted

TOTAL HISTORY POINTS 0

II. SERIOUSNESS (Either A or B)

NOTE: For assignment of points in Parts II and III, the following apply:

1. Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
2. Beginning at the mid-point of the category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an EVENT (A) or HINDRANCE (B) violation? Event

A. EVENT VIOLATION (Max 45 pts.)

1. What is the event which the violated standard was designed to prevent?
Conducting activities without appropriate approvals.

Water Pollution

2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 20

PROVIDE AN EXPLANATION OF POINTS:

****According to the information in the inspector statement, "On April 20, 2011 Division inspectors observed Operator discharging water to Lower Robinson Creek from the former creek channel without an associated UPDES outfall for the discharge."*

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

No damage occurred as a result of the violation

ASSIGN DAMAGE POINTS 0

PROVIDE AN EXPLANATION OF POINTS:

****According to the information in the inspector statement, "sediment and sediment laden snow were pushed over a disturbed area berm adjacent to Bear creek within the stream buffer zone. The stream buffer area is currently subject to the sediments of the deposited material. Water being discharged had been impounded behind an earthen road/dike constructed across the former creek channel for equipment access. Discharge was through a 4-inch PVC pipe, with the flow measured as 12 L/min."*

B. HINDRANCE VIOLATION (Max 25 pts.)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? Actual RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS _____

PROVIDE AN EXPLANATION OF POINTS:

TOTAL SERIOUSNESS POINTS (A or B) 20

III. NEGLIGENCE (Max 30 pts.)

A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, or the failure to abate any violation due to the same? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Greater Degree of Fault

ASSIGN NEGLIGENCE POINTS 25

PROVIDE AN EXPLANATION OF POINTS:

**** According to the information in the inspector statement: "During an inspection on April 7, 2011, Division inspectors instructed Operator to cap the 4-inch PVC pipe to prevent discharges to Lower Robinson Creek. Operator reportedly began discharging after receiving results of a RCRA-8 analysis of the water impounded in the former creek channel. ACD representative Kirk Nichols indicated that he assumed that the water could be discharged based on the analytical results; however, he did not contact the Division to discuss the analytical results or the discharge to Lower Robinson Creek."*

Permit C0250005 Sec. 14 COMPLIANCE WITH OTHER LAWS - The permittee shall comply with the provisions of the Water Pollution Control Act (33 USC 1151 et seq.) and the Clean Air Act (42 USC 7401 et seq), UCA 26 11 1 et seq, and UCA 26 13 1 et seq.

Coal Hollow UPDES permit UTG040027 (page 4) states that "discharges at any location not authorized under a UPDES permit is a violation of the Act and may be subject of penalties under the Act. Knowingly discharging from an unauthorized location or failing to report an unauthorized discharge may be subject to criminal penalties as provided under the Act."

IV. GOOD FAITH (Max 20 pts.)

(Either A or B)

(Does not apply to violations requiring no abatement measures)

A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?

IF SO--EASY ABATEMENT

Easy Abatement Situation

X Immediate Compliance -11 to -20*

- (Immediately following the issuance of the NOV)
- X Rapid Compliance -1 to -10
(Permittee used diligence to abate the violation)
 - X Normal Compliance 0
(Operator complied within the abatement period required)
(Operator complied with condition and/or terms of approved Mining and Reclamation Plan)

*Assign in upper of lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

- X Rapid Compliance -11 to -20*
(Permittee used diligence to abate the violation)
- X Normal Compliance -1 to -10*
(Operator complied within the abatement period required)
- X Extended Compliance 0
(Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete)
(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? Difficult, plans were required

ASSIGN GOOD FAITH POINTS 0

PROVIDE AN EXPLANATION OF POINTS:

****According to the inspector statement good faith did not apply to this type of violation*

V. ASSESSMENT SUMMARY

NOTICE OF VIOLATION # N 10084

I.	TOTAL HISTORY POINTS	<u>0</u>
II.	TOTAL SERIOUSNESS POINTS	<u>20</u>
III.	TOTAL NEGLIGENCE POINTS	<u>25</u>
IV.	TOTAL GOOD FAITH POINTS	<u>0</u>
	TOTAL ASSESSED POINTS	<u>45</u>

TOTAL ASSESSED FINE \$ 2,750