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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

C0250005
Outgoing
#3826
R

July 12, 2011

CERTIFIED RETURN RECEIPT

7009 3410 0001 4203 1898

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

Subject: Proposed Reassessment for State Violation No. N 10085, Coal Hollow Mine, C/025/0005, Task ID #3826, 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 *reassessment* for the above referenced violation. The violation was issued by Division Inspector, Karl Housekeeper, on May 25, 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:

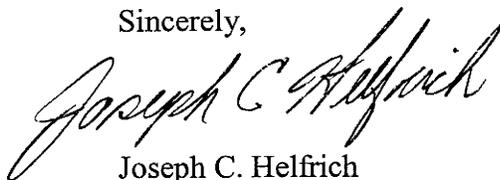
1. If you wish to informally appeal the fact of this violation, you should file a written request for an Informal Conference within thirty (30) days of receipt of this letter. This conference will be conducted by the Division Director. This Informal Conference is distinct from the Assessment Conference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



Joseph C. Helfrich
Assessment Officer

JCH/sqs
Enclosure

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

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Kirk Nicholes		
<i>Sent To</i> Alton Coal Development LLC		
<i>Street, Apt or PO Box</i> 463 North 100 West, Suite 1		
<i>City, State</i> Cedar City, Utah 84720		

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

COMPANY / MINE Coal Hollow Mine

PERMIT C/025/0005 NOV / CO # N 10085 VIOLATION 1 of 1

REASSESSMENT DATE July 12, 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? Hindrance

A. EVENT VIOLATION (Max 45 pts.)

1. What is the event which the violated standard was designed to prevent?
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 0

PROVIDE AN EXPLANATION OF POINTS:

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:

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 15

PROVIDE AN EXPLANATION OF POINTS:

******According to the information in the inspector statement "Inspection and or paperwork associated with First Quarter 2011 Excess Spoil Pile were not conducted and or available for review by the assigned inspector during the field inspection". The information submitted after the NOV was issued was incomplete and did not meet the requirements of the regulations. Therefore the hindrance points remain as assessed.***

TOTAL SERIOUSNESS POINTS (A or B) 15

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 15

PROVIDE AN EXPLANATION OF POINTS:

***** According to the information in the inspector statement: "From communication with the resident agent Kirk Nicholes it did not appear that they, (Company/Operator/Permittee), knew that an inspection was required. The regulations as well as the commitment in their Mining and Reclamation Plan were reviewed during the inspection." The permittee was also in violation of a specific permit condition, that being "commitment to inspect quarterly by a registered Professional Engineer in the State of Utah for excess Spoil Pile is contained on page 5-6, paragraph 2 (titled 514.110)". Additional information provided by the permittee warranted a lesser degree of negligence. Therefore the negligence points are reduced to 15. It is important for the permittee to understand the importance of clearly understanding the permit conditions noted in the MRP as they are a factor in determining the negligence points.**

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 (Permittee used diligence to abate the violation)	-11 to -20*
X	Normal Compliance (Operator complied within the abatement period required)	-1 to -10*
X	Extended Compliance (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)	0

EASY OR DIFFICULT ABATEMENT? Difficult, plans were required

ASSIGN GOOD FAITH POINTS 0

PROVIDE AN EXPLANATION OF POINTS:

***There is no abatement required by the violation. The information required for the first quarter of 2011 can not be obtained.

V. ASSESSMENT SUMMARY

NOTICE OF VIOLATION # N 10085

I.	TOTAL HISTORY POINTS	<u>0</u>
II.	TOTAL SERIOUSNESS POINTS	<u>15</u>
III.	TOTAL NEGLIGENCE POINTS	<u>15</u>
IV.	TOTAL GOOD FAITH POINTS	<u>0</u>
	TOTAL ASSESSED POINTS	<u>30</u>

TOTAL ASSESSED FINE \$ 1,100