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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

April 14, 2014

CERTIFIED MAIL 70101670000148103379

Bennett E. Bayer
Landrum & Shouse, LLP
106 West Vine Street, Suite 800
PO Box 951
Lexington, KY 40588-0951

Subject: Findings of Fact, Conclusions, and Order for Violation #10135 Alton Coal Development, LLC, Coal Hollow Mine, C/025/0005

Dear Mr. Bayer:

On April 11, 2014, an Informal Conference was held to review the assessment for Violation #10135. 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, and order.

Within fifteen (15) days of your receipt of this letter, you or your agent may make a written appeal to the Board of Oil, Gas and Mining. To do so, you must escrow the assessed civil penalties with the Division within thirty (30) days of receipt of this letter, but in all cases prior to the Board Hearing. Failure to comply with this requirement will result in a waiver of your right of further recourse.

If no timely appeal is made, this assessed civil penalty of \$110.00 must be tendered within thirty (30) days of your receipt of this letter. Please remit payment to the Division of Oil, Gas and Mining, c/o Vickie Southwick at the address listed below.

Sincerely,

John R. Baza
Director

Assessment Conference Officer

JRB:dd/er
Enclosures

Cc: Larry Johnson
Kirk Nicholes

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

IN THE MATTER OF THE INFORMAL ASSESSMENT CONFERENCE for PROPOSED ASSESSMENT; VIOLATION No. N10135, ALTON COAL DEVELOPMENT, COAL HOLLOW MINE, C/025/0005, KANE COUNTY, UTAH	: : : :	FINDINGS of FACT, CONCLUSIONS OF LAW AND ORDER
		CAUSE NO. C/0025/0005

---ooOoo---

On April 11, 2014, the Division of Oil, Gas and Mining (Division) held an Informal Assessment Conference as provided for by R645-401-700 Utah Administrative Code (2013) in response to the written request by Alton Coal Development (ACD) to review the fact of violation and amount assessment for Notice of Violation N10135 (NOV), issued to it on January 15, 2014 for operations at the Coal Hollow Mine, C/025/0005, Kane County, Utah.

ISSUES

The Division in its Notice of Violation found that rule R645-301-553 had been violated. This rule requires that rough backfilling and grading will follow coal removal by not more than 60 days or 1500 linear feet. The Division assessed a fine of \$440.00.

PARTIES

John R. Baza, Director of the Division of Oil, Gas and Mining served as the hearing officer. The hearing was conducted as an informal adjudicative proceeding. Lynn Kunzler represented Joe C. Helfrich, Assessment Officer, in presenting the arguments concerning the determination of the assessment amount. Dana Dean, Associate Director was in attendance and participated for the Division. Bennett Bayer, Larry Johnson, and Kirk Nicholes represented ACD and presented the position and arguments on its behalf.

No recording or transcript of the conference was made.

FINDINGS OF FACT

Based on the information provided at the conference, the statements presented by those speaking, and on information in the files of the Division the following Findings and Conclusions were made.

- The Request for an informal assessment conference was delivered to the Division on March 20, 2014.
- Notice of the Informal Assessment Conference was provided as required on April 1, 2014.
- Pits 6 and 9 were not rough backfilled and graded within 60 days of mining the coal in those pits.
- Pit 9 is no longer required to be filled at this time due to a recently approved permit amendment.
- ACD had been sending material to pit 6 since at least October 16, 2013.
- The swell factor used to design the mine was overestimated and ACD stopped sending material to the spoils pile as soon as they realized they did not have enough to fill pit 6.

CONCLUSIONS OF LAW

1. Pits #6 and 9 were not rough backfilled and graded within 60 days or 1500 linear feet.
2. The fact of the violation should stand.
3. Based on Mr. Johnson's testimony, and the actions ACD is taking to fill pit 6 the negligence points should be reduced to 0.
4. Because the violation is not yet abated no good faith points should be awarded.

ORDER

NOW THEREFORE, it is ordered that:

1. The fact of the violation is upheld.
2. The proposed assessment of \$440.00 is now finalized at \$110.00.

SO DETERMINED AND ORDERED this 11th day of April, 2014.



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

UTAH DIVISION OF OIL, GAS AND MINING
WORKSHEET FOR FINAL ASSESSMENT OF PENALTIES

COMPANY: Alton Coal Development
PERMIT: C/025/0005
VIOLATION: 10135

ASSESSMENT CONFERENCE OFFICER: John Baza

	Proposed Assessment	Final Assessment
(1) History/Previous Violations	<u>0</u>	<u>0</u>
(2) Seriousness	<u>5</u>	<u>5</u>
(3) Negligence	<u>20</u>	<u>0</u>
(4) Good Faith	<u>0</u>	<u>0</u>
Total Points	<u>25</u>	<u>5</u>

TOTAL ASSESSED FINE \$110.00

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BENNETT E BAYER
 LANDRUM & SHOUSE, LLP
 106 W VINE ST, SUITE 800
 PO BOX 951
 LEXINGTON KY 40588-0951

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