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DENVER
LAS VEGAS
LOS ANGELES
LOS CABOS
ORANGE COUNTY
PHOENIX
RENO
SALT LAKE CITY
TUCSON

August 28, 2015

**VIA E-MAIL
CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

John Baza
Director
Utah Division of Oil, Gas & Mining
1594 W. North Temple, Suite 1210
PO Box 145801
Salt Lake City, Utah 84114-5801

Re: Alton Coal Development, LLC, Request for Informal Conference on Fact of Violation, Notice of Violation Number 21154, dated July 16, 2015 (NOV), Coal Hollow Mine, Permit No. C/025/0005

Dear Director Baza:

On behalf of Alton Coal Development, LLC (“ACD”), and pursuant to R645-401-700, we request an informal conference to review the fact of violation for NOV 21154 and the proposed penalty assessment, attached.

We respectfully request that the Division vacate the NOV which was improvidently issued by Division biologist, Joe Helfrich. The NOV was issued for ACD’s alleged failure to provide vegetation monitoring regarding “vegetation transects in the sage grouse habitat areas and the transect in the 85.88 acre addition for highwall mining.” NOV 21154, page 1. In fact, no coal was removed from the 85.88 acre area referenced by Mr. Helfrich. Highwall mining in the area has been completed and no further mining is contemplated, therefore no data is required.

In addition, Dr. Petersen reviewed the 2013 report and the description of monitoring to be completed in 2014. The report provides that sites to be monitored will be determined based on discussions and recommendation by state and federal agencies. Dr. Petersen has confirmed that there were no specific instructions or recommendations to monitor any particular vegetation communities in the area during the 2014 season. Therefore, the NOV should be vacated.

ACD further objects to the cavalier manner in which the NOV was issued, via e-mail from Mr. Helfrich stating, “Hi Kirk, I’ve reviewed ACDs annual sage grouse report and incoming correspondence and have not been able to locate the vegetation monitoring data for the

Director John R. Baza
August 28, 2015
Page 2

sage grouse habitat transects and the transect for 85.88 acre addition for highwall mining. If you have the data and can send it to the Division I will gladly vacate the attached NOV." e-mail dated July 16, 2015. Mr. Helfrich did not bother to request the data, or even inquire with ACD as to whether the data was required. Rather, without any apparent inquiry into the facts or whether the data was required, he simply issued the NOV.

Mr. Helfrich's inspector's statement inaccurately asserts that "The biologists are also hindered from determining if the auger mining had any impacts on the wet meadow area." Statement at ¶ A. In fact, no augering occurred in the 85.88 acre mining parcel. There are no impacts.

ACD further objects to the unprofessional and inaccurate reference to Dr. Petersen in the inspector statement prepared by Mr. Helfrich which incorrectly states, "Basically, the NOV was the result of the lack of reasonable care; Dr. Petersen just didn't get around to conducting the surveys last season." Statement at ¶ B. In fact, Dr. Petersen did conduct surveys in the areas which required a review and those surveys were timely provided to the Division.

ACD requests that the Division vacate the NOV which was issued by Mr. Helfrich without basis or factual inquiry. We appreciate your assistance in this matter.

Very truly yours,

Snell & Wilmer



Denise A. Dragoo

DAD/mkm

Enclosure

cc: Dana Dean
Darron Haddock
Bob Nead
Kirk Nicholes
Dr. Steve Petersen

 <p>UTAH DNR <small>OIL, GAS & MINING</small></p>	<p>Citation for Non-Compliance Utah Coal Regulatory Program 1594 West North Temple, Salt Lake City, UT 84114 Phone: (801) 538-5340 Fax: (801) 359-3940</p>	<p>Citation #: 21154</p>								
			<p>Permit Number: C0250005</p>							
			<p>Date Issued: 07/16/2015</p>							
<p> <input checked="" type="checkbox"/> NOTICE OF VIOLATION <input type="checkbox"/> CESSATION ORDER (CO) <input type="checkbox"/> FAILURE TO ABATE CO </p>										
<p>Permittee Name: ALTON COAL DEVELOPMENT LLC</p>		<p>Inspector Number and ID: 1 JHELFRIC</p>								
<p>Mine Name: COAL HOLLOW</p>		<p>Date and Time of Inspection: 07/16/2015</p>								
<p>Certified Return Receipt Number: 70123460 000295596519</p>		<p>Date and Time of Service: 07/16/2015</p>								
<p>Nature of condition, practice, or violation: Alton Coal Development LLC has not conducted vegetation monitoring in accordance with the approved mining and reclamation Plan (MRP). This includes the vegetation transects in the sage grouse habitat areas and the transect in the 85.88 acre addition for highwall mining.</p>										
<p>Provisions of Act, regulations, or permit violated: R645-300-143</p>										
<p><input type="checkbox"/> This order requires Cessation of ALL mining activities. (Check box if appropriate.)</p> <table border="0" style="width:100%;"> <tr> <td style="width:50%; vertical-align: top;"> <p><input type="checkbox"/> Condition, practice, or violation is creating an imminent danger to health or safety of the public.</p> <p><input type="checkbox"/> Condition, practice, or violation is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.</p> </td> <td style="width:50%; vertical-align: top;"> <p><input type="checkbox"/> Permittee is/has been conducting mining activities without a Permit.</p> <p><input type="checkbox"/> Permittee has failed to abate Violation(s) included in <input type="checkbox"/> Notice of Violation or <input type="checkbox"/> Cessation Order within time for abatement originally fixed or subsequently extended.</p> </td> </tr> </table>			<p><input type="checkbox"/> Condition, practice, or violation is creating an imminent danger to health or safety of the public.</p> <p><input type="checkbox"/> Condition, practice, or violation is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.</p>	<p><input type="checkbox"/> Permittee is/has been conducting mining activities without a Permit.</p> <p><input type="checkbox"/> Permittee has failed to abate Violation(s) included in <input type="checkbox"/> Notice of Violation or <input type="checkbox"/> Cessation Order within time for abatement originally fixed or subsequently extended.</p>						
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<p><input type="checkbox"/> This order requires Cessation of PORTION(S) of mining activities.</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:60%;"> <p>Mining activities to be ceased immediately: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> </td> <td style="width:40%;"> <p>Abatement Times (if applicable).</p> </td> </tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </table>			<p>Mining activities to be ceased immediately: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	<p>Abatement Times (if applicable).</p>						
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<p>Action(s) required: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No There is no abatement required by this notice of violation.</p>										
<p>Kirk Nicholes _____ (Print) Permittee Representative</p>		<p>JOE HELFRICH _____ (Print) DOGM Representative</p>								
<p>Permittee Representative's Signature - Date</p>		<p><i>Joe Helfrich</i> _____ DOGM Representative's Signature - Date</p>								
<p><u>SEE REVERSE SIDE OF This Form For Instructions And Additional Information</u></p>										

Snell & Wilmer
L.L.P.
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July 31, 2015

**VIA E-MAIL
CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

Dana Dean
Associate Director
Utah Division of Oil, Gas & Mining
1594 W. North Temple, Suite 1210
PO Box 145801
Salt Lake City, Utah 84114-5801

Re: Alton Coal Development, LLC, Request for Vacation of Fact of Violation,
Notice of Violation Number 21154, dated July 16, 2015 (NOV), Coal Hollow
Mine, Permit No. C/025/0005

Dear Associate Director Dean:

On behalf of Alton Coal Development, LLC ("ACD"), we respectfully request that you vacate the above-stated NOV improvidently issued by Division biologist, Joe Helfrich. The NOV was issued for ACD's alleged failure to provide vegetation monitoring regarding "vegetation transects in the sage grouse habitat areas and the transect in the 85.88 acre addition for highwall mining." NOV 21154, page 1. In fact, no coal was removed from the 85.88 acre area referenced by Mr. Helfrich. Highwall mining in the area has been completed and no further mining is contemplated, therefore no data is required. In addition, Dr. Petersen reviewed the 2013 report and the description of monitoring to be completed in 2014. The report provides that sites to be monitored will be determined based on discussions and recommendation by state and federal agencies. Dr. Petersen has confirmed that there were no specific instructions or recommendation to monitor any particular vegetation communities in the area during the 2014 season. Therefore, the NOV should be vacated.

ACD further objects to the cavalier manner in which the NOV was issued, via e-mail from Mr. Helfrich stating, "Hi Kirk, I've reviewed ACDs annual sage grouse report and incoming correspondence and have not been able to locate the vegetation monitoring data for the sage grouse habitat transects and the transect for 85.88 acre addition for highwall mining. If you have the data and can send it to the Division I will gladly vacate the attached NOV." e-mail

Dana Dean
July 31, 2015
Page 2

dated July 16, 2015. Mr. Helfrich did not bother to request the data, or even inquire with ACD as to whether the data was required. Rather, without any apparent inquiry into the facts or whether the data was required, he simply issued the NOV.

ACD requests that the Division immediately vacate the NOV which was issued by Mr. Helfrich without basis or factual inquiry. We appreciate your assistance in this matter.

Very truly yours,

Snell & Wilmer



Denise A. Dragoo

DAD

cc: Bob Nead
Kirk Nicholes

HINDRANCE TO ENFORCEMENT VIOLATIONS
INSPECTOR'S STATEMENT

Company/Mine: Alton Coal Development/Coal Hollow
Permit #:

NOV # 21154
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: ACD is required to conduct vegetation and bird use surveys in certain areas near the mine as well as the wet meadow area above the 85.88 acre auger mining parcel. The biologists are hindered from determining the status of the vegetation and bird use in these areas for that particular season. Overall trend analysis of the vegetation and bird use may not be hindered if the monitoring continues annually over an extended period of time (10 years). The biologists are also hindered from determining if the auger mining had any impacts on the the wet meadow area.

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: _____

- 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: Basically the NOV was the result of the lack of reasonable care; Dr. Peterson just didn't get around to conducting the surveys last season.

**Hindrance to Enforcement
Inspector's Statement**

NOV/CO # 21154
Violation # 1 of 1

- 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: _____

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

Explanation: _____

- 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: _____

There is no abatement required by the NOV.

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

Explanation: _____

3. Was the submission of plans prior to physical activity required by this NOV / CO? No If yes, explain.

Explanation: _____

**Hindrance to Enforcement
Inspector's Statement**

NOV/CO # 21154
Violation # 1 of 1

Joe Helfrich
Authorized Representative

Signature



Date

July 28, 2015

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GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas and Mining

JOHN R. BAZA
Division Director

8/28/15
9:35am

August 25, 2015

CERTIFIED RETURN RECEIPT
7012 3460 0002 9559 6595

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

Subject: Proposed Assessment for State Violation No. #21154, Coal Hollow Mine, C/025/0005,
Task ID #4956

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, Joe Helfrich, on July 16, 2015. 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.

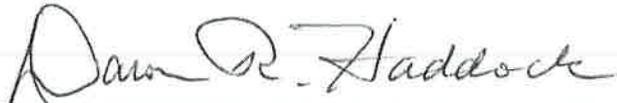
Under R645-401-700, there are two informal appeal options available to you:

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,



Daron R. Haddock
Assessment Officer

Enclosure

cc: Sheri Sasaki, DOGM
Suzanne Steab, DOGM

O:\025005.COLAWG4956 N21154\PROPOSED ASSESSMENT.DOC

PROVIDE AN EXPLANATION OF POINTS:

TOTAL SERIOUSNESS POINTS (A or B) 8

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 *Negligence*

ASSIGN NEGLIGENCE POINTS 8

PROVIDE AN EXPLANATION OF POINTS:

*** *According to the information in the inspector statement, the mine consultant, Dr. Peterson, didn't get around to conducting the vegetation surveys last season. A prudent operator would follow through on the commitments and make sure they were carried through. This is considered ordinary negligence and points are assigned in the middle of the range.*

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 (Immediately following the issuance of the NOV)	-11 to -20*
X	Rapid Compliance (Permittee used diligence to abate the violation)	-1 to -10
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? _____

ASSIGN GOOD FAITH POINTS NA

PROVIDE AN EXPLANATION OF POINTS:

****As this is an after the fact violation that cannot be corrected back in time, no good faith
 points are available.*

V. ASSESSMENT SUMMARY

NOTICE OF VIOLATION # **N 21154**

I.	TOTAL HISTORY POINTS	3
II.	TOTAL SERIOUSNESS POINTS	8
III.	TOTAL NEGLIGENCE POINTS	8
IV.	TOTAL GOOD FAITH POINTS	-
	TOTAL ASSESSED POINTS	19

TOTAL ASSESSED FINE \$ 418

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

COMPANY / MINE Coal Hollow Mine

PERMIT C/025/0005 NOV / CO # N 21154 VIOLATION 1 of 1

ASSESSMENT DATE August 25, 2015

ASSESSMENT OFFICER Daron R. Haddock

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
<u>NOV #16150</u>	<u>April 8, 2015</u>	<u>1</u>
<u>NOV #18150</u>	<u>April 28, 2015</u>	<u>1</u>
<u>NOV #20153</u>	<u>July 7, 2015</u>	<u>1</u>

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 3

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?

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 _____

PROVIDE AN EXPLANATION OF POINTS:

*****According to the information in the inspector statement,**

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.

ASSIGN DAMAGE POINTS _____

PROVIDE AN EXPLANATION OF POINTS:

***** According to the information in the inspector statement, vegetation and bird use surveys in certain areas of the mine were not conducted as required by the Mining and Reclamation Plan. As a result, the biologists are hindered from determining the status of the vegetation and bird use in these areas during a particular season. The inspector indicates that overall trends of the vegetation and bird use may not be hindered if the monitoring continues over an extended period of time. There is actual hindrance but it may have minor to no impact over time, therefore the points are assigned in the lower end of the range.**

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 8