C/025/005 Incoming

NOV #21162: Permittee failed to install discharge drainage pipes from sump in Pit 10 to discharge point in Pond 3 according to the design.
R645-301-752.100, -732.300, -744.100

	DOGM Assessment	ACD Position
Violation History (25 points)	5	5
Seriousness		
Event Violation (20 Points)	20	10
Actual or Potential Damage (0-25 points)	5	5
Hindrance		
Negligence (30 Points)	25	10
Good Faith	0	-10
Total	**55**	20
Penalty	$3,850	$440

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Violation terminated on 3/3/2016 because abatement was met.

Fact of Violation: The Division has already been working with ACD to address pipes in Pit 10. Division has been aware of ongoing work by ACD. The Division has arbitrarily determined that the time for coordination is up, and that ACD is in violation. ACD was unaware that there was an expiration date on the Division's willingness to work with ACD.

Penalty Contentions

Seriousness- The purpose of sediment control measures and drainage structures is to protect ground and surface water quality, as well as to stabilize erosion. Here, neither the inspection report nor the penalty assessment cite to ground or surface water quality issues at the time of the inspection (January 12, 2016). Although there may have been slight erosion issues, these concerns were quickly mitigated, and controlled. There is a low likelihood of occurrence of the event (water pollution and erosion) for which the standard was enacted to prevent-10 points is appropriate. There was no threat to public health or welfare, or offsite damage.

Negligence- The Division's point assessment (25 points) are reserved for violations that are "knowing" or intentional or reckless- wherein the permittee takes some action that knowingly causes or does not prevent violation. Here, The site was under a foot of snow, and operations had ceased. The inspection report and penalty assessment state that ACD's failure to complete construction on Pit 10 in November of 2015 constitutes "indifference." **The maximum number of points for "indifference" is limited to 15 points.** Further, the site was under a foot of snow, making construction difficult given available labor and site conditions.

Good Faith- DOGM does not award any "good faith" points stating that this was and "easy abatement" because ACD had resources onsite to complete mitigation. DOGM states that there were resources onsite because "men were laid off who could have been put to work at this task." To the contrary, layoffs suggest that resources are limited. It is not within DOGM's discretion to second guess operating limitations. This was a Difficult abatement situation. ACD abated violation within 45 days. And should be credited -10 points.

NOV #21163: Failure to have backfilling and grading follow coal removal by not more than 60 days, for HW2

R645-301-553, -542.100, -542.200

	DOGM Assessment	ACD Position
Violation History (25 points)	5	5
Seriousness		
Event Violation (20 Points)	20	0
Actual or Potential Damage (0-25 points)	5	0
Hindrance		
Negligence (30 Points)	25	0
Good Faith	0	(-10)
Total	**55**	**0-5**
Penalty	$3,850	$0-$110

Violation Abatement Date: June 6, 2016

Fact of Violation: As noted in the inspection report, the approved MRP calls for reclamation for HW2 in 2016. ACD is in full compliance with its permit. It has a plan for reclamation as required under R645-301-542.100 and -542.200. The 60 day time limit under R645-301-553 is discretionary. "The division may grant additional time for rough backfilling and grading through a detailed analysis..." ACD provided this detailed analysis in its approved MRP. The Division approved the MRP, thereby approving concurrent reclamation as per the timeframe in the MRP, beyond the 60 day period.

Penalty Contentions

Seriousness- The purpose of backfilling and grading to be completed within 60 days is to ensure timely reclamation. Here, the approved MRP called for completed reclamation in 2016 of the area. If the Division required more timely reclamation, it should have required amendment to the timetable included in the MRP. There is no risk of ACD not completing reclamation. This violation is purely administrative. There is no risk that ACD will not complete mitigation. Moreover, there is no damage caused by mitigation extending beyond 60 days.

Negligence- The Division's point assessment (25 points) are reserved for violations that are "knowing" or intentional or reckless- wherein the permittee takes some action that knowingly causes or does not prevent violation. Here, ACD's alleged violation stemmed from its reliance on the approved MRP that called for reclamation of the area in 2016. The violation was inadvertent, caused by no fault of the operator. Under R645-401-323.110, the Division is required to assess 0 points.

Good Faith- DOGM does not award any "good faith" points stating that this was and "easy abatement" because ACD had resources onsite to complete mitigation. First, the date of abatement, February 1, 2016 in the NOV is unreasonable, as abatement requires MRP amendment, and engineering analysis. This is a Difficult Abatement situation that requires the submission of plans prior to activity. Moreover, given ACD's reliance on the Division's acceptance of the MRP, the Division cannot penalize ACD for following MRP plans.

NOV #21164: Failure to provide a final plan for reclamation of Pit 10.

R645-301-541.400, -542.100, -542.200, -542.300

	DOGM Assessment	ACD Position
Violation History (25 points)	5	5
Seriousness		
Event Violation (20 Points)	20	0
Actual or Potential Damage (0-25 points)	5	0
Hindrance		
Negligence (30 Points)	25	15
Good Faith	0	-10
Total	**55**	10
Penalty	$3,850	$220

No abatement date agreed on.

Fact of the Violation: ACD has provided a reclamation plan for Pit 10. Reclamation plans are included in the MRP. If the Division required more specificity, they should have indicated so in the review of the MRP prior to accepance. ACD is in compliance with the MRP. The MRP will be updated with source fill is determined.

Penalty Contentions

Seriousness- The purpose of backfilling and grading to be completed within 60 days is to ensure timely reclamation. Here, the approved MRP called for completed reclamation in 2016 of the area. If the Division required more timely reclamation, it should have required amendment to the timetable included in the MRP. There is no risk of ACD not completing reclamation.

Negligence- The Division's point assessment (25 points) are reserved for violations that are "knowing" or intentional or reckless- wherein the permittee takes some action that knowlingly causes or does not prevent violation. Here, The site was under a foot of snow, and operations had ceased. ACD was acting in reliance on the approved MRP and any violation was uninentional.

Good Faith- DOGM does not award any "good faith" points stating that this was and "easy abatement" because ACD had resources onsite to complete mitigation. This was a difficult abatement situation. ACD does not have the in-house engineering recourses to complete mitigation, draw up new reclamation plans, onsite, with current staff.

NOV #21165 (1)Failure to provide accurate certified UG mine surface facilities map

R645-301-512.100, -512.120, -521.161 through -521.167

(2) Failure to provide accurate certified map of UG mine water diversion, collection, conveyance and treatment structures

R645-301-512.140 and R645-301-731.720

	DOGM Assessment	ACD Position
Violation History (25 points)	4	4
Seriousness		
Event Violation (20 Points)		
Actual or Potential Damage (0-25 points)		
Hindrance	12	0
Negligence (30 Points)	21	0
Good Faith	0	(-1) to (-10)
Total	**37**	0 to 4
Penalty	$2,090	$0-$88

Violation Abated: 5/2/2016

Fact of the Violation:, updates are not required under the rules until the Division requests an update. R645-303-213 requires DOGM to issue written findings to require a change to the MRP. The Division is required to request an update to the MRP before issuing a violation. Moreover, facilities and plans included in the MRP have been in place for a number of years. It is unclear as to why the Division now, feels as though they are inadequate. The level of detail demanded by the Division is far greater than detail provided in the MRP application that was approved by the Division.

Penalty Contentions

Hindrance: DOGM unjustifiably assigned 12 points for "hindrance," despite the fact that ACD, permanent mine structures have been in place for over a decade and that the Division has had ample opportunity to inspect and enforce adequacy of maps in the approved MRP, has revised the DWG 5-3B no fewer than four times during the past three months at the Division's request.

Negligence: The Division's point assessment (20 points) are reserved for violations that are "knowing" or intentional or reckless- wherein the permittee takes some action that knowingly causes or does not prevent violation. Here, the permittee is not required to update maps unless requested. The Permittee was acting on reliance of the approved MRP, Division's previous behavior and the plan language of the rule. The violation was unknowing and should be awarded 0 aggravation points.

Good Faith: DOGM does not award any "good faith" points stating that this was and "easy abatement" because ACD had resources onsite to complete mitigation. This was a difficult abatement situation. ACD does not have the in-house engineering recourses to complete mitigation, draw up new reclamation plans, onsite, with current staff.

NOV # 21174

Failure to follow the approved plan in Area 1, MRP Vol. 3, Chap 5, pgs 5-13 and 5-21

Page 5-13: County road to be completed prior to mining activity so that public is routed around mine;

Page 5-21: Construction of haul road, Pond 5, Pond 6, subsoil pile, topsoil pile and spoil pile, all ditches and culverts completed prior to mining in Pit 1

R645-300-142; R645-301-251; R645-301-752; R645-301-560

	DOGM Assessment	ACD Position
Violation History	4	4
Seriousness		
Probability of Occurrence	20	1 to 4
Actual or Potential Damage	10	0
Hindrance	0	0
Negligence	20	5
Good Faith	0	-10
Total	**54**	0 to 13
Penalty	$3,740	$0-$286

Violation terminated: Abated on 4/15/2016 and terminated on 4/19/16 inspection

Penalty Contentions

Seriousness- The purpose of ensuring that coal mining and reclamation operations are conducted in accordance with the approved MRP is to ensure that environmental harms such as water pollution are avoided. Under R645-401-322.100, 20 point penalty assessments are reserved for instances where harm actually occurred. Here, there is no evidence of water pollution, environmental harm or harm to the public. The inspection report does not identify any environmental harm that occurred. Moreover, as mitigation required administrative MRP plan updates, and filing of paperwork, it is unlikely that any harm could have resulted. Had there been any likelihood of harm, mitigation would have required more than paperwork and plan revisions. ACD established that road signs and reduced speed limits set by the County assured public safety. The County confirmed this in a letter to ACD. There is no mention of any actual or potential environmental damage in the inspection report. Pricilla Burton, the inspector, did not report that that she observed "a .37 acre area that had partial topsoil removed on the spoil pile side." There are no observations during the inspection regarding Drainage Ditch #9 (DD09). These statements in the penalty assessment were improperly added after the inspection giving rise to the NOV and subsequent modifications.

Negligence- The Division's maximum point assessment (20 points) is reserved for violations that are "knowing" or intentional or reckless- wherein the permittee takes some action that knowingly causes or does not prevent violation. Here, ACD was in the process of regrading and getting structures in place. The violation was unintentional and was not knowing. Violation should be scored between 1 and 15 because stemmed from lack of diligence in following sequence of events in MRP.

Good Faith: Contrary to statements made in the penalty assessment, the termination report confirms that ACD responded on April 15th with required plans and certifications. After the NOV was abated, on April 18th, the inspector placed additional requirements on ACD which were not in the original or modified NOV. The violation was not terminated until the April 19 inspection. Further, this was a difficult abatement situation as abatement required MRP amendment and compliance of plans. Permittee did not have the resources on hand to complete abatement immediately. Still, ACD mitigated the violation on April 15, 2016 within "Normal Compliance" and is entitled to "good faith credit."