

EVENT VIOLATION INSPECTOR'S STATEMENT

Company/Mine: Alton Coal Development LLC/Coal Hollow mine
Permit #: C/025/0005

NOV 21161

SERIOUSNESS

1. What type of event is applicable to the regulation cited? Refer to the DOGM reference list of event below and remember that **the event is NOT the same as the violation.** Mark and explain each event.

- a. Activity outside the approved permit area.
- b. Injury to the public (public safety).
- c. Damage to property.
- d. Conducting activities without appropriate approvals.
- e. Environmental harm.
- f. Water pollution.
- g. Loss of reclamation/revegetation potential.
- h. Reduced establishment, diverse and effective vegetative cover.
- i. No event occurred as a result of the violation.
- X j. Other. Loss of development of sage grouse habitat

Explanation:

If the requisite specifications for the mechanical treatment of pinyon/juniper are not completed a "Loss of development of sage grouse habitat" could occur.

2. Has the event occurred? No

If yes, describe it. If no, what would cause it to occur and what is the probability of the event(s) occurring? (None, Unlikely, Likely).

Explanation:

If the specifications for the mechanical treatment of pinyon/juniper are not met grass and forb growth will be precluded by the dense stands of remaining cut pinyon/juniper trees. Since this is the fourth time Alton Coal has been apprised of not meeting the requisite specifications for the mechanical treatment of pinyon/juniper it is likely that the "Loss of development of sage grouse habitat" will occur. However if alternative abatement measures are employed by entities other than ACD it is unlikely that there would be a "Loss of development of sage grouse habitat".

3. Did any damage occur as a result of the violation? No damage occurred as a result of the violation.

If yes, describe the duration and extent of the damage or impact. How much damage may have occurred if the violation had not been discovered by a DOGM inspector? Describe this potential damage and whether or not it would extend off the disturbed and/or permit area.

Explanation: _____

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.

Explanation: _____

- 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 a specific permit condition? Yes

Explanation: The required specifications for the removal of pinyon/juniper trees that were set forth by the BLM and DWR are also incorporated in the MRP, they include but are not limited to:

- Stump height should not exceed 6”;
- Cut material will be lopped and scattered so that slash height does not exceed 24” above the ground;
- Cut material left on site shall not exceed 4’;
- No live limbs shall be left on the stump of cut trees;
- All main branches shall be cut from the trunk of the tree to meet scattering requirements;
- Only established roads shall be used.

Additional requirements are described in the BLM correspondence to DOGM dated 10/05/2015. This information is located in the hard copy NOV file and in the O directory, C/025/0005, WG 5059, NOV 21161.

- X Has DOGM or OSM cited the violation in the past? If so, give the dates and the type of warning or enforcement action taken. Meetings, correspondence, site visits and enforcement actions are described as follows from item 9 of the 11/18/2015 inspection report:

ACD has failed for the fourth time to complete sage-grouse mitigation work for the 355-acre project (that was identified in Appendix 3-7 of the approved MRP) on time. The September 19, 2013 BLM letter authorized the "removal of pinyon and juniper tress within the 355 acres." At an October 24, 2013 meeting where ACD's skilled biologists were present, the Division of Wildlife Resources (DWR) explained what standards were necessary for the mitigation work to benefit the sage grouse population. On October 28, 2013, the Division of Oil, Gas and Mining (DOGM) approved an amendment to the Mining Reclamation Plan (MRP), which included a requirement that the stump height of any felled tree would not exceed six (6) inches. ACD failed to meet this standard by the beginning of the 2014 February-to-July mating season. The BLM later clarified what standards it required on its land in its February 28, 2014 correspondence, which was subsequently amended to the MRP on March 21, 2014. That amendment stated "[a]fter assessment of the project in early 2014 by the BLM, it was decided that additional work needed to be done in the appropriate season of 2014 as per the letter dated 3/3/2014 from [the BLM]. . . ." Again, ACD failed to complete the additional work required to meet those standards that the BLM, DWR, and DOGM have provided to ACD by the end of the working season of 2014 and 2015. At the beginning of the 2015 February-to-July mating season, the 355-acre project had still not been treated to the required standards. Notice of Violation 18150 was issued to Alton Coal Development LLC as a result of the inspections conducted on February 11, March 10 and April 14, 2015. Alton Coal abated the violation by providing an amendment to the MRP that expressly included the standards provided by DWR, BLM, and DOGM. The amendment included a deadline to complete the work to the standards by October 31, 2015 or eight (8) weeks after DWR or DOGM had confirmed that it was a safe time to begin mitigation work, whichever date was earlier.

Three inspections were conducted prior to the October 31st, 2015 deadline, August 12th and 19th and a combined DOGM/BLM inspection on September 23rd, 2015. Photographs and documentation of site conditions for the three inspections indicated that the standards provided by DWR, BLM, and DOGM had not been met. DOGM sent a letter to ACD on October 21, 2015 noting that the specifications had not been met and were required to be completed by October 31st. The areas inspected and photographed in the 355 acre BLM parcel during this site visit do not meet the standards provided by DWR, BLM, and DOGM. NOV #21161 is being issued as a result of Alton Coal Development LLC's failure to meet these requirements by the 31st of October 2015.

Action(s) required: 1) ACD will need to complete the mitigation for those remaining areas within the 355 acre BLM parcel to the required specifications and receive written approval from the BLM for completion of the treatment. There are time constraints associated with this option as weather conditions make the area currently inaccessible and closure periods for the sage grouse are in effect until mid-July of 2016; or

- 2) Fund a Watershed Restoration Initiative (WRI) project through the BLM and DWR which will count toward completion of the treatment in the 355 acre BLM parcel. The amount of acreage to be treated and cost per acre will be determined by the BLM; or
- 3) Complete an alternative mitigation project comprising 355 acres of mitigation approved in conjunction with DWR and DOGM.

ACD will need to comply with one of the abatement options prior to the expansion of mining and or mining related activities into any new area. Selection of one of the abatement options must be made by no later than January 20th, 2016. Termination of the NOV will occur upon completion of any one of the options.

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 date) and describe the measures the operator took to comply as rapidly as possible.

Explanation:

2. Explain whether or not the operator had the necessary resources on site to achieve compliance. It depends on which abatement option is selected

Explanation:

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

Explanation: _____

Event Violation Inspector's Statement

NOV/CO # 21161
Violation # 1 of 1

Joe Heberich
Authorized Representative

Joseph C. Heberich
Signature

1/12/2016
Date

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