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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*

January 27, 2016

CERTIFIED RETURN RECEIPT  
7012 3460 0002 9559 6687

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. #21161, Coal Hollow Mine, C/025/0005,  
Task ID #5059

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 December 21, 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

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

COMPANY / MINE Coal Hollow Mine

PERMIT C/025/0005 NOV / CO # N 21161 VIOLATION 1 of 1

ASSESSMENT DATE January 27, 2016

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>
<u>NOV #21157</u>	<u>September 22, 2015</u>	<u>1</u>
<u>NOV #21158</u>	<u>September 22, 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 5**

**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? *Event*

A. EVENT VIOLATION (Max 45 pts.)

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

***Loss of sage grouse habitat development.***

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 14**

**PROVIDE AN EXPLANATION OF POINTS:**

***\*\*\*According to the information in the inspector statement, there is the likelihood that the sage grouse habitat would be lost or at least not developed if the mine does not complete the mitigation treatment to the required specifications. Therefore, points are assigned in the mid portion of the Likely category.***

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 5**

**PROVIDE AN EXPLANATION OF POINTS:**

***\*\*\* According to the information in the inspector statement, no damage has occurred as of yet, however there is the potential that the habitat would be lost if the mechanical treatment is not completed to specification. There is only potential for damage, 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 NA**

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\*

**TOTAL SERIOUSNESS POINTS ( A or B ) 19**

**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 12**

**PROVIDE AN EXPLANATION OF POINTS:**

**\*\*\* According to the information in the inspector statement, the mine failed to complete the mitigation work on this 355 acre area. A similar violation was issued on April 28, 2015. The inspector indicates that he had notified the company at least 4 times to complete the mitigation work before the October 31<sup>st</sup> deadline. 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 upper part of the negligence range, because of the number of times the company was warned and the prolonged efforts to get the work done.**

**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

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 -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? Difficult Abatement

ASSIGN GOOD FAITH POINTS 15

**PROVIDE AN EXPLANATION OF POINTS:**

***\*\*\*There seemed to be a fair amount of confusion as to the abatement requirements and the specifications that were to be met. For this reason it was considered to be a difficult abatement. A meeting was held on site on January 13, 2016 to line out the requirements. This meeting included representatives from the Company, BLM and DOGM. Although it took some time to agree to what the abatement measure were, the abatement was completed quickly once the specifications were determined. The company started immediately to rectify the issues associated with the Lop and Scatter project. Mine workers brought chain saws and started to work on the area right then to make sure they were doing the treatment appropriately. The project was completed within 10 days of the meeting, which I consider to be rapid compliance.***

**V. ASSESSMENT SUMMARY**

NOTICE OF VIOLATION # N 21161

I. TOTAL HISTORY POINTS 5  
 II. TOTAL SERIOUSNESS POINTS 19

III.	TOTAL NEGLIGENCE POINTS	<u>12</u>
IV.	TOTAL GOOD FAITH POINTS	<u>-15</u>
	TOTAL ASSESSED POINTS	<u>21</u>
	<b>TOTAL ASSESSED FINE</b>	<b><u>\$ 462</u></b>