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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

May 3, 2016

CERTIFIED RETURN RECEIPT  
7012 3460 0002 9559 6786

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. #21167, Coal Hollow Mine, C/025/0005,  
Task ID #5103

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, Priscilla Burton, on March 9, 2016. 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:

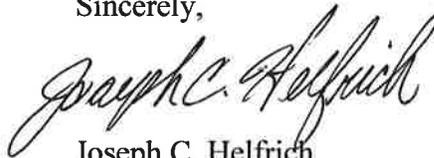
1. If you wish to informally appeal the fact of this violation, you should file a written request for an Informal Conference within thirty (30) days of receipt of this letter. This conference will be conducted by the Division Director. This Informal Conference is distinct from the Assessment Conference 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,



Joseph C. Helfrich  
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 Alton Coal /Coal Hollow Mine

PERMIT C/025/0005 NOV / CO # N 21167 VIOLATION 1 of 1

ASSESSMENT DATE May 3, 2016

ASSESSMENT OFFICER Joseph C. Helfrich

**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 #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>
<u>NOV #21154</u>	<u>November 28, 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 4**

**II. SERIOUSNESS (Either A or B)**

NOTE: For assignment of points in Parts II and III, the following apply:

- Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
- 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.)

- 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 20**

**PROVIDE AN EXPLANATION OF POINTS:**

*\*\*\* According to the information in the inspector statement "Sediment control is not effective on the fill slopes on the south side of Pit 10, as could be seen by the sludge being pumped from Pit 10 to Pond 3 via the pipeline. Pond 3 was extremely turbid and an oil sheen was noted on Pond 3 at the time of the inspection. Water carrying sediment is sent to a sump in Pit 10. The sump is inadequate to treat the volume of water and backed up into Pit 10. Pit 10 water includes coal fines and other mining related sediment".*

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 0**

**PROVIDE AN EXPLANATION OF POINTS:**

*\*\*\* According to the information in the inspector statement no damage occurred as a result of the violation.*

B. HINDRANCE VIOLATION (Max 25 pts.)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

**ASSIGN HINDRANCE POINTS 0**

**PROVIDE AN EXPLANATION OF POINTS:**

*\*\*\**

**TOTAL SERIOUSNESS POINTS ( A or B ) 20**

**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 Greater *Degree of Fault*

**ASSIGN NEGLIGENCE POINTS 16**

**PROVIDE AN EXPLANATION OF POINTS:**

*\*\*\* According to the information in the inspector statement, "The Permittee did not take reasonable care to use the best technology available to control the flow and treat the sediment coming off the slopes around Pit 10. The problem was first discussed in June 2015 (Insp Rpt 4219) when the Permittee explained that when the south slope around pit 10 dried out, the MSHA bench would be continued around and the slope graded to 2h:1v. The possibility of controlling erosion with seeding, tackifier and mulch was also discussed at that time. The problem was again discussed in November 2015 (Insp Rpt #5372) and again in January 12, 2016 (Insp Rpt 5385) when the problem was discussed with both Kirk Nichols and Adrian Childs, UG Mine Foreman. The relationship between effluent exceedance and sediment control was discussed in January 2016 (Insp 5385)".*

**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 (Permittee used diligence to abate the violation)	-11 to -20*
X	Normal Compliance (Operator complied within the abatement period required)	-1 to -10*
X	Extended Compliance (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)	0

EASY OR DIFFICULT ABATEMENT? *Difficult Abatement plans were required that were prepared by Alton Coal employees (surveyor and engineer)*

ASSIGN GOOD FAITH POINTS 0

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\*According to the information in the inspector statement the 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). "The deadline for plans was April 8, 2016 (one month from the time of issuance by email) with a deadline for implementation of plans by April 30, 2016. A modification request was received on April 7, 2016. The deadline for plans was extended to April 15, 2016 with no extension for implementation. The Permittee appealed to management and received an extension to April 20, 2016 for plans and to May 6 for implementation".

**V. ASSESSMENT SUMMARY**

NOTICE OF VIOLATION # N 21167

I.	TOTAL HISTORY POINTS	<u>4</u>
II.	TOTAL SERIOUSNESS POINTS	<u>20</u>
III.	TOTAL NEGLIGENCE POINTS	<u>16</u>
IV.	TOTAL GOOD FAITH POINTS	<u>0</u>
	TOTAL ASSESSED POINTS	<u>40</u>

**TOTAL ASSESSED FINE                   \$ 2200**