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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 6816

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. #21174, Coal Hollow Mine, C/025/0005,
Task ID #5158

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 April 7, 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:

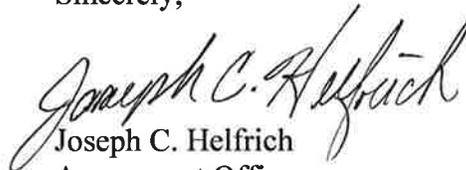
1. If you wish to informally appeal the fact of this violation, you should file a written request for an Informal Conference within thirty (30) days of receipt of this letter. This conference will be conducted by the Division Director. This Informal Conference is distinct from the Assessment Conference 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 21174 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?

Conducting activities without appropriate approvals, Environmental harm and 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 controls were not installed and topsoil and subsoil recovery was not completed prior to coal mining activity. 1. The County bypass road was not completed as described in the MRP before mining activity began in Area 1. Consequently, the County road remained open for public travel through the active mine site. Haul trucks and articulated scrapers were crossing the County road with full loads of topsoil.*

2. Sediment pond construction, Ditch construction, spoil pile foundation preparation, topsoil and subsoil salvage were not completed prior to the removal of overburden and spoil down to coal in Pit 1".

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 10

PROVIDE AN EXPLANATION OF POINTS:

**** According to the information in the inspector statement "The public notice of the approved plan described construction of a bypass for public use during mining. Contrary to the approved plan, the public was traveling through the active mine site on the existing county road*

Ponds were not completed as designed. Final certifications of ponds were not provided. Pond 5 embankment was driven over with heavy equipment and the embankment was over compacted. Pond 5 and Pond 6 spillways were not at final elevation. Sediment markers were in place, but elevations were not marked. Elevations are necessary for monitoring water level draw down. Geotextile fabric was sloppily placed at Pond 5. Riprap was not fully installed at the emergency spillway outlets of Pond 5 & 6. County road construction soil piles blocked the outlet from emergency spillways of both ponds.

Topsoil recovery in the vicinity of the excess spoil pile was fragmented. Certification of the spoil pile foundation preparation was not provided. One third of the spoil pile had topsoil removed and spoil placed before the rest of the spoil pile had topsoil removed. I observed a 0.37 acre area that had partial topsoil removed on the south side of the spoil pile. This topsoil was encroached upon by the spoil pile to the north and a haul road to the south. Topsoil salvage was not monitored by volume as required in the MRP.

Topsoil around Pond 6 was not recovered and some was shaped into berm material. Topsoil along ditches DD5, DD6, DD7, DD8 and DD9 was not recovered. In the vicinity of DD8 topsoil was being driven on by trucks loaded with riprap. Topsoil above Pit 1 was being removed simultaneous to mining in pit 1.

Subsoil was being used for an MSHA haul road berm. Subsoil pile location was bisected by a temporary haul road. Subsoil piles were not bermed”.

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) 30

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 20

PROVIDE AN EXPLANATION OF POINTS:

**** According to the information in the inspector statement, "The timeline for development of Pit 1 was discussed at the conclusion of the Bond release inspection on 3/30/2016. A follow up email was sent on 3/31/2016. ACD was fully aware of the conditions of their MRP and the requirements of construction of the County bypass prior to mining. ACD was fully aware of the requirements of sediment pond construction and certification, ditch construction to design, topsoil/subsoil salvage and monitoring of that salvage, and foundation preparation for the spoil pile all were required prior to removal of overburden.*

The potential harm to the public was apparent and between the inspector on 3/29/2016 and 4/6/2016. In the intervening week, the operator placed a Warning/Truck Crossing sign, a speed limit sign, disturbed area boundary signs, and 3 mine information signs. The operator closed off the fourth entrance to the site from the county road.

Similar violations have occurred when the operator has failed to construct according to approved plans: NOV 21162 (2016), NOV 16149 (2015), NOV 10123 (2013), NOV 10092 (2011), NOV 10078 (2011),

And when the operator has failed to protect topsoil: NOV 21157 (2015), NOV 10079 (2011),

And when the operator initiated UG mining activity without final approval NOV 20151 (2015)".

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? *Yes, According to the information in the inspector statement "there were two idle haul trucks on site. One of two trackhoes was being repaired while the other was being used to load coal. The PC 2000 track hoe was loading two haul trucks with spoil. A road grader was on site to cut the ditches".*

IF SO--EASY ABATEMENT

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 (Operator complied within the abatement period required) (Operator complied with condition and/or terms of approved Mining and Reclamation Plan)	0

*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 abatement was agreed upon during a conference call on April 11, 2015 and written as Modification 2 to NOV 21174. The deadline was April 15, 2016 for topsoil/subsoil salvage, pond construction, ditch construction and documentation of certification and county acknowledgment and approval of public travel through the active mine site. The operator did not meet the deadline. Keenan Storrar and I conducted an inspection on April 18, 2016 and found the Ditch 5 was not completed, and topsoil and subsoil salvage and protection was not completed. I kept the inspection open until the next day at noon. I returned the next day and found the work was not completed. The equipment being used to move topsoil was too small to complete the job within a reasonable timeframe. Larger equipment was requested. In the interim, I found additional topsoil that needed to be recovered. I agreed to return at 4:00 pm to either terminate the violation or write an FTACO".*

V. ASSESSMENT SUMMARY

NOTICE OF VIOLATION # **N 21174**

I.	TOTAL HISTORY POINTS	<u>4</u>
II.	TOTAL SERIOUSNESS POINTS	<u>30</u>
III.	TOTAL NEGLIGENCE POINTS	<u>20</u>
IV.	TOTAL GOOD FAITH POINTS	<u>0</u>
	TOTAL ASSESSED POINTS	<u>54</u>

TOTAL ASSESSED FINE \$ 3740