GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

State of Utah
DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas and Mining

JOHN R. BAZA
Division Director

July 1, 2016

CERTIFIED RETURN RECEIPT
9590 9402 1201 5246 2589 34

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. #21183, Coal Hollow Mine, C/025/0005, Task ID #5201

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 June 3rd, 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 or his appointee. This Informal Conference is distinct from the Assessment Conference regarding the proposed penalty.

1594 West North Temple, Suite 1210, Salt Lake City, UT 84116
PO Box 145801, Salt Lake City, UT 84114-5801
telephone (801) 538-5340 • facsimile (801) 359-3940 • TTY (801) 538-7458 • *www.ogm.utah.gov*

UTAH DNR
OIL, GAS & MINING

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 21183 VIOLATION 1 of 1

ASSESSMENT DATE July 1, 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
NOV #20153	July 7, 2015	1
NOV #21157	September 22, 2015	1
NOV #21158	September 22, 2015	1
NOV #21154	November 28, 2015	1

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:

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?

The events noted in the inspector statement include; Damage to property, conducting activities without appropriate approvals and environmental harm.

2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

PROBABILITY	RANGE
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 "The excess spoil pile was over-excavated below the premining surface at the south disturbed area boundary of the excess spoils pile. According to the operator's survey, 76,500 CY of cut from the previously undisturbed cut slope was placed in the highwall trench. The slope against which the excess spoil pile was constructed was used for backfill of HWT 2 creating a steep cut in the pre-mining contour and lowering the topography in this location 28 feet. Cutting into this undisturbed slope was not contemplated in the approved plan. MRP Sec 528.310, Sec 542.100 and Sec 553 state that any shortage of fill for the highwall trench would be made up of excess spoil to bring both the excess spoil pile and the trench back to approximate original contour, The operator's survey showed that the total excess spoil fill available for placement in the highwall trench was 417,000 CY at the time of the inspection, so that use of the undisturbed slope was unnecessary".*

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 12

PROVIDE AN EXPLANATION OF POINTS:
**** According to the information in the inspector statement "The cut slope was at the boundary of the disturbed area and did not extend beyond the disturbed area. The cut was surveyed by the Permittee who reported a 1.5h:1v cut slope and an area of 5 acres that was 28 feet below original grade. Removal of additional cut from the toe of the slope was ongoing during the inspection. The damage is that reclamation of this additional cut slope is not contemplated in the Mining and Reclamation Plan. A reclamation and stabilization plan for backfilling this cut slope will need to be approved and implemented".*

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) 32

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 23

PROVIDE AN EXPLANATION OF POINTS:
*** *According to the information in the inspector statement, "The Mining and Reclamation Plan clearly states that the Excess Spoil Pile would be removed to Approximate Original Contour (MRP Section 528.310, Sec. 542.100 and Sec 553). There was a disconnect between the approved plan and implementation of the plan. Failure to follow the approved plan has been cited four times previously: NOV 21174 issued April 6, 2016; NOV 201551 issued June 16, 2015;NOV 18150 issued April 28, 2015; and NOV 16149 January 26, 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 "The operator gathered the survey information to confirm the elevations of the working surface of excess spoil pile the day after the violation. The operator presented that information to the Division within three business days".

B.

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 plans were required that were prepared by Alton Coal employees (surveyor and engineer)*

ASSIGN GOOD FAITH POINTS 15

PROVIDE AN EXPLANATION OF POINTS:

**** On May 31 Alton Coal's Engineer presented a conceptual plan that dealt with the over excavation of the borrow area to the Division's staff (Daron Haddock, Priscilla Burton, Joe Helfrich and Keenan Storrar) acknowledging that the company had excavated beyond what was allowed in the MRP.*

V. ASSESSMENT SUMMARY

NOTICE OF VIOLATION # **N 21183**

I.	TOTAL HISTORY POINTS	4
II.	TOTAL SERIOUSNESS POINTS	32
III.	TOTAL NEGLIGENCE POINTS	23
IV.	TOTAL GOOD FAITH POINTS	-15
	TOTAL ASSESSED POINTS	44
	TOTAL ASSESSED FINE	**$ 2640**