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DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas and Mining

JOHN R. BAZA
Division Director

November 20, 2014

CERTIFIED MAIL

70101670000148103409

Mr. Chris Hansen
Bowie Resources
Sufco Mine
597 S SR24
Salina, Utah 84654

Subject: Findings of Fact, Conclusions of Law, and Order for NOV 13148, 13149, 13150, 13151, and 13153, SUFCO Mine, C0410002

Dear Mr. Hansen:

On October 29, 2014, an informal conference was held at the Utah Department of Natural Resources to review the fact of violation for the referenced Notices of Violation issued on October 1, 2014. As a result of a review of all pertinent data and facts, including those presented in the informal conference, the attached document constitutes the Findings of Fact, Conclusions of Law, and Order of the Informal Conference Officer.

Pursuant to Utah Admin. Code R645-401-800, you may make a written appeal of this Order to the Board of Oil, Gas, and Mining. Your written appeal may be filed with Julie Ann Carter, Board Secretary, P.O. Box 145801, Salt Lake City, Utah 84114-5801. If you have questions regarding the filing, she can be contacted at juliecarter@utah.gov or (801) 538-5277.

If you have questions or concerns please contact me at (801) 538-5334.

Sincerely,

John R. Baza, P.E.
Director
Informal Conference Officer

JRB:er
Attachment

cc: Dana Dean
Daron Haddock



**BEFORE THE DIVISION OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

**IN THE MATTER OF THE
INFORMAL CONFERENCE FOR THE
FACT OF VIOLATION AND
PROPOSED PENALTY ASSESSMENT
FOR NOTICES OF VIOLATION
13148, 13149, 13150, 13151, AND 13153,
CANYON FUEL COMPANY, SUFCO
MINE**

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER**

PERMIT NO. C/041/0002

PROCEDURAL HISTORY

1. On October 1, 2014, the Utah Division of Oil, Gas and Mining (“Division” or “DOGM”) issued Notices of Violation No. 13148, 13149, 13150, 13151, and 13153 (“NOV”) to Canyon Fuel Company (“CFC” or “the operator”) as a result of a complete inspection conducted September 23, 2014, by Joe Helfrich of DOGM.
2. NOV 13151 was subsequently modified on October 14, 2014.
3. On or about October 20, 2014, CFC timely requested an informal conference before the Division to review the fact of the violation and proposed assessment for the NOV.
4. On October 29, 2014, the Division held an informal conference pursuant to Utah Admin. Code R645-401-700 to review the NOVs. The hearing took place at the Department of Natural Resources Building, 1594 West North Temple, Salt Lake City, Utah.
5. John Baza, Director of the Division, served as the Conference Officer for the informal conference.
6. Joe Helfrich, Environmental Scientist and Inspector for the Division, presented the Division’s arguments for the NOVs. Other persons in attendance representing the Division were Dana Dean, Associate Director for Mining, and Daron Haddock, Coal Regulatory Program Supervisor.
7. Representatives of CFC and Bowie Resources attending the conference were Chris Hansen, Vicky Miller, Ken May, John Byers, Amanda Richard, and Wyatt Shakespear. Chris Hansen provided principal arguments contesting the Fact of Violation of the NOVs.

FINDINGS OF FACT

8. During the complete inspection of the SUFCO Mine on September 23, 2014, Mr. Helfrich was accompanied by Vicky Miller of CFC.
9. The NOVs were written to address certain issues in the operations of the SUFCO Mine:
 - a. Management of surface drainage and stormwater runoff at the waste rock site such that the runoff was conveyed to the sediment pond (NOV 13148);
 - b. Protection of topsoil both in construction of the waste rock expansion site and at the #1 topsoil storage site (NOV 13149 and 13150); and
 - c. Conducting mining activities different than described in the approved Mining Reclamation Plan ("MRP", NOV 13151 and 13153).
10. The areas subject to the NOVs were all within the permitted areas of disturbance previously approved and identified by the MRP.

NOVs relating to the construction of the waste rock expansion site:

11. In response to NOV 13148, Mr. Hansen stated that their contractor encountered a larger amount of topsoil during construction of the waste rock expansion site. Thus, the depth of excavation was greater than they anticipated, and the amount of topsoil moved to a topsoil storage area was also greater than they anticipated.
12. Hansen also indicated that there had been recent rainstorm activity at the subject location prior to the inspection. He stated that the increased depth of the topsoil excavation allowed for surface drainage and stormwater runoff to pool in an area behind a berm designed to prevent such water from moving topographically downhill (the berm is also the subject of NOV 13153). The pooled water had not reached the level of a previously established drainage ditch designed to convey water to the sediment pond. At the time of the inspection, the operator had not yet implemented a mechanism for conveying the runoff to the sediment pond; however, the pooled water had not exceeded the capacity of or overtopped the berm.
13. A review of Division information related to this matter shows the following language approved in the permit: "Section 3.1.1 - Runoff Control - All surface precipitation falling directly on and infiltrating the underground development waste fill shall be channeled to a sedimentation pond located down gradient from the toe of the disposal area fill. The active pad area will have a berm constructed around the outside edge about 2 ft. high to comply with MSHA requirements. This active pad will be sloped at about 2% to the east and south. Thus precipitation falling on the pad will drain to the southeast corner where it will be routed down the slope of the fill in an interception ditch with a trapezoidal cross section."
14. Mr. Hansen contended that the impoundment of fluid was in fact adequate, and that further action will be taken by the operator to properly convey the fluid to the sediment pond as approved in their MRP. This information was provided in regard to NOV 13148.

15. Hansen also stated that the waste rock expansion site was within the approved disturbed area of the mine at the time of the inspection. The total approved waste rock expansion site disturbed area includes a tract that will remain undisturbed, pending decisions by the operator concerning a potential road being considered through that tract. A berm (also identified in paragraphs 12 and 22, and NOV 13153) separates the disturbed area of the waste rock expansion site from the undisturbed area to the south of the berm. Although the operator is approved for greater disturbance than is currently used for the waste rock expansion site, they may not need the total area. They will revise their plan accordingly at the appropriate time.
16. The area to the south of the aforementioned separating berm also includes a 10 ft. wide area adjacent to the berm where equipment has been used in constructing the berm. This 10 ft. wide portion is the subject of NOV 13149. Mr. Hansen contends that the topsoil is not overly compacted and is still capable of being salvaged if and when plans for disturbance of that area are implemented. In Mr. Hansen's words, "topsoil that was required to be saved has been saved."
17. Hansen stated further that the greater amount of topsoil excavated from the waste rock expansion site was placed in a topsoil storage area, but did not match the described volume included in the approved MRP. After topsoil placement, "as built" information was prepared and submitted to address this discrepancy. Mr. Hansen's explanation was provided in regard to NOV 13151.
18. A review of Division information related to this matter shows that the Division issued an approval of a 0.54 acre expansion of Lift #5 (Task 4457) on December 26, 2013, with the assumptions that: 18 in. depth topsoil and subsoil removal to be either live-hauled to cover waste rock or placed on existing topsoil stockpile #2, and the operator would submit "as-builts" detailing the volumes salvaged and mapping the new stockpile configuration.
19. Lift #5 "as-builts" were received on June 30, 2014, reviewed (Task 4635) and returned the next day, July 1, 2014. The Division learned that the volume of soil salvaged was greater than estimated, but requested an additional as-built map showing the location and construction of the topsoil storage piles.
20. The requested as-built map had not been submitted at the time the inspector went to the site.
21. NOV 13151 was written on October 1, 2014. The narrative and as-built map was provided (Task 4702) on October 9, 2014.
22. Mr. Hansen indicated the berm that is the subject of NOV 13153 (also mentioned in paragraphs 12 and 15) was to demarcate the limit of construction disturbance and topsoil salvage for the waste rock expansion site. Although it is related to the capture and conveyance of surface drainage and stormwater runoff identified in NOV 13148, he contends that there is no specific requirement for approval of the design or construction of the referenced berm.

NOV relating to topsoil storage areas #1A and #1B:

23. Mr. Hansen and Ms. Miller provided photographs that were identified as illustrating the area that is the subject of NOV 13150 (the subject area is located at the northwest corner of topsoil storage area #1, near the western edge of the permit area boundary, adjacent to a county public road). They stated that the existing configuration of the drainage ditch and berm are just as depicted in the approved MRP, and there is no need for further action.

CONCLUSIONS OF LAW

24. NOV 13148 alleges a violation of Rule R645-300-143 which reads that “the permittee will comply with the terms and conditions of the permit, all applicable performance standards and requirements of the State Program.” The September 23, 2014 complete inspection report provided at the conference by Mr. Helfrich states that the NOV “was issued for failure to convey runoff from the waste rock site to the corresponding sediment pond.” The language of the approved MRP shown in paragraph 13 indicates that the management of surface runoff was to occur by a 2% sloping of the waste disposal pad to the east and south and the runoff conveyed to the sediment pond. This appears to not be the case. It is not clear to the Conference Officer that the impoundment of runoff water or its conveyance to the sediment pond was being performed inadequately or otherwise causing environmental degradation; however, the operator does have the responsibility to document the physical configuration of mining operations as part of the approved MRP, and to timely maintain those records.
25. NOV 13149 alleges a violation of Rule R645-301-234.200 that refers to placement and protection of stockpiled topsoil such that the material can be saved and redistributed over reclaimed areas at an appropriate time. From the explanations provided by both Mr. Helfrich and Mr. Hansen at the informal conference, the Conference Officer cannot discern that the operator has inadequately stockpiled topsoil for future use.
26. NOV 13150 alleges another violation of Rule R645-301-234.200 (similar to the alleged violation of paragraph 25, but for a different subject area). The berm and ditch discussed at the conference are indicated on maps within the approved MRP. Maps 2v6 and 4v4 depict Topsoil Storage Piles 1A and 1B accurately and at a scale as required in Rule R645-301-140. However, the Conference Officer believes that much confusion could have been avoided if a larger scale map of that particular area were available, with line types more clearly distinguishing berms, ditches, silt fences and the disturbed area boundary.
27. NOV 13151 alleges a violation of Rule R645-300-142 which reads that “the permittee will conduct all coal mining and reclamation operations only as described in the approved application, except to the extent that the Division otherwise directs in the permit.” The operator was not prompt in submitting as-built information in response to the Division’s July 1, 2014 request for such information. The plan had not been modified at the time the inspector visited the site.

28. NOV 13153 alleges an additional violation of Rule R645-300-142 (see quoted language of paragraph 27). This NOV relates to NOV 13148 regarding the impoundment of surface drainage and stormwater runoff by the construction of a berm. This NOV requires as an abatement action that the berm's design and construction should be reviewed and approved as part of the MRP. The Conference Officer cannot determine that there is a specific requirement for such information to be included in the MRP.

ORDER

25. NOVs 13149 and 13153 are hereby vacated.

26. NOV 13150 is vacated. However, additional action is required as a result of information that came to light but was not part of the NOV. The operator shall submit a map of topsoil storage piles 1A and 1B at a scale of 1" = 25' with line types more clearly distinguishing berms, ditches, silt fences and the disturbed area boundary. Such information shall be submitted to the Division by close of business on December 19, 2014. The submitted information will be reviewed by the Division, and if approved, will be included as part of the approved MRP.

27. NOV 13148 is upheld. To further describe the abatement action already explained in the NOV, the operator shall submit information that:

- a. shows that the pooled surface drainage and stormwater runoff that had been visually observed at the time of the complete inspection has been eliminated or properly conveyed to the sediment pond, and
- b. corrects the information in the approved MRP to accurately describe the future methods and the structural configuration to convey surface drainage and stormwater runoff to the sediment pond.

Such information shall be submitted to the Division by close of business on December 19, 2014. The submitted information will be reviewed by the Division and if approved, will be included as part of the approved MRP.

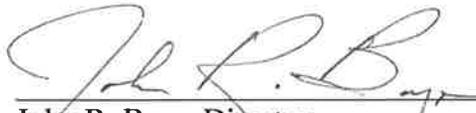
28. NOV 13151 is upheld. As stated in paragraph 21, the narrative and map related to topsoil stockpiling have already been submitted to the Division. Thus, the required abatement action has already occurred. The Conference Officer is not aware if the Division has reviewed and approved the submitted information; therefore, the operator should promptly confer with Division staff to identify any further action needed for Division approval.

RIGHTS OF APPEAL

This Order may be appealed to the Board of Oil Gas and Mining in accordance with the procedures set out in Rule R645-401-800 by filing a written petition for appeal with the Board within 30 days of receipt of the Order. To do so, you must also escrow the assessed civil penalties with the Division within 30 days of receipt of the Order, but in all cases prior to the Board Hearing. Failure to comply with this requirement will result in a waiver of your right of further recourse.

Your written appeal may be filed with Julie Ann Carter, Board Secretary, P.O. Box 145801, Salt Lake City, Utah 84114-5801. If you have questions regarding the filing, she can be contacted at juliecarter@utah.gov or (801) 538-5277.

SO DETERMINE AND ORDERED this 20th day of November, 2014.



John R. Baza, Director
Division of Oil, Gas and Mining
Informal Conference Officer

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Bowie Resources
Sufco Mine
597 S SR24
Salina, Utah 84654

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