7404

State of Utah
DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Division of Oil, Gas and Mining
JOHN R. BAZA
Division Director

July 29, 2016

CERTIFIED RETURN RECEIPT
7013 2250 0000 2310 2590

Dale D. Rogers
218 South 400 West
PO Box 697
Delta, UT 84624

Subject: Proposed Assessment for State Cessation Order No. MC-2016-42-08, Dale D. Rogers, Pleasant Mine, S/023/0109, Juab County, Utah

Response Due By: 30 Days of Receipt

Dear Mr. Rogers:

The undersigned has been appointed by the Division of Oil, Gas & Mining as the assessment officer for assessing penalties under R647-7.

Enclosed is the proposed civil penalty assessment for the above referenced notice of violation (NOV). The NOV was issued by Division inspector, Peter Brinton, on September 16, 2015. Rule R647-7-103 et. seq. has been utilized to determine the proposed penalty of $2,200.00. The enclosed worksheet outlines how the civil penalty was assessed.

By these rules, any written information which was submitted by you or your agent within fifteen (15) days of receipt of this NOV has been considered in determining the facts surrounding the violation and the amount of this penalty.

Under R647-7-106, there are two informal appeal options available to you. You may appeal the 'fact of the violation', the proposed civil penalty, or both. If you wish to informally appeal you should file a written request for an informal conference within thirty 30 days of receipt of this letter.

The informal conference will be conducted by a Division-appointed conference officer. The informal conference for the fact of the violation is distinct from the informal assessment conference regarding the proposed penalty. If you wish to review both the fact of the violation and proposed penalty assessment, you should file a written request for an assessment conference within thirty (30) days of receipt of this letter. In this case, the assessment conference will be scheduled immediately following the review of the fact of the violation.

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

If a timely request for review is not made, the fact of the violation will stand, the proposed penalty will become final, and will be due and payable within thirty (30) days of the date of this proposed assessment (by September 1, 2016). Please remit payment to the Division, mail c/o Sheri Sasaki.

Sincerely,

Lynn Kunzler
Assessment Officer

LK: eb
Enclosure: Proposed assessment worksheet
cc: Sheri Sasaki, Accounting
Vickie Southwick, Exec. Sec.
P:\GROUPS\MINERALS\WP\M023-Juab\S0230109- Pleasant\non-compliance\2016-42-08\passltr-7404-07272016.doc

WORKSHEET FOR ASSESSMENT OF PENALTIES
DIVISION OF OIL, GAS & MINING
Minerals Regulatory Program

NOV / CO #: MC-2016-42-08 PERMIT: S/0230109
COMPANY / MINE Dale D. Rogers / Pleasant Mine

ASSESSMENT DATE July 27, 2016
ASSESSMENT OFFICER Lynn Kunzler

I. HISTORY (Max. 25 pts.) (R647–7-103.2.11)

A. Are there previous violations, which are not pending or vacated, which fall within three (3) years of today's date? No

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS (1pt for NOV 5pts for CO)
None		

TOTAL HISTORY POINTS 0

II. SERIOUSNESS (Max 45pts) (R647–7-103.2.12)

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 Administrative (B) violation? Event (A)
(assign points according to A or B)

A. EVENT VIOLATIONS (Max 45 pts.)

1. What is the event which the violated standard was designed to prevent?
Activity outside approved permit area and conducting activities without appropriate approvals.

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

PROBABILITY	POINT RANGE	PROBABILITY	POINT RANGE
insignificant	1-4	Likely	10-19
Unlikely	5-9	Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 20

PROVIDE AN EXPLANATION OF POINTS: *Disturbance at the site had exceeded the permitted disturbance by approximately double the permitted acreage. Therefore the event is considered to have occurred. Points were assigned accordingly.*

3. What is the extent of actual or potential damage?: *Mining operations have affected xx acres outside the permitted and bonded aera*

ASSIGN DAMAGE POINTS (Range 0-25) **12**

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

PROVIDE AN EXPLANATION OF POINTS: *By disturbing more acreage that what is bonded, the Division would potentially not have sufficient funds to fully reclaim the site. With only bond for 2 acres, the potential for not having sufficient funds is substantial. Points assigned at the mid point of the range.*

B. ADMINISTRATIVE VIOLATIONS (Max 25pts)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? _____
   Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS _____

PROVIDE AN EXPLANATION OF POINTS: _____

TOTAL SERIOUSNESS POINTS (A or B) 32

III. DEGREE OF FAULT (Max 30 pts.) (R647-7-103.2.13)

LEVEL of NEGLIGENCE.	Point Range
No Negligence (Was this an inadvertent violation which was unavoidable by the exercise of reasonable care?)	0
Negligence (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?)	1 - 15
Greater Degree of Fault (reckless, knowing or intentional conduct)	16 - 30

STATE DEGREE OF NEGLIGENCE: *Negligent*

ASSIGN NEGLIGENCE POINTS 8

PROVIDE AN EXPLANATION OF POINTS: *Inspector indicated ordinary negligence. Without argument to adjust up or down, points are assigned at the mid-point of the 'negligence' range.*

IV. GOOD FAITH (Max 20 pts.) (R467-7-103.2.14)

(Either A or B) (Does not apply to violations requiring no abatement measures, or violations not abated at the time of assessment)'

Has Violation Been Abated? NO , Since the violation has not yet been abated, good faith points are not evaluated. If this violation is abated prior to the date specified for abatement to be complete, the proposed assessment may be re-evaluated with good faith being evaluated.

A. EASY ABATEMENT (The operator had onsite, the resources necessary to achieve compliance of the violated standard within the permit area.)

	Point Range
Immediate Compliance (Immediately following the issuance of the NOV)	-11 to -20
Rapid Compliance (Permittee used diligence to abate the violation. Violation abated in less time than allotted.)	-1 to -10
Normal Compliance (Operator complied within the abatement period required, or, Operator requested an extension to abatement time)	0

B. DIFFICULT ABATEMENT (The operator did not have the resources at hand to achieve compliance, or the submission of plans was required prior to physical activity to achieve compliance.)

	Point Range
Rapid Compliance (Permittee used diligence to abate the violation. Violation abated in less time than allotted.)	-11 to -20
Normal Compliance (Operator complied within the abatement period)	-1 to -10
Extended Compliance (Operator complied within the abatement period required, or, Operator requested an extension to abatement time) (Permittee took minimal actions for abatement to stay within the limits of the violation, or the plan submitted for abatement was incomplete.)	0

EASY OR DIFFICULT ABATEMENT? _____

ASSIGN GOOD FAITH POINTS - 0

PROVIDE AN EXPLANATION OF POINTS: _.

V. ASSESSMENT SUMMARY (R647-7-103.3)

I.	TOTAL HISTORY POINTS	0
II.	TOTAL SERIOUSNESS POINTS	32
III.	TOTAL NEGLIGENCE POINTS	8
IV.	TOTAL GOOD FAITH POINTS	- 0
	TOTAL ASSESSED POINTS	40

TOTAL ASSESSED FINE **$2,200.00**