GARY R. HERBERT
Governor

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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 20, 2010

CERTIFIED MAIL
7005 2570 0000 4801 6461

Todd Wilhite
Wall & Rock Inc.
3651 North 100 East, Suite 300
Provo, Utah 84064

Subject: Findings of Fact, Conclusions, and Order for Violation MC-2010-41-01, Wall and Rock, Mount Pleasant Quarry (un-permitted), S/039/0037

Dear Mr. Wilhite:

On July 8, 2010, an Informal Conference was held to review the facts of violation and assessments for Violation MC-2010-41-01. 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, and order.

Within fifteen (15) days of your receipt of this letter, you or your agent may make a written appeal to the Board of Oil, Gas and Mining. To do so, you must escrow the assessed civil penalties with the Division within thirty (30) days of receipt of this letter, 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.

If no timely appeal is made, this assessed civil penalty of $2,200.00 must be tendered within thirty (30) days of your receipt of this letter. Please remit payment to the Division of Oil, Gas and Mining, c/o Vickie Southwick at the address listed below.

Failure to remit the payment, or to comply with other options given in the order will result in reinstatement of the full fine of $4,950 dollars; and may result in a failure to abate cessation order, which requires a fine of $750 per day that the order is in place.

If you have questions or concerns, please contact me at (801) 538-5320, or John Rogers at (801) 538-5349.

Sincerely,

Dana Dean, P.E.
Associate Director
Assessment Conference Officer

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

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IN THE MATTER OF THE INFORMAL ASSESSMENT CONFERENCE for NOTICE OF VIOLATION AND PROPOSED ASSESSMENT. VIOLATION No. MC-2010-41-01, WALL AND ROCK UNPERMITTED MOUNT PLEASANT QUARRY, S/039/0027, SAN PETE COUNTY, UTAH	:	**FINDINGS of FACT, CONCLUSIONS OF LAW AND ORDER** **CAUSE NO. S/039/0027**

---ooOoo---

On July 8, 2010, the Division of Oil, Gas and Mining (Division) held an Informal Assessment Conference as provided for by R647-7-106 Utah Administrative Code (2009) in response to a request by Mr. Todd Wilhite to review the fact of violation and assessment amount for Cessation Order MC-2010-41-01, issued to him on April 15, 2010 for non-permitted operations at the Mount Pleasant Quarry, S/039/0027, San Pete County, Utah.

ISSUES

The Division, in its Cessation Order, found that rules R647-3-101 and R647-3-110 (small mine); or R647-4-101 and R647-4-111 (large mine) had been violated. These rules require that the operator have a valid permit and reclamation surety before commencing mining operations. The Division assessed a fine of $4,950.00 for the violation.

PARTIES

Dana Dean, Associate Director Division of Oil, Gas and Mining served as the Hearing Officer. The hearing was conducted as an informal adjudicative proceeding. John Rogers, Division Geologist/Permit Lead presented the facts and arguments in support of the Cessation Order. Lynn Kunzler, Assessment Officer, presented the arguments concerning the determination of the assessment amount. Paul Baker, Minerals Program Manager was also in attendance and participated for the Division. Todd Wilhite represented Wall and Rock.

No recording or transcript of the conference was made.

FINDINGS OF FACT

Based on the information provided at the conference, the statements presented by those speaking, and on information in the files of the Division the following Findings and Conclusions were made.

1. The Request for an informal assessment conference was delivered to the Division on June 21, 2010.

2. Notice of the Informal Assessment Conference was provided as required.

3. Mr. Wilhite began mining operations without a bond or permit. The disturbance perimeter was measured at approximately 17 acres using GPS equipment.

4. Mr. Wilhite was fully aware of the requirements to have a permit and reclamation bond before he began to mine this area.

5. On April 15, 2010, the Division Issued Cessation Order MC-2010-41-01, requiring the cessation of all operations at the Mount Pleasant Quarry until a Notice of Intention and a bond could be posted in a form accepted by the Division. The CO also allowed for complete reclamation of the quarry as an option to permitting.

6. Mr. Wilhite immediately reclaimed most of the 17 acres upon receipt of the CO.

7. The disturbance to the 17 acres was shallow, and some parts had merely been cleared of sagebrush as requested by the landowner. The landowner will use the areas that had only been cleared of sagebrush to plant, and no mining was ever contemplated for those areas.

CONCLUSIONS OF LAW

1. Mr. Wilhite knowingly and willfully began mining operations without a permit or surety bond.

2. The fact of the violation should stand.

3. Although the damage occurred, the disturbance was shallow and some islands of non-mined lands were contained within the disturbed area boundary. The damage points may be reduced.

4. Although the violation has not been abated, the majority of the 17 acres were immediately reclaimed. Good will points may be awarded.

ORDER

NOW THEREFORE, it is ordered that:

1. The fact of the violation is upheld.
2. The proposed assessment of $4,950 is held in abeyance, and may be waived in order to apply the funds toward bonding; providing that Mr. Wilhite does the following by August 26, 2010:

a. Sign and file a Reclamation Contract with the Division

b. Provide an interim bond of $10,000 in a form acceptable to the Division

c. Submit a complete NOI

d. Pay the appropriate permit fee

e. Provide full bond as calculated and required by the Division once they have reviewed the NOI

3. If Mr. Wilhite decides to reclaim and close the quarry instead of filing a plan and providing a bond, the work must be completed by August 18. Additionally, the fine for mining without a permit will be reinstated at the re-assessed amount of $2,200.
4. If neither option is completely satisfied by the required dates, the full fine will be reinstated and a Failure to Abate Cessation Order may be issued.
5. If, in the future, Mr. Wilhite is found to have started any other mining operations without a permit and surety bond, the Division will impose all punitive measures, to the maximum extent allowed under the Act.

SO DETERMINED AND ORDERED this 20th day of July 2010

Dana Dean, Associate Director
Division of Oil, Gas and Mining

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UTAH DIVISION OF OIL, GAS AND MINING
WORKSHEET FOR FINAL ASSESSMENT OF PENALTIES

COMPANY: Walls and Rock
PERMIT: S/039/0027 (un-permitted)
VIOLATION: MC-2010-41-01

ASSESSMENT CONFERENCE OFFICER: Dana Dean

		Proposed Assessment	Final Assessment
(1)	History/Previous Violations	0	0
(2)	Seriousness	40	30
(3)	Negligence	25	25
(4)	Good Faith	0	-15
	Total Points	65	40

TOTAL ASSESSED FINE $2,200.00