6987

State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas and Mining

JOHN R. BAZA
Division Director

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

January 19, 2016

CERTIFIED RETURN RECEIPT
7013 2250 0000 2310 2354

Boris Treyzon
TMC Capital, LLC
9701 Wilshire Blvd., Suite 1000
Beverly Hills, California 90212

Subject: Proposed Assessment for State Notice of Violation No. MN-2015-60-04, TMC Capital, LLC, TME Asphalt Ridge Mine, M/047/0089, Uintah County, Utah

Response Due By: 30 Days of Receipt

Dear Mr. Treyzon:

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. The NOV was issued by Division inspector, April Abate on November 9, 2015. Rule R647-7-103 et. seq. has been utilized to determine the proposed penalty of $462.00. 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.

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 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.

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 February 22, 2016). Please remit payment to the Division, mail c/o Sheri Sasaki.

Sincerely,

Lynn Kunzler
Assessment Officer

LK:pb
Enclosure: Proposed assessment worksheet
cc: Sheri Sasaki, Accounting
Vickie Southwick, Exec. Sec.
O:\M047-Uintah\M0470089-TMEAsphaltRidge\non-compliance\MN-2015-60-04\Pass-ltr-6987-01192015.doc

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

NOV / CO #: MN-2015-60-04 PERMIT: M/047/0089
COMPANY / MINE TME Capital, LLC. / TME Asphalt Ridge Mine

ASSESSMENT DATE January 19, 2015
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 three (3) years of today's date?

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?
Environmental Harm/Water polution

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

PROBABILITY	POINT RANGE	PROBABILITY	POINT RANGE
None	0	Likely	10-19
Unlikely	1-9	Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 15

PROVIDE AN EXPLANATION OF POINTS: *With the secondary containment being compromised with storage additional barrels, and the lack of maintenance to remove previously contained materials, it was the understanding of the inspector that one more storm could have provided sufficient inflow to cause un-authorized discharge. The violation is therefore considered likey to occur and points are assigned at the midpoint of theLikely range.*

3. What is the extent of actual or potential damage?: *Since the violation has not occurred there is no actual damage – Potential damage would include surface water contamination (likely) and groundwater contamination (less likely). The surface water pollution could also affect the fish and wildlife that depend on the stream.*

ASSIGN DAMAGE POINTS (Range 0-25) **13**

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: *Points assigned at the midpoint of the range since the assessment officer was not provided any evidence to justify a higher, or lower assessment..*

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) **28**

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 (was this a failure to abate any violation or was economic gain realized by the permittee?	16 - 30

STATE DEGREE OF NEGLIGENCE: *Negligent*

ASSIGN NEGLIGENCE POINTS **8**

PROVIDE AN EXPLANATION OF POINTS: *The Operator had been warned via a Division Directive (written notice) to remove barrels from the containment area. This did not occur, demonstrating indifference or lack of diligence or reasonable carfe. Points assigned at the midpoint of the Negligent 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? *Yes*

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? *Difficult abatement – the operator needed to find specialized equipment to clean out the containment area.*

ASSIGN GOOD FAITH POINTS -15

PROVIDE AN EXPLANATION OF POINTS: *Operator abated in violation in about ½ the allotted time of two weeks. Points assigned at the mid-point of the Rapid Compliance range..*

V. ASSESSMENT SUMMARY (R647-7-103.3)

I.	TOTAL HISTORY POINTS	0
II.	TOTAL SERIOUSNESS POINTS	28
III.	TOTAL NEGLIGENCE POINTS	8
IV.	TOTAL GOOD FAITH POINTS	-15
	TOTAL ASSESSED POINTS	21

TOTAL ASSESSED FINE **$462.00**