



THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

**Department of Natural Resources**

DIVISION OF MINING, LAND & WATER  
Mining Resources Section

550 West 7th Avenue, Suite 920  
Anchorage, Alaska 99501-3577  
Minerals Property Management Main: 907.269.8642  
Fax: 907.269.8649  
Coal Regulatory/Abandoned Mine Lands Main: 907.269.8631  
Fax: 907.269.8930  
TDD: 907.269.8411

June 5, 2014

Fred Wallis  
Usibelli Coal Mine, Inc.  
PO Box 1000  
Healy, AK 99743

RE: NOTICE OF VIOLATION N-S0603-05292014-1

Dear Mr. Wallis,

During the May 29<sup>th</sup> inspection of the Two Bull Ridge mine, the Division noticed that equipment had crossed Hoseanna Creek at an unarmored low water crossing near ponds T-3 and T-4. During initial discussion with by Usibelli with Division staff, this crossing was to be used only when there was sufficient ice present to protect the stream bed and bank. This crossing during non-frozen conditions disturbed the riparian habitat, bank, and the bed of Hoseanna Creek causing minimal damage and erosion into Hoseanna Creek

A review of the Two Bull Ridge Operation and Reclamation Plan found that no low water stream crossings to facilitate the maintenance of Ponds T-3 and T-4 were included in the approved plan. The only access to ponds T-3 and T-4 approved under the current operations and reclamation plan is across Hoseanna Creek at bridge 3 and then along an auxiliary road along the north side of the Hoseanna creek. 11 AAC 90.491 requires that a design/plan be submitted in the operations and reclamation plan for approval. This plan must show how the operation will prevent or minimize erosion, siltation; minimize diminution or degradation of water quality or quantity; prevent or minimize damage to fish, wildlife, or their habitat and related environmental values and refrains from significantly altering the normal flow of water in streambeds or drainage channels. Additionally, a review of the Stream Buffer Zone waiver under the original Two Bull Ridge Final Findings shows that while crossing Hoseanna Creek (Lignite Creek) during construction was allowed the waiver did not extend to crossing for long term maintenance. A waiver request would have to have been submitted that showed how the requirement of 11 AAC 90.353 would be met at this crossing and how it was preferred over the constructed access road.

Initial discussion with Usibelli indicated that the Fish Habitat Permit from the Alaska Department of Fish and Game (ADFG) for this crossing had expired. Further discussions with Usibelli and ADFG revealed that Usibelli does have a valid Fish Habitat Permit (FH07-III-0178) that expires in December of 2016. The issuance of this Fish Habitat permit meets the

requirement of ADFG but does not meet the specific requirement for authorization under 11 AAC 90.

This crossing has resulted in a Notice of Violation (N-S0603-05292014-1) to be issued for violation of 11 AAC 90.353 Stream Buffer Zones and 11 AAC 90.491 Construction and maintenance of roads, transportation and support facility and utility installations.

In order to abate this violation Usibelli must:

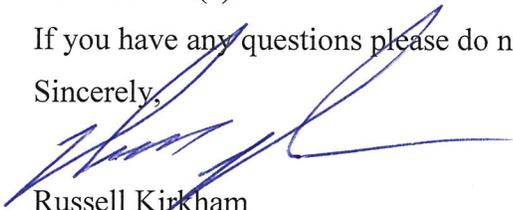
1. Install sedimentation controls on the north and south sides of Hoseanna Creek
2. Provide in writing that it will cease all use of the low water crossing.

These steps must be completed before June 16, 2014 to abate this Notice of Violation. At the time of the inspection the Division directed Usibelli to immediately install sediment controls at the site. This was completed before the Division returned the next morning meeting the requirement of item 1.

If Usibelli wishes to use this crossing it must provide to the Division a revision request under 11 AAC 90.129 that shows how the requirements of 11 AAC 90.353, 11 AAC 90.491(a) and 11 AAC 90.491(e).

If you have any questions please do not hesitate to contact me.

Sincerely,



Russell Kirkham  
Coal Program Manager

Attached: NOV: N-S0603-04302013-0

Cc: Tammy Scholten, Usibelli  
Glenn Waugh, OSMRE  
Christine Belka, OSMRE

ALASKA DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF MINING LAND AND WATER  
**NOTICE OF VIOLATION**

**VIOLATION NUMBER:** N-S0603-05292014-1  
**PERMIT NUMBER:** S-0603  
**PROJECT:** Two Bull Ridge Mine  
**PERMITTEE:** Usibelli Coal Mine, Inc  
**MAILING ADDRESS:** P.O. Box 1000  
Healy AK 99743  
**OPERATOR:** Usibelli Coal Mine, Inc  
**MAILING ADDRESS:** P.O. Box 1000  
Healy AK 99743  
**DATE OF INSPECTION:** May 29, 2014  
**TIME OF INSPECTION:** 3:00 pm

1. **VIOLATION.** Under the authority of AS 27.21, the undersigned authorized representative of the commissioner of the Department of Natural Resources has conducted an inspection on the above date and has found one or more violations of AS 27-21, 11 AAC 90, or the permit for the above operation which require a notice of violation to be issued. This notice is a separate notice for each violation listed on the attached pages. For further information about the violation and Department procedures you may wish to consult AS 27.21 and 11 AAC 90.

2. **ABATEMENT.** You must abate each of these violations within the stated abatement time. You are responsible for doing all work in a safe manner in compliance with all applicable laws and regulations. Be sure to contact the inspector upon the completion of abatement so that the violation can be terminated as quickly as possible. Rapid abatement can also reduce the amount of the penalty, which you might otherwise be assessed for this violation. You may apply for an extension of the time for abatement in accordance with AS 27.21.240(b) and 11 AAC 90.615. If you have any questions, please call the inspector at (907) 269-8650.

3. **NOTICE REMAINS IN EFFECT.** This notice remains in effect until it expires as provided by law, or until it is modified, terminated, or vacated in writing by an authorized representative of the commissioner.

4. **PENALTIES.** AS 27.21.250 (a) provides for imposition of civil penalties of up to \$5,000 for each violation. Each day of continuing violation may be deemed a separate violation. In addition, if you fail to correct any of the violations described in this notice within the period permitted for abatement, a penalty of \$750 per day must be assessed for each day during which the violation continues beyond the period set forth in this notice.

**YOU MAY SUBMIT WRITTEN INFORMATION ABOUT THIS VIOLATION FOR THE COMMISSIONER TO CONSIDER IN DETERMINING WHETHER OR NOT TO ASSESS A PENALTY WITHIN 10 DAYS OF SERVICE OF THIS NOTICE.** You will receive a written notice of any proposed penalty by certified mail.

5. **CRIMINAL PENALTIES.** If you willfully and knowingly violate a condition of your permit or an order of the commissioner or cause a corporation to violate a condition or order, you may be subject to criminal prosecution and may, upon conviction, be found guilty of a class C felony.

6. **FAILURE TO ABATE.** Failure to abate any violation within the required abatement period will result in an order of cessation requiring you to cease surface coal mining operations on the portion of your operation affected by the violation.

7. **EFFECT ON PERMIT.** In addition, if it is determined that a pattern of violations of any requirements of AS 27.21, 11 AAC 90, or permit conditions exists, and that the violations were caused by unwarranted failure to comply or were willful, your permit may be suspended or revoked. Outstanding violations may prevent the issuance of further surface coal mining and reclamation permits both in Alaska and in other states.

8. **EXPEDITED REVIEW.** The undersigned finds that cessation of mining is \_\_\_ is not X expressly or in practical effect required by this notice. If the first of these two choices is checked, this notice will expire not more than 30 days after you receive this notice unless an informal conference is held or unless you waive the right to such a conference. **PLEASE NOTE THAT THE RIGHT TO THIS INFORMAL CONFERENCE WILL BE CONSIDERED TO BE WAIVED UNLESS YOU REQUEST THE CONFERENCE WITHIN 30 DAYS AFTER SERVICE OF THIS NOTICE.** The notice will not expire if you agree to have the informal conference beyond the 30-day period. Any request for a conference under this paragraph received on or after 21 days after service of this notice will result in an automatic extension of 10 days in the period for holding the conference.

9. **FORMAL REVIEW AND TEMPORARY RELIEF.** You have a right to a review of this notice or any penalty assessed as a result of this notice, with or without a public hearing, before the commissioner of the Department of Natural Resources or his or her representative. You may wish to delay requesting review until you receive your "Notice of Proposed Assessment of Civil Penalty" in the mail. Unless a signed written request for review of this notice is made within 60 days, the commissioner will proceed without a hearing. Applying for review does not result in a stay of this notice. However, if you apply for formal review, you may also apply for temporary relief from this notice. The requirements for obtaining temporary relief are contained in AS 27.21.240 (e).

**ALL INFORMATION OR REQUESTS FOR REVIEW UNDER THIS NOTICE must be submitted by mail or delivered to the Director, Division of Mining, Land and Water, Department of Natural Resources, 550 West 7<sup>th</sup> Ave., Suite 1000, Anchorage, Alaska 99501-3577.**

**Date of Service:** June 5, 2014

**Person Served:** Fred Wallis, Vice-President, Engineering

(Please print name and title)

**Signature of person served:** \_\_\_\_\_

**Inspector:** Russell Kirkham, Geologist

(Please print name and title)

**Signature of Inspector:** \_\_\_\_\_

**Manner of Service:** Email and Certified Mail

**Notice of Violation Number:** N-S0603-05292014-1

**Violation Number** 1 of 1

**Nature of the Violation:** During the May 29th inspection of the Two Bull Ridge mine, the Division noticed that equipment had crossed Hoseanna Creek at an unarmored low water crossing near ponds T-3 and T-4. During initial discussion with by Usibelli with Division staff, this crossing was to be used only when there was sufficient ice present to protect the stream bed and bank. This crossing during non-frozen conditions disturbed the riparian habitat, bank, and the bed of Hoseanna Creek causing minimal damage and erosion into Hoseanna Creek

A review of the Two Bull Ridge Operation and Reclamation Plan found that no low water stream crossings to facilitate the maintenance of Ponds T-3 and T-4 were included in the approved plan. The only access to ponds T-3 and T-4 approved under the current operations and reclamation plan is across Hoseanna Creek at bridge 3 and then along an auxiliary road along the north side of the Hoseanna creek. 11 AAC 90.491 requires that a design/plan be submitted in the operations and reclamation plan for approval. This plan must show how the operation will prevent or minimize erosion, siltation, minimize diminution or degradation of water quality or quantity; prevent or minimize damage to fish, wildlife, or their habitat and related environmental values and refrains from significantly altering the normal flow of water in streambeds or drainage channels. Additionally, a review of the Stream Buffer Zone waiver under the original Two Bull Ridge Final Findings shows that while crossing Hoseanna Creek (Lignite Creek) during construction was allowed the waiver did not extend to crossing for long term maintenance. A waiver request would have to have been submitted that showed how the requirement of 11 AAC 90.353 would be met at this crossing and how it was preferred over the constructed access road.

**Violation of:**

**AS 27.21.210**

**11 AAC. 90.353**

**11AAC 90.491(a)**

**11AAC 90.491(e)**

**Permit Condition:** Failure to receive approval for a low water crossing of Hoseanna Creek (Lignite Creek).

**Portion of the operation to which this notice applies:**

**Action required to abate the violation (including interim steps, if any):**

1. Install sedimentation controls on the north and south sides of Hoseanna Creek
2. Cease all use of the low water crossing.

**Time for abatement (including interim steps, if any):**

**On or before** June 16, 2014