

# STATE OF COLORADO

## DIVISION OF RECLAMATION, MINING AND SAFETY

Department of Natural Resources

1313 Sherman St., Room 215

Denver, Colorado 80203

Phone: (303) 866-3567

FAX: (303) 832-8106



November 29, 2012

Mr. James Kiger  
Environmental Manager Oxbow Mining LLC  
3737 Hwy 133  
P.O. Box 535  
Somerset Co 81434

John W. Hickenlooper  
Governor

Mike King  
Executive Director

Loretta E. Piñeda  
Director

Notice of Violation CV 2012-008, Elk Creek Mine, Permit No. 1981-022

Dear Mr. Kiger:

This letter is written in response to the request to vacate Notice of Violation (NOV) CV 2012-008 received from Oxbow Mining LLC by letter dated November 8, 2012. I reviewed the circumstances involved with the issuance of this NOV through file document review, staff discussions, and our onsite meeting on November 9, 2011. I will vacate the NOV as explained below.

The record indicates that, in this case, the violation may be considered an administrative violation where proper permitting procedures were not followed. The permit is being correctly revised with OMLLC's submittal of Minor Revision No.101 on November 13, 2012. There is also no evidence of environmental harm at this time.

Prior to construction, the Division and OMLLC discussed the features of the gas to electricity proposal and agreed that the electric generating station would not be under DRMS jurisdiction if: 1) the electricity was fed to the Delta-Montrose Electric Association (DMEA) electrical grid and not used directly for mine related activities, and 2) that the disturbance boundary be adjusted so the generating station is outside the disturbance boundary. However, during construction a new pad for the substation was constructed within the Elk Creek Mine disturbance boundary. DRMS was not notified, verbally or in writing, before the construction of the substation pad.

The following advice and direction is offered to avoid this circumstance in the future.

- DRMS recognizes that the use of methane gas to generate electricity and the related facilities are beyond DRMS jurisdiction (Rule 1.04 (132)). The NOV was written to address the issue that a facility was built within the mine disturbance boundary without an adjustment of the boundary. Correct maps must be provided for review and approval for incorporation into the permit prior to construction activity.
- DRMS respectfully requests that regulatory authorities for the methane gas electricity facility be identified and documented in the Elk Creek permit. This will assure that

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there are clear lines of distinction in terms of authority over worker safety, operational and environmental protection at this facility. This will also facilitate better communication for future sites and facility construction.

- Finally, open communication between DRMS staff and Elk Creek has never been more important. Please continue to work closely with the Coal program staff. There is ever increasing oversight of Coal program activities by local governments, citizen groups and federal agencies. DRMS takes great pride in maintaining primacy over the regulation of coal mining in Colorado and much of this success is due to the communication and partnerships with the industry.

This is a very worthwhile and innovative project for the Elk Creek Mine, OMLLC and the entire coal industry and it is in the best interest of all parties for this project to be successful and profitable. Thank you for your cooperation with this situation. Please feel free to contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Loretta Pineda". The signature is fluid and cursive, with the first name "Loretta" written in a larger, more prominent script than the last name "Pineda".

Loretta Pineda  
Division Director



**COLORADO DIVISION OF RECLAMATION, MINING AND SAFETY**  
1313 Sherman Street, Room 215, Denver, Colorado 80203, (303) 866-3567

**VACATION OF NOTICE OF VIOLATION OR CESSATION ORDER**

TO: THE OPERATOR AND PERMITTEE OF THE MINE DESCRIBED BELOW

CESSATION ORDER NO.: _____	NOTICE OF VIOLATION NO.: <u>CV-2012-008</u>
DATE ISSUED: <u>10/29/2012</u>	PERMIT NO.: <u>C-1981-022</u>
MINE: <u>Elk Creek Mine</u>	COUNTY: <u>Gunnison</u>
OPERATOR (if other Permittee): _____	TYPE OF MINE: <u>Underground coal</u>
MAIL ADDRESS: _____	PERMITTEE: <u>Oxbow Mining, LLC</u>
_____	MAIL ADDRESS: <u>P.O. Box 535, Somerset, CO 81434</u>
_____	_____

The captioned Notice of Violation or Cessation Order is vacated from the date of issue for the following reason(s):

The violation is an administrative violation where proper procedures were not followed. The permit is being correctly revised with OMLLC's submittal of Minor Revision No.101 on November 13, 2012. There is no evidence of environmental harm at this time.

DIVISION OF RECLAMATION, MINING AND SAFETY

BY *Sandra E. Lisch*  
Division Director

Date of Issue: 11/29/12

WHITE - File

YELLOW - Operator

PINK - Specialist

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