



State of Utah  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

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November 26, 1997

Mine file

CERTIFIED RETURN RECEIPT REQUESTED  
No. P 074 976 884

Vicky S. Bailey  
Earthfax Engineering  
7324 South Union Park Avenue  
Midvale, Utah 84047

Re: Findings of Fact, Conclusions and Finalized Assessment for Notice of Violation (NOV) N97-39-4-1, ACT/007/001, White Oak Mining and Construction, White Oak Mine, Folder # 5, Carbon County, Utah

Dear Ms. Bailey:

On November 19, 1997, an Assessment Conference was held to review the proposed assessment for state violation N97-39-4-1, White Oak Mine, White Oak Mining and Construction Company. As a result of a review of all pertinent data and facts, including those presented in the Assessment Conference, the following shall constitute the findings of fact, conclusions and the finalized assessment.

#### **Fact of Violation**

Violation N97-39-4-1 (the NOV) was written for "failure to minimize erosion to the extent possible on the main haul road." The portion of the operation to which the notice applied was "the road out slope below the identification signs on the main haul road to the mine site." Remedial action was "repair out slope of the haul road and seed with the approved seed mix." Discussion on the fact of the violation revealed that rilling of unknown magnitude had occurred at the NOV site, that the aerial extent of the rilling was in the order of 150-300 square feet, that overland flows of unknown volumes had passed through a vegetation filter before entering Eccles Creek, and that no evidence substantiating water pollution or documenting sediment transport to the creek was presented. Senior Reclamation Specialist Steve Demczak indicated that he had voiced concerns over the uncontrolled erosion at this site on previous visits to the mine, but the operator had not taken the requisite action. Abatement occurred in the last few days of the 30-day abatement period.

The fact of the violation was not contested by White Oak Mining (the Permittee).

#### **Findings**

1. The request of an Assessment Conference was made in a timely manner.
2. The Assessment Conference was appropriately noticed.
3. The NOV was abated prior to the Assessment Conference.

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**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

DOGM VB ACT/007/001 N97-39-4-1 FLDR #5

Sent to <b>VICKY BAILEY</b>	
Street and No. <b>EARTHFAK ENGINEERING</b>	
<b>7324 S UNION PARK AVE.</b>	
P.O., State and ZIP Code <b>MIDVALE UT 84047</b>	
Postage	S
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and	<b>NOV 28 1997</b>
Postmark or Date	<b>USPS - 84190</b>

PS Form 3800, June 1985

### Assessment Conference

Vicky Bailey, the representative of the Permittee stated that the Assessment Conference was requested because the Permittee felt the proposed assessment was not proportional to the extent of the damage.

Eight history points were awarded. The ensuing discussion substantiated the adequacy of the proposed points.

The proposed Seriousness points were reviewed. Pamela Grubaugh-Littig, the Assessment Officer indicated that 20 points had been awarded in this category because she felt the event had occurred. The resulting discussion centered on the fact that the rilling noted in the NOV had occurred, but no evidence had been presented supporting water pollution (the event the violated standard was designed to prevent). Lack of evidence to this end suggests a review of the Probability of Occurrence points is also in order. The proposed extent of damage assessment (10 points) considered proximity to the creek, but ensuing discussions noted that there is provision within R645-401-322.200 for consideration of the "duration, area and impact of such damage" that had not been considered.

The proposed assessment of 15 negligence points was visited. Given discussions between the Permittee and the inspector prior to issuance of the NOV on the need to address the subject area, no discussion of reduced assessment for this category ensued.

A discussion on the award of Good Faith points suggested that the delayed abatement precluded crediting of good faith. The Assessment Conference Officer suggested that a better understanding of the role of prompt abatement in the award of future good faith points might be beneficial to the Permittee.

### Finalized Assessment

I.	Total History Points	8	Unchanged
II.	Total Seriousness Points	5	Points reduced since no evidence substantiating water pollution was presented, and because proposed assessment did not consider the small extent of the eroded area and because evidence substantiating the extent of erosion was not presented.
III.	Total Negligence Points	15	Unchanged
IV.	Total Good Faith Points	0	Unchanged
	Total Assessed points	28	
	<b>Total Finalized Assessment</b>		<b>\$360</b>

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Vicky Bailey

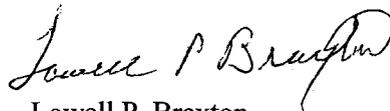
ACT/007/001, White Oak Mine

November 26, 1997

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 a maximum of 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 must be tendered within thirty (30) days of your receipt of this letter. Please remit payment to the Division of Oil, Gas and Mining, mail c/o Vicki Bailey at the address listed above.

Sincerely,



Lowell P. Braxton  
Assessment Conference Officer

vb

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