

0015



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

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memo #5

September 17, 1993

CERTIFIED RETURN RECEIPT  
P 074 977 042

Mr. Richard H. Allison, Jr., P.E.  
Project Supervisor  
Amax Coal West, Inc.  
165 South Union Blvd., Suite 1000  
P.O. Box 280219  
Lakewood, Colorado 80228-0219

Re: Proposed Assessment for State Violation No. N93-41-2-1, Amax Coal West, Castle Gate Mine, ACT/007/004, Folder #5, Carbon County, Utah

Dear Mr. Allison:

The undersigned has been appointed by the Board of Oil, Gas and Mining as the Assessment Officer for assessing penalties under R645-401.

Enclosed is the proposed civil penalty assessment for the above-referenced violation. The violation was issued by Division Inspector, Paul Baker on 25 August, 1993. Rule R645-401-600 et. sec. has been utilized to formulate the proposed penalty. By these rules, any written information which was submitted by you or your agent, within fifteen (15) days of receipt of the Notice of Violation, has been considered in determining the facts surrounding the violation and the amount of penalty.

Under R645-401-700, there are two informal appeal options available to you:

1. If you wish to informally appeal the fact of this violation, you should file a written request for an Informal Conference within 30 days of receipt of this letter. This conference will be conducted by the Division Director. This Informal Conference is distinct from the Assessment Conference regarding the proposed penalty.



P 074 977 042

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

PS Form 3800, June 1985

RICHARD H ALLISON JR	
PROJECT SUPERVISOR	
Street and No MAX COAL WEST INC	
P.O. BOX 280219	
P.O. State and Zip Code LEAKWOOD CO 80228-0219	
Postage	\$ 52
Certified Fee	1.00
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	WSP
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	53.00
Postmark or Date	



MBM DGM ACT/007/004 FLDR #5 N93-41-2-1

STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE,  
CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES. (see front)

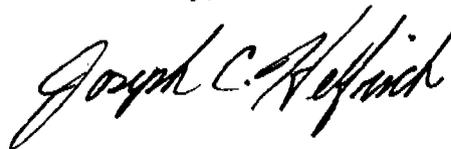
1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier. (no extra charge)
2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article.
3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.
4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.
5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.
6. Save this receipt and present it if you make inquiry.

\* U.S.G.P.O. 1988-217-132

2. If you wish to review the proposed penalty assessment, you should file a written request for an Assessment Conference within 30 days of receipt of this letter. If you are also requesting a review of the fact of violation, as noted in paragraph 1, the Assessment Conference will be scheduled immediately following that review.

**If a timely request for review is not made, the fact of violation will stand, the proposed penalty(ies) will become final, and the penalty(ies) will be due and payable within thirty (30) days of the proposed assessment. Please remit payment to the Division, mail c/o Vicki Bailey.**

Sincerely,



Joseph C. Helfrich  
Assessment Officer

jbe  
Enclosure  
cc: Bernie Freeman, OSM

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

COMPANY/MINE Amax Coal West/Castle Gate Mine

NOV #N93-41-2-1

PERMIT # ACT/007/004

VIOLATION 1 OF 1

ASSESSMENT DATE 09/15/93

ASSESSMENT OFFICER Joseph C. Helfrich

I. HISTORY MAX 25 PTS

- A. Are there previous violations which are not pending or vacated, which fall within 1 year of today's date?

ASSESSMENT DATE 09/15/93

EFFECTIVE ONE YEAR TO DATE 09/15/92

PREVIOUS VIOLATIONS

EFFECTIVE DATE

POINTS

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

1 point for each past violation, up to one year;  
5 points for each past violation in a CO, up to one year;  
No pending notices shall be counted.

TOTAL HISTORY POINTS 0

II. SERIOUSNESS (either A or B)

NOTE: For assignment of points in Parts II and III, the following applies. Based on the facts supplied by the inspector, the Assessment Officer will determine within which 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 Hindrance (B) violation? Hindrance

A. Event Violations Max 45 PTS

1. What is the event which the violated standard was designed to prevent?

\_\_\_\_\_

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

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

**ASSIGN PROBABILITY OF OCCURRENCE POINTS \_\_\_\_\_**

PROVIDE AN EXPLANATION OF POINTS

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3. What is the extent of actual or potential damage? RANGE 0 - 25\*

\*In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

**ASSIGN DAMAGE POINTS \_\_\_\_\_**

PROVIDE AN EXPLANATION OF POINTS

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**B. Hindrance Violations MAX 25 PTS**

1. Is this a potential or actual hindrance to enforcement? Actual RANGE 0 - 25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

**ASSIGN HINDRANCE POINTS 12**

PROVIDE AN EXPLANATION OF POINTS

The inspector was hindered from evaluating the presence or absence of iron levels in the water.

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**TOTAL SERIOUSNESS POINTS (A or B) 12**

**III. NEGLIGENCE MAX 30 PTS**

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? **IF SO - NO NEGLIGENCE;**  
 OR 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, or the failure to abate any violation due to the same? **IF SO - NEGLIGENCE;**  
 OR Was this violation the result of reckless, knowing, or intentional conduct? **IF SO - GREATER DEGREE OF FAULT THAN NEGLIGENCE.**

... No Negligence	0
... Negligence	1-15
... Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Ordinary

ASSIGN NEGLIGENCE POINTS 14

PROVIDE AN EXPLANATION OF POINTS

The operator's representative did not believe that iron was a parameter that was to be tested for according to the requirements of the UPDES permit. He felt that the Division was ambiguous, however, the UPDES permit which was provided to the Division by the Division of Water Quality and which was to expire on 4/30/93 clearly showed that iron was to be tested for. Also, 40 CFR part 434 includes limits or total iron which indicates that it must be tested for, and R645-301-731-222.1 specifically includes total iron as a parameter that must be tested for in the surface water monitoring program.

**IV. GOOD FAITH MAX 20 PTS. (EITHER A or B) (Does not apply to violations requiring no abatement measures.)**

- A. Did the operator have onsite the resources necessary to achieve compliance of the violated standard within the permit area?  
 ... **IF SO - EASY ABATEMENT**  
 Easy Abatement Situation
- |   |             |
|---|-------------|
| ... Immediate Compliance                              | -11 to -20* |
| ... Immediately following the issuance of the NOV)    |             |
| ... Rapid Compliance                                  | -1 to -10*  |
| ... (Permittee used diligence to abate the violation) |             |

- ... **Normal Compliance**                    **0**  
 (Operator complied within the abatement period required)  
 (Operator complied with conditions and/or terms of approved  
 Mining and Reclamation Plan)

\* Assign in upper or lower half of range depending on abatement occurring in 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance OR does the situation require the submission of plans prior to physical activity to achieve compliance?

... **IF SO - DIFFICULT ABATEMENT**

**Difficult Abatement Situation**

- ... **Rapid Compliance**            **-11 to -20\***  
 (Permittee used diligence to abate the violation)
- ... **Normal Compliance**            **-1 to -10\***  
 (Operator complied within the abatement period required)
- ... **Extended Compliance**            **0**  
 (Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard, or the plan submitted for abatement was incomplete)  
 (Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? \_\_\_\_\_ **ASSIGN GOOD FAITH POINTS**   -0  

PROVIDE AN EXPLANATION OF POINTS

No abatement required by the Notice of Violation.

**V. ASSESSMENT SUMMARY FOR    N93-41-2-1**

I.	TOTAL HISTORY POINTS	<u>  0  </u>
II.	TOTAL SERIOUSNESS POINTS	<u>  12  </u>
III.	TOTAL NEGLIGENCE POINTS	<u>  14  </u>
IV.	TOTAL GOOD FAITH POINTS	<u>  -0  </u>
	 TOTAL ASSESSED POINTS	 <u>  26  </u>
	 TOTAL ASSESSED FINE	 <u>  \$ 320  </u>