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

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April 20, 1994

CERTIFIED RETURN RECEIPT
P 074 978 403

Mr. Richard Allison
AMAX Coal Company
165 South Union Blvd., Suite 10000
P.O. Box 280219
Lakewood, CO 80228-0219

Re: Proposed Reassessment for State Violation No. N94-41-1-1, AMAX Coal Company,
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 reassessment for the above-referenced violation. The violation was issued on March 9, 1994, by Inspector Paul Baker. 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.
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 reassessment. Please remit payment to the Division, mail *c/o* Vicki Bailey.

Sincerely,


Joseph C. Helfrich
Assessment Officer

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Enclosure
cc: Bernie Freeman, OSM

**WORKSHEET FOR REASSESSMENT OF PENALTIES
UTAH DIVISION OF OIL, GAS AND MINING**

COMPANY/MINE AMAX Coal Company/Castle Gate Mine NOV #N94-41-1-1

PERMIT # ACT/007/004 VIOLATION 1 OF 1

ASSESSMENT DATE 04/20/94 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?

REASSESSMENT DATE 04/20/93 EFFECTIVE ONE YEAR TO DATE 04/20/94

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS
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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? Event

A. Event Violations Max 45 PTS

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

The inspector's statement revealed that R645-301-353.120 requires that reestablished vegetation be comprised of native species except where introduced species are desirable and necessary to achieve the post-mining land use. An introduced species was submitted for a native species without authorization, so it is

less likely that the vegetation will meet the performance standard. Also, one species was planted at a much reduced rate as compared to the plan, but this species will be replanted as part of the abatement.

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

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

ASSIGN PROBABILITY OF OCCURRENCE POINTS 20

PROVIDE AN EXPLANATION OF POINTS

- 3. What is the extent of actual or potential damage?

ASSIGN DAMAGE POINTS 12

PROVIDE AN EXPLANATION OF POINTS

The correct seed mixture was not used when seeding portions of Hardscrabble Canyon and Sowbelly Gulch. The inspector's statement revealed that an introduced grass species, intermediate wheat grass, was substituted for a native species, Basin wildrye, in areas seeded for final reclamation, and another species was seeded at a reduced rate. The grass species that was not included in the mixture is an important component of the area of vegetation, and, because of its height, provides a winter forage for big game animals. The introduced species that was seeded instead of the native is not "desirable" and necessary as required by R645-301-353.120 for introduced species.

The species that was seeded at a reduced rate, blueleaf aster, tends to establish very well on disturbed sites and provides good erosion control. Intermediate wheatgrass is not an aggressive species. It could establish to a very limited degree outside the permit area. However, other than being introduced and able to crowd out some of the native species, it is not undesirable.

With the abatement, Basin wild rye and blueleaf aster, should be able to become established in the revegetated areas. However, they will not be planted at the ideal

time for establishment. Also, even if efforts are made to reduce the amount of intermediate wheatgrass, this species will probably persist in the reclaimed area beyond the extended responsibility period.

B. Hindrance Violations MAX 25 PTS

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

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

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.

TOTAL SERIOUSNESS POINTS (A or B) 32

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 No Negligence

ASSIGN NEGLIGENCE POINTS 0**PROVIDE AN EXPLANATION OF POINTS**

All of the species shown in the Species List 1 in the Mining and Reclamation Plan were present in the proper proportions on the seed label. There was no indication of any problem with the seed before the seed lab results were received. The operator might have had the seed tested before using it. However, in order to receive the test results before planting, it would have been necessary for the operator to obtain the seeds several months before planting, have it sampled, and store it through the summer (in this case, the seed lab took nearly five months to perform the tests). The operator probably does not have facilities to properly store the seed.

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** -10

PROVIDE AN EXPLANATION OF POINTS

The revised inspector's statement of April 15, 1994 revealed that the permittee exercised diligence in abating the violation, thus ten points are awarded.

V. REASSESSMENT SUMMARY FOR N94-41-1-1

I.	TOTAL HISTORY POINTS	<u>0</u>
II.	TOTAL SERIOUSNESS POINTS	<u>32</u>
III.	TOTAL NEGLIGENCE POINTS	<u>0</u>
IV.	TOTAL GOOD FAITH POINTS	<u>-10</u>
	 TOTAL ASSESSED POINTS	 <u>22</u>
	 TOTAL ASSESSED FINE	 <u>\$ 0.00*</u>

*Total assessed points less than 50, civil penalty is discretionary.

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