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

Michael O. Leavitt
Governor

Ted Stewart
Executive Director

James W. Carter
Division Director

355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340
801-359-3940 (Fax)
801-538-5319 (TDD)

November 29, 1996

CERTIFIED RETURN RECEIPT
P 074 977 703

Brad Bourquin, P.E.
Horizon Coal Company
1131 South Dover Street
Lakewood, Colorado 80232

Re: Proposed Assessments for State Violation No. N96-35-1-2, Horizon Coal Company, Horizon Mine, ACT/007/020, Folder #5, Carbon County, Utah

Dear Mr. Bourquin:

The undersigned has been appointed by the Division 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 Susan White, on November 1, 1996. Rule R645-401-600 et. seq. has been utilized to formulate the proposed penalties. 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 penalties.

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 penalties.
2. If you wish to review the proposed penalty assessments, 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

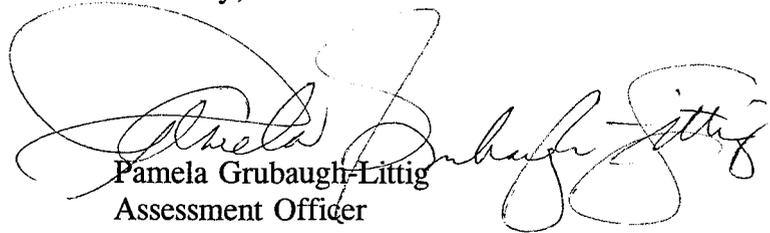


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ACT/007/020
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following that review.

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,



Pamela Grubaugh-Littig
Assessment Officer

blb
Enclosure
cc: James Fulton, OSM
Vicki Bailey, DOGM
O:\I&E\PROPLET.WPD

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

COMPANY/MINE Horizon Coal/Horizon Mine NOV# N-96-35-1-2

PERMIT# ACT/007/020

VIOLATION 1 OF 2

ASSESSMENT DATE 11/22/96 ASSESSMENT OFFICER Pamela Grubaugh-Littig

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 EFFECTIVE ON YEAR TO DATE

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 violation falls. Beginning at the mid-point of the category, the AO 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?

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 20

PROVIDE AN EXPLANATION OF POINTS

Runoff from the disturbed area was going offsite without being treated. Failed to control or prevent additional contribution of suspended solids to streamflow or runoff outside of the

permit area on lower Jewkes Creek area on west side of county road.

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 10

PROVIDE AN EXPLANATION OF POINTS

Sediment loading occurred on the lower Jewkes Creek area on the west side of the county road.

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 0

PROVIDE AN EXPLANATION OF POINTS

TOTAL SERIOUSNESS POINTS (A OR B) 30

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 Negligence

ASSIGN NEGLIGENCE POINTS 15

PROVIDE AN EXPLANATION OF POINTS

Permittee did not have sediment control in place prior to construction activities. The inspector said that sediment control measures were discussed in a preconstruction meeting.

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

The silt fences and straw bales were installed within the abatement period required.

V. ASSESSMENT SUMMARY FOR N-96-35-1-2, 1 of 2

I. TOTAL HISTORY POINTS	<u>0</u>
II. TOTAL SERIOUSNESS POINTS	<u>30</u>
III. TOTAL NEGLIGENCE POINTS	<u>15</u>
IV. TOTAL GOOD FAITH POINTS	<u>0</u>

TOTAL ASSESSED POINTS 45

TOTAL ASSESSED FINE \$ 800.00

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

COMPANY/MINE Horizon Coal/Horizon Mine NOV# N-96-35-1-2

PERMIT# ACT/007/020 VIOLATION 2 OF 2

ASSESSMENT DATE 11/29/96 ASSESSMENT OFFICER Pamela Grubaugh-Littig

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 EFFECTIVE ON YEAR TO DATE

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 violation falls. Beginning at the mid-point of the category, the AO 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?

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 5

PROVIDE AN EXPLANATION OF POINTS

Coal waste was placed in approximately 200 feet along the length of the drainage. Consultant for Horizon Mining Company stated as-builts would be submitted to document where waste was placed. This waste could be a problem at reclamation when a reclamation channel is constructed

on top of the waste. (Water through waste could have an offsite impact.)

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 0

PROVIDE AN EXPLANATION OF POINTS

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 0

PROVIDE AN EXPLANATION OF POINTS

TOTAL SERIOUSNESS POINTS (A OR B) 5

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 Negligence

ASSIGN NEGLIGENCE POINTS 5

PROVIDE AN EXPLANATION OF POINTS

The permittee failed to keep waste out of areas where the reclaimed drainages will be constructed. This is a commitment contained in the permit.

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

Permittee will provide plans.

V. ASSESSMENT SUMMARY FOR N-96-35-1-2, 2 of 2

I. TOTAL HISTORY POINTS 0

II. TOTAL SERIOUSNESS POINTS 5

III. TOTAL NEGLIGENCE POINTS 5

IV. TOTAL GOOD FAITH POINTS 0

TOTAL ASSESSED POINTS 10

TOTAL ASSESSED FINE \$ 100.00

PS Form 3811 Mar 1988

3. Article, Addressed to:
BRAD BOURQUIN
 HORIZON COAL CO
 1131 S DOVER ST
 LAKEWOOD CO 80232

4. Article Number
P 074 977 703

Type of Service:
 Registered
 Certified
 Express Mail
 Insured
 COD
 Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature - Address
 X *John Bourquin*

6. Signature - Agent
 X

7. Date of Delivery

8. Addressee's Address (ONLY if requested and fee paid)

9. Return Receipt for Merchandise

10. Restricted Delivery (Extra charge)

PS Form 3811 Mar 1988

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check boxes for additional services requested.

1. Show to whom delivered, date, and addressee's address. 2. Restricted Delivery (Extra charge)

SENDER INSTRUCTIONS
 Print your name, address and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.



PENALTY FOR PRIVATE USE, \$300

RETURN TO

Print Sender's name, address, and ZIP Code in the space below.

OF
 OF COAL & MINING
 HORIZON COAL COMPANY
 LAKEWOOD CO 80232
 LAKEWOOD CO 80232