



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

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HEARING MEMORANDUM

Horizon Coal Company Horizon Mine ACT/007/020

N96-35-1-2, Part 1 of 2

On January 28, 1997, at the request of Horizon Coal Company, and after due notice, an informal hearing on the fact of violation N96-35-1-2, part 1 of 2 (the NOV), and an assessment conference to discuss the proposed assessment was scheduled in the Division's offices. Lowell Braxton served as the hearing officer. Horizon Coal, the permittee, was represented by Brad Borquin, Project Manager (by speaker phone), and by Vicky Bailey, Earthfax Engineering. The Division was represented by Mary Ann Wright, Joe Helfrich, Pam Grubaugh-Littig, the Assessment Officer, and Susan White, the Inspector.

Susan White provided participants with a one page statement "In the Matter of Notice of Violation N96-35-01-02, part 1 of 2." A copy was faxed to Mr. Borquin at the beginning of the informal conference.

The NOV was issued for: "failure to control or prevent additional contributions of suspended solids to streamflow or runoff outside the permit area." Portion of operation to which notice applies: "Lower Jewkes Creek area on West side of county road." Remedial action: "Install silt fence, straw bales or other sediment control measures as necessary and in accordance with the approved plan to treat all disturbed area runoff."

Discussion on the Fact of the Violation

Representatives of the Permittee stated that the fact of violation was not at issue, admitted that no sediment control was in place at the subject area at the time of the violation, and for purposes of this hearing, agreed to wave the opportunity for further discussion on the fact.

Assessment Conference

Susan White used plate 3-6 (Pre-mining Topography) from the permit, and photographs taken at the time of the inspection to establish the location of the uncontrolled runoff, along the south-west portion of the disturbed area.

Vicky Bailey indicated that on the date of the inspection, construction activities at the site of the NOV were being conducted by the permittee (establishment of the Horizon mine)

and by Carbon County (relocation of a portion of the county road west and outside the approved disturbed area of the mine). The same contractor was working for both entities.

Susan established the Division's historic position that sediment control along county roads within a permitted, coal mine disturbed area had to follow UCM10-10 performance standards.

Vicky stated that due to field topographic conditions, runoff was actually entering the disturbed area from the county road. She further indicated that during construction, sediment control would have been difficult to establish given the small size of the subject disturbed area, and the rather continuous nature of traffic through this area.

Using maps from the permit, Vicky noted that uncontrolled runoff exiting the permit area would have had to have passed through a culvert in Lower Jewkes Creek before leaving the permit area, and questioned the Division's assertion that "additional contributions" had left the permit area. She admitted that uncontrolled runoff had left the disturbed area of the permit.

Brad Borquin indicated Horizon's desire that the Division reconsider good faith assessment due to timely abatement of the NOV. Mr. Borquin indicated that abatement began October 30, 1996, the day the NOV was issued, and abatement was achieved by the modified abatement date, November 7, 1996.

The NOV was terminated November 8, 1996.

Finalized Assessment

Probability of Occurrence.....10 points.

Basis for reduction: the Division's NOV asserted that uncontrolled runoff had left the permit area (emphasis added) but provided no evidence to that effect. The regulation cited in the NOV, R645-301-752.220 reads "Control or prevent additional contributions of suspended solids to streamflow or runoff outside the permit area" emphasis added. All parties in the Assessment Conference agreed that uncontrolled runoff had left the disturbed area (emphasis added), but penalty points assessed for sediment related to "Coal Mining and Reclamation Operations" (as opposed to that leaving the site as a function of county road construction activities or poor maintenance on roads topographically above the permit area) are better stated at the lower end of the range found in the regulations. Support for this may be found in the Event Violation Inspectors Statement which reads: "...(the reality is that the logging operations have been causing such a high sediment yield from there (sic) trucks and logging practices that this event was negligible in the overall view.)"

Damage.....5 points.

Basis for reduction: sediment loading outside the disturbed area is uncontested.

Guidance in confining sediment to the disturbed area is found at R645-301-731. 121, the general surface water protection regulation that includes “prevent to the extent practical additional contributions of suspended solids outside the permit area” which implies sediment control treatment of runoff leaving disturbed areas. In reviewing the “extent practical” language, one must consider the difficulty of maintaining sediment control in the midst of road relocation activities. Since the road was channeling surface water to the construction area and thence off the disturbed area, consideration must be given to long term solutions to prevent this water transport via the road. One such methodology would be to relocate the road to a more favorable topographic location, which is what was being done at the time the violation was issued. Such a solution is contemplated at R645-301-742.413, “Roads will be located to minimize downstream sedimentation and flooding” and R645-301-752.200, “Roads will be designed...to achieve”.... , (and at.752). “...to control or prevent additional contributions to streamflow outside the permit area.”

Activities undertaken by the permittee and the county to achieve the intent of the regulations at the time of initial construction deserve some credit in the penalty assessment, but the final assessment cannot excuse the permittee’s failure to pass disturbed area runoff through some form of sediment control.

Negligence.....10 points.

Basis for reduction: road relocation activities undertaken at the initial construction for the mine (the time of the NOV) will impart a solution to sediment transport and siltation problems at and adjacent to the Horizon Mine. Implementation of long term solutions supports reduction in the negligence points, but does not excuse the permittee’s failure to ensure appropriate sediment control was in place during construction activity.

Good Faith.....0 points.

No change.

N96-35-1-2, Part 2 of 2

On January 21, 1997, after due notice, an informal public hearing was held in the Division’s offices at the request of Horizon Coal to discuss the fact of the violation and possibly the proposed assessment for Notice of Violation (NOV) N96-35-1-2, part 2 of 2. Lowell Braxton served as the hearing officer. Horizon (the Permittee) was represented by Brad Borquin, Project Manager (by speaker phone), and by Vicky Bailey, (Earth Fax Engineering). The Division was represented by Mary Ann Wright, Joe Helfrich, Bob Davidson, Sharon Falvey, Pam Grubaugh-Littig (Assessment Officer), and Susan White (the Inspector).

The permittee requested background information on the informal process, the subject NOV being Horizon’s first violation under this process. Joe Helfrich provided this information, and the informal hearing began.

Susan White gave Lowell Braxton, Vicky Bailey, and Brad Borquin (by fax) an

eight-page report titled "In the matter of Notice of Violation N96-35-01-02," and used this to establish her basis for issuing the NOV. The NOV was issued, **"for failure to follow an approved plan."** The portion of the operation to which the notice applies **"is Portal Canyon drainage: operator placed coal waste into proposed reclamation drainage location in Portal Canyon."**

Discussion on the Fact of the Violation

Susan explained that based on requests by Sharon Falvey and Bob Davidson a partial inspection resulting in issuance of the NOV was conducted on October 30, 1996. At the time of the inspection, the permittee was utilizing coal waste to build a road, no designated representative of the permittee was present, "Kurt", a contractor's representative, told her fill was needed. And further, in the judgement of the inspector, Sharon and Bob, the permittee was placing coal refuse in a portion of the permit area where an engineered drainage not utilizing coal waste was to be established. Bob Davidson stated that at the time of the inspection, he felt that road construction may have jeopardized topsoil salvaging. Susan presented photographs taken during the inspection, and used a map from the permit to illustrate where the activity resulting in the violation had occurred.

Vicky Bailey stated that the road in question was temporary, was designed to facilitate topsoil transport by scraper to the designated topsoil stockpile, that the road location was a judgement call, and that the temporary road would not be present during the operational phase of the Horizon Mine, and did not jeopardize the designed channel configuration. She also indicated that where existent, topsoil had been stripped prior to construction of the temporary road. She provided photographs to support her position, and used a map from the permit, and a map prepared to abate the NOV to illustrate her points. She also noted that field conditions precluded surveying of the "certified as built" map requisite for abatement.

Brad Borquin substantiated the temporary nature of the road, and stated that the location did not effect the center of the Portal Canyon drainage where designed channels were to be established. He further stated since the channel was not under construction it was an error on the part of the Division to assume the temporary road was a precursor to channel reclamation.

Susan indicated that since there was no designated permittee's representative on site during the inspection she was hindered from access to the plan, and that the positions established by Brad and Vicky were not clear during the inspection.

During the hearing all parties were in general agreement that the road in question was temporary in nature, and that discussions subsequent to issuance of the NOV had substantiated that at the time of the inspection topsoil stripping was in accordance with the approved plan, and that coal waste handling practices had not jeopardized the permittee's ability to comply with the MRP. It was further noted that pre-SMCRA coal waste and other evidence of an earlier period of unregulated mining activity are in evidence within the Horizon Mine permit area.

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

COMPANY: Horizon Coal Company
 PERMIT: ACT/007/020
 VIOLATION: N96-35-1-2 Part 1 of 2

ASSESSMENT CONFERENCE OFFICER: Lowell P. Braxton

	Proposed Assessment	Final Assessment
(1) History/Previous Violations	<u>0</u>	<u>0</u>
(2) Seriousness	<u> </u>	<u> </u>
Probability of Occurance	<u>20</u>	<u>10</u>
Damage	<u>10</u>	<u>5</u>
(3) Negligence	<u>15</u>	<u>10</u>
(4) Good Faith	<u>0</u>	<u>0</u>
Total Points	<u>45</u>	<u>25</u>

TOTAL ASSESSED FINE \$ 300

NARRATIVE: See Hearing Memorandum attached.

(Brief explanation for any changes made in assignment of points and any additional information that was available after the proposed assessment.)

Brad Borquin stated that the permittee has designated a field representative subsequent to the inspection resulting in the NOV.

Findings

1. The hearing was appropriately noticed and timely.
2. At the time of the inspection, the Division had reason to believe a violation of the approved MRP had occurred.
3. Discussions between the permittee and the Division subsequent to issuance of the NOV, and the discussion at the hearing establish the operator was in compliance with issues raised in the NOV at the time of the inspection.

Order

1. Notice of Violation N96-35-1-2, part 2 of 2 is vacated.
2. The map showing the permanent placement of waste materials in the Portal Canyon Drainage, the remedial action required to abate the NOV should be provided to the Division as a certified "as built" when field conditions allow the requisite surveying.

Remarks

Compliance inspection of construction activities and mining operations at the Horizon mine will be greatly facilitated by having a designated representative for the permittee on site during working hours. This representative must understand both the MRP and the performance standards of the Utah Coal Regulatory Program. During construction, it may not be reasonable to expect an MRP to have plans or drawings depicting every increment of the construction process. It is incumbent on the inspector to understand the MRP well enough to allow a discussion with the permittee's representative to determine if compliance is being achieved, thus avoiding notices of violation that simply ask for information.

Assessment Conference

Although appropriately noticed and opportunity provided, the Permittee did not discuss the proposed assessment for the violation beyond noting the amount of \$100.00.