



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

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September 5, 1997

CERTIFIED RETURN RECEIPT
P 074 977 264

Vicky Bailey
EarthFax
7324 South Union Park Ave.
Midvale, Utah 84047

Re: Proposed Assessment for State Violation No. N-97-26-7-1, Horizon Coal Company, Horizon Mine, ACT/007/020, Folder #5, Carbon County, Utah

Dear Ms. Bailey:

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 William J. Malencik on August 21, 1997. Rule R645-401-600 et. seq. 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:

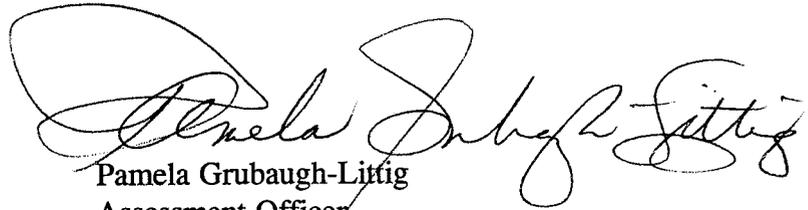
1. If you wish to informally appeal the fact of this violation, you should file a written request for an Informal Conference within 30 days of receipt of this letter. This conference will be conducted by the Division Director. This Informal Conference is distinct from the Assessment Conference regarding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

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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,



Pamela Grubaugh-Litfig
Assessment Officer

tat
Enclosure
cc: James Fulton, OSM
Vicki Bailey, DOGM
O:\007020.HZN\ASSESMNT\9726-7-1.LTR

WORKSHEET FOR ASSESSMENT OF PENALTIES
DIVISION OF OIL, GAS, & MINING

COMPANY/MINE Horizon Coal Company/Horizon Mine NOV# N-97-26-7-1

PERMIT ACT/007/020 VIOLATION 1 OF 1

ASSESSMENT DATE 09/05/97 ASSESSMENT OFFICER Pamela Grubaugh-Littig

I. HISTORY MAX 25 POINTS

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

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS
<u>N-96-26-4-3</u>	<u>11/01/96</u>	<u>3</u>
<u>N-96-35-1-2</u>	<u>11/08/96</u>	<u>2</u>

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 5

II. SERIOUSNESS (EITHER A OR B)

NOTE: For assignment of points in Parts II and III, the following apply:

- Based on facts supplied by the inspector, the Assessment Officer will determine within each category the violation falls.
- Beginning at the mid-point of the category, the Assessment Officer will adjust the point up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an Event (A) or Hindrance (B) violation? A

A. EVENT VIOLATION MAX 45 POINTS

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?

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 7

PROVIDE AN EXPLANATION OF POINTS:

The person doing the diversion repairs was not aware of DOGM/MRP design criteria. The repair person was trying to contain the runoff to the reconstructed/ undisturbed diversion.

IV. GOOD FAITH MAX 20 POINTS

(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 the 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?

IN 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 of the plan submitted for abatement was incomplete)

(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? Easy

ASSIGN GOOD FAITH POINTS 0

PROVIDE AN EXPLANATION OF POINTS:

The plans for modifying the undisturbed diversions have not been submitted to the Division as of this date.

V. ASSESSMENT SUMMARY

NOTICE OF VIOLATION	<u>N-97-26-7-1</u>
I. TOTAL HISTORY POINTS:	<u>5</u>
II. TOTAL SERIOUSNESS POINTS:	<u>28</u>
III. TOTAL NEGLIGENCE POINTS:	<u>7</u>
IV. TOTAL GOOD FAITH POINTS:	<u>0</u>
TOTAL ASSESSED POINTS:	<u>40</u>
TOTAL ASSESSED FINE:	<u>\$600.00</u>

TT DOCN 0-9-97 ACT 10071020 N 07 26 7 1

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 services the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

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

3. Article Addressed to: VICKY BAILEY EARTHFAX 7324 S UNION PARK AVE MIDVALE UT 84047 4. Article Number P 074 977 264

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

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature - Address X *Stonanne Kocaja*

6. Signature - Agent X

7. Date of Delivery

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