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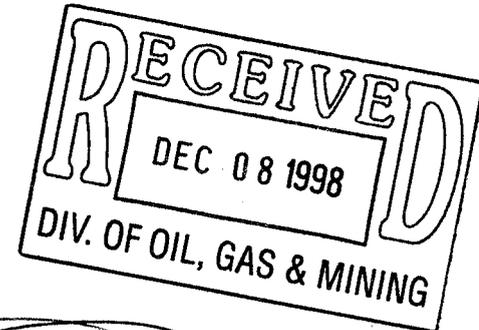
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Denise A. Dragoo (801) 237-1998
Internet: ddragoo@swlaw.com

December 7, 1998

Ms. Pamela Grubaugh-Littig
Utah Division of Oil, Gas & Mining
1594 West North Temple, Suite 1210
Salt Lake City, Utah 84114



RE: Update - Mining & Reclamation Plan
Horizon Mining, LLC, Permit No. ACT/007/020
Horizon No. 1 Mine

Dear Pam:

As we have discussed, Horizon Coal Corporation has assigned its 84% Membership Interest in Horizon Mining, LLC, to a new Virginia limited liability company, Horizon Coal, LLC. Enclosed is an Application for Permit Processing, including five complete copies of the Application, and amended pages for insertion into Chapter 2, Legal/Financial Compliance and Related Information.

Please let me know if you need anything further regarding this matter.

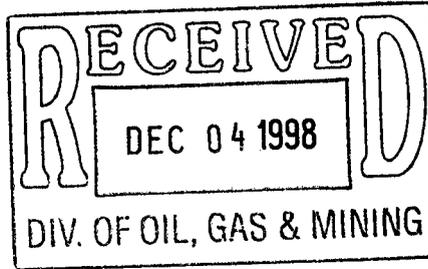
Very truly yours,

Denise A. Dragoo

DAD:jmc:74002

Enclosures

cc: Larry Jones
Vicky Miller, Earthfax Engineering

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December 4, 1998

HAND DELIVEREDMr. Lowell Braxton
Director
Utah Division of Oil, Gas & Mining
1594 West North Temple, Suite 200
Salt Lake City, Utah 84116NOV file
ACT/007/050 #5**RE: Horizon Mining, LLC - Informal Conference - N98-26-4-1**

Dear Director Braxton:

On behalf of Horizon Mining, LLC ("Horizon"), we respectfully request a reduction in the proposed assessment for notice of violation N98-26-4-1 ("NOV"). The NOV was issued on August 26, 1998 for the alleged violation of R645-301-234.240 which provides:

Stockpiled materials will: not be moved until required for redistribution unless approved by the Division.

Horizon abated the violation in October prior to the end of the abatement period specified by the inspector and the NOV was terminated November 3, 1998.

Extent of Damage:

Horizon requests that the extent of damage be reduced to "0" points. Inspector Bill Malencik admits that this NOV involves "de minimus damage." The Event Violation Inspector's Statement for this NOV, enclosed, states that the "problem is not environmental." Similarly, in the Inspection Report of August 26, 1998, the inspector admits that "movement of the riparian topsoil does not have any long-term environmental impacts and does not adversely impact the capability of the riparian soil." Inspector Report, p. 2. Therefore, the extent of damage assessment should be reduced to zero.

Negligence

The Division has assessed points for negligence on the basis of a "Memo to the File from Acting Director, Lowell P. Braxton dated May 22, 1998, see Proposed Assessment." This is an improper basis for the assessment of negligence points which must be based on the facts of this NOV. The May 22, 1998, Memo arose from the Division's review of a potential pattern of violation under notices of violations N97-26-7-1, N97-45-1-1 and N98-26-2-1 and does not involve this NOV. The previous violations involved three distinctly different fact situations but all alleged, *inter alia*, violation of R645-300-142, 143. This provision generally requires the permittee to conduct operations in accordance with the permit, applicable performance standards and state program requirements. The May 22, 1998 Memo instructs the assessment office to assess 20 negligence points for future violations of R645-300-142, 143. The NOV does not cite R645-300-142, 143. Therefore, there is no basis for applying Mr. Braxton's memo.

Further, Horizon challenges the authority of the Division to assess negligence points prospectively as ordered by the Memo. The Division is without jurisdiction to assess this penalty under the State's pattern of violation regulations. The Memo should be withdrawn. The pattern of violation is the most serious enforcement tool available to the State and results in suspension of a permit and the right to mine. Such draconian action can only be imposed by the Board following issuance of an order to show cause and a formal hearing pursuant to R645-400-335. In this case, the Division found no pattern and is without authority to fashion a remedy which shortcuts the procedural safeguards mandated by its own regulations. Horizon requests that the Division withdraw this Memo.

The negligence points must be assessed based on the facts of the NOV. The Event Violations Inspection Statement recommends a degree of fault category which should be assessed 15 points or less under R645-401-323.120. See enclosed Inspection Statement, p.2. In this case, an operator with Kentucky experience moved the riparian soil in a manner consistent with that experience to prepare the unvegetated lower topsoil area for seeding. This action was taken in an effort to meet the operator's seeding commitment under the Utah program. Clearly, the negligence was minimal and should be reduced well below the 15-point maximum for this category of fault.

Good Faith

The proposed assessment awards no good faith points. Horizon requests that it be awarded maximum good faith points. Horizon met its seeding commitment and revegetated the lower topsoil area. Further, Horizon abated the violation in October prior to the specified abatement period and the NOV was terminated on November 3, 1998. Horizon's good faith

Mr. Lowell Braxton
December 4, 1998
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efforts fall in the category of "rapid compliance" under R645-401-324 and should be awarded 10 points.

In sum, Horizon requests withdrawal of the Memo and a reduction of the assessment as follows:

I.	Total History Points	6
II.	Total Seriousness Points	10
III.	Total Negligence Points	10
IV.	Total Good Faith Points	<u>-10</u>
	Total Assessed Points	<u>16</u>
	Assessed Fine	\$160

Very truly yours,



Denise A. Dragoo

Jph

EVENT VIOLATIONS INSPECTORS STATEMENT

Company/Mine Horizon Mining LLC
Permit # Act 007-020

NOVICO # 98-26-4-1
Violation # 1 of 1

A. SERIOUSNESS

1. What type of event is applicable to the regulation cited? Refer to the DOGM reference list of events below and remember that the event is NOT the same as the violation. Mark and explain each event.

- a. Activity outside the approved permit area.
- b. Injury to the public (public safety).
- c. Damage to property.
- d. Conducting activities without appropriate approvals.
- e. Environmental harm.
- f. Water pollution.
- g. Loss of reclamation/revegetation potential.
- h. Reduced establishment, diverse and effective vegetative cover.
- i. No event occurred as a result of the violation.
- j. Other. MOVING A RIPARIAN TOPSOIL PILE TO A NON APPROVED AREA WITHIN THE TOPSOIL PILE. THE RIPARIAN SOILS ARE STILL IN A SEPARATE PILE.

Explanation:

2. Has the event occurred? Yes No

Yes: Describe it. See 1 above, the riparian soil was moved to the seeded & vegetated topsoil area

No: What would cause it to occur and what is the probability of the event(s) occurring? (None, Unlikely, Likely).

Explanation:

3. Did any damage occur as a result of the violation?

No.

Yes: Describe the duration and extent of the damage or impact. How much damage may have occurred if the violation had not been discovered by a DOGM inspector? Describe this potential damage and whether or not it would extend off the disturbed and/or permit area.

Explanation:

The only problem is not environmental, but to take an action to move riparian soil without Division approval

Page 2
Inspector Statement
Event Violations

NOV/CO # 98-26-4-1
Violation # 1 of 1

B. DEGREE OF FAULT (Check the statements which apply to the violation and discuss.)

- () Was the violation not the fault of the operator (due to vandalism or an act of God), explain. Remember that the permittee is considered responsible for the actions of all persons working on the mine site.

Explanation:

- Was the violation the result of not knowing about DOGM regulations, indifference to DOGM regulations or the result of lack of reasonable care.

Explanation: The individual who moved the riparian soil is from Kentucky. He moved the riparian soil in order to prepare the unvegetated lower topsoil area for a seeding commitment this fall. This included necessary site preparation.

- () If the actual or potential environmental harm or harm to the public should have been evident to a careful operator, describe the situation and what, if anything, the operator did to correct it prior to being cited.

Explanation:

- () Was the operator in violation of a specific permit condition?

Explanation:

- () Has DOGM or OSM cited the violation in the past? If so, give the dates and the type of warning or enforcement action taken.

Explanation:

NOV. 97-45-1-1 concerning topsoil, but the coal rule citations are not the same. See Davidson's NOV & letter dated 9/18/97

Page 3
Inspector Statement
Event Violations

NOV/CO # 98-26-41
Violation # 1 of 1

C. GOOD FAITH

- 1. In order to receive good faith for compliance with an NOV or CO, the violation must have been abated before the abatement deadline. If you think this applies, describe how rapid compliance was achieved (give dates) and describe the measures the operator took to comply as rapidly as possible.

The permittee should have no problem in seeding and meeting the abatement dates

- 2. Explain whether or not the operator had the necessary resources on site to achieve compliance.

Yes

- 3. Was the submission of plans prior to physical activity required by this NOV/CO?
Yes ___ No If yes, explain.

Authorized Representative

Signature

Date