



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

Michael O. Leavitt
 Governor

Kathleen Clarke
 Executive Director

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 Division Director

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December 23, 1998

Mine file
 ACT/007/020
 Folder #5

CERTIFIED RETURN RECEIPT REQUESTED
 No. P 540 714 061

Denise A. Dragoo
 Horizon Mining, LLC
 c/o Snell & Wilmer, LLP
 111 East Broadway, Suite 900
 Salt Lake City, Utah 84111

Re: Findings of Fact, Conclusions of Law and Order and Finalized Assessment for State Notice of Violation (NOV) N98-26-4-1, ACT/007/020, Horizon Mining, LLC, Horizon Mine, Folder No. 5, Carbon County, Utah

Dear Ms. Dragoo:

On December 4, 1998, an Informal Hearing and Assessment Conference was held to review the fact of violation and proposed assessment for state Notice of Violation (NOV) N98-26-4-1, ACT/007/020, Horizon Mining, LLC, Horizon Mine. The operator, Horizon Mining, LLC was represented by Mark Wayment, Vicky Miller, and Denise Dragoo. The Division was represented by Bill Malencik, Joe Helfrich and Mary Ann Wright. As a result of a review of all pertinent data and facts, including those presented in the Informal Hearing and Assessment Conference, the following shall constitute the findings of fact, conclusions of law and order and finalized assessment:

Fact of Violation

The NOV, N98-26-4-1, was written for "failure to receive Division approval before moving riparian topsoil from one area of the topsoil pile to another." The operator described the circumstances leading to movement of the riparian portion of the topsoil storage pile as one of expedience: "Danny said, it was easier to move the pile than work around it." And, "moving the pile promoted better drainage." In describing the circumstances leading to issuance of the NOV, Bill Malencik noted his efforts to encourage the operator to seek written approval from the Division before initiating coal mining and reclamation operations that were not approved in the Mining and Reclamation Plan, and that failure to follow the underlying regulations had triggered the NOV.

Findings

The Assessment Conference Officer finds that the Division established that movement of the topsoil pile occurred without appropriate approval, and that such activity falls under the term "Coal Mining and Reclamation Operations" as defined at R645-100, and such activity requires approval by the Division of Oil, Gas and Mining prior to the activity taking place.

Order

NOV N98-26-4-1 is upheld.

Assessment Conference

At the Assessment Conference which followed the fact of violation hearing, the parties representing the Division and the operator were joined by Pamela Grubaugh-Littig, Assessment Officer for the Division of Oil, Gas and Mining. The proposed assessment that is the subject of the Assessment Conference was reviewed by the parties.

History Points	6	No discussion.
Seriousness	20	Event as assessed occurred.
Extent of Damage	3	The inspector noted that no environmental harm resulted from the NOV. The operator requested reduction of Extent of Damage points to zero.
Negligence	20	The Assessment Officer noted that 20 points has been assigned to this category following direction found in a memo written by Lowell Braxton dated May 22, 1998, "... <i>Meantime, for all Notices of Violation that may be issued to Horizon Coal between the date of this memo and February 23, 1999, for failure to have adequate permits before beginning coal mining and reclamation operations, the Assessment Officer is ordered to assess a minimum of 20 negligence points when proposing the penalty.</i> " The operator presented verbal and written testimony asserting the Division was procedurally incorrect in imposing this stipulation on the permittee, and suggested the 20 Negligence points should be zeroed out. The Assessment Conference Officer agreed to review this situation.
Good Faith	0	Bill Malencik explained that the abatement times built into the NOV, if achieved, would by definition constitute rapid compliance and clarified this position with the Assessment Officer. Given this information the Assessment Conference Officer agreed to consider issuance of Good Faith points in the final assessment.
Total Proposed Points	49	Proposed Penalty \$960.

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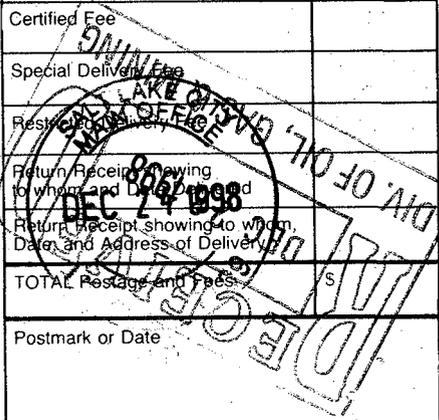
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DOG M VB ACT/007/020 N98-26-4-1 IH/AC FLDR #5

PS Form 3800, June 1985 * U.S.G.P.O. 1985-234-555

DENISE A DRAGOO HORIZON MINING LLC	
Street and No. C/O SNELL & WILMER LLP	
111 E BROADWAY STE 900	
P.O. State and ZIP Code	
SALT LAKE CITY UT 84111	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	
Return Receipt showing to whom, Date and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	



DOG M VB. N98-26-4-1 ACT/007/020 IH/AC FLDR #5

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

<p>3. Article Addressed to:</p> <p>DENISE A DRAGOO HORIZON MINING LLC C/O SNELL & WILMER LLP 111 E BROADWAY STE 900 SALT LAKE CITY UT 84111</p>	<p>4. Article Number</p> <p>P 540 714 061</p> <p>Type of Service:</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Insured <input checked="" type="checkbox"/> Certified <input type="checkbox"/> COD <input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise</p> <p>Always obtain signature of addressee or agent and DATE DELIVERED.</p>
<p>5. Signature - Address</p> <p>X</p>	<p>8. Addressee's Address (ONLY if requested and fee paid)</p>
<p>6. Signature - Agent</p> <p>X <i>Mike Hadley</i></p>	
<p>7. Date of Delivery</p> <p><i>289</i></p>	

PS Form 3811, Mar. 1988

* U.S.G.P.O. 1988-212-865

DOMESTIC RETURN RECEIPT

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ACT/007/020
Horizon Mine
December 23, 1998

Finalized Assessment

History Points	6	No change.
Seriousness	20	No change.
Extent of Damage	1	Impact to health, safety and the environment was minimal, the potential for same notwithstanding, when unpermitted activities occur. Points reduced from 3 to 1.
Negligence	14	Review of R645-401-323.120 and 130 suggests that assignment of < 15 points requires a finding that the violation resulted from knowing, reckless or intentional conduct on the part of the operator. Lacking evidence for this, the points are reduced from 20 to 14.
Good Faith	-10	Rapid compliance was achieved.
Total Points	31	Finalized Assessment \$420

Within fifteen (15) days of your receipt of this letter, you or your agent may make a written appeal to the Board of Oil, Gas and Mining. To do so, you must escrow the assessed civil penalties with the Division within a maximum of thirty (30) days of receipt of this letter, but in all cases prior to the Board Hearing. Failure to comply with this requirement will result in a waiver of your right of further recourse.

If no timely appeal is made, this assessed civil penalty must be tendered within thirty (30) days of your receipt of this letter. Please remit payment to the Division of Oil, Gas and Mining, mail c/o Vicki Bailey at the address listed above.

Sincerely,



Lowell P. Braxton
Assessment Conference Officer

vb
cc: V. Miller, EarthFax
M. Wright
P. Grubaugh-Littig
B. Malencik
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