



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

1594 West North Temple, Suite 1210  
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 Salt Lake City, Utah 84114-5801  
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 801-359-3940 (Fax)  
 801-538-7223 (TDD)

Michael O. Leavitt  
 Governor  
 Lowell P. Braxton  
 Division Director

Mine file  
 ACT/007/020  
 Folder #5

August 12, 1998

CERTIFIED RETURN RECEIPT REQUESTED  
 No. P 540 714 055

Denise A. Dragoo  
 VanCott, Bagley, Cornwall & Mc Carthy  
 50 South Main Street, Suite 1600  
 P. O. Box 45340  
 Salt Lake City, Utah 84145-0340

Re: Finalized Assessment for State Notice of Violation (NOV) N97-26-7-1, ACT/007/020, Horizon Mine, Horizon Mining, LLC, Folder No. 5, Carbon County, Utah

Dear Ms. Dragoo:

On July 21, 1998, an Assessment Conference was held to review the fact of violation and proposed assessment for state violation N97-26-7-1, Horizon Mine, Horizon Mining, LLC. 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 finalized assessment. A fact of violation Informal Hearing was held on November 14, 1997. The violation was upheld in a document to the permittee dated November 24, 1997. At the time of the Informal Hearing the NOV had not been abated, and the Assessment Conference Officer denied the operator's request for an Assessment Conference pending abatement of the NOV. The NOV was terminated March 4, 1998. Abatement precipitated the Division's May 20, 1998, letter offering the permittee the opportunity to request an Assessment Conference.

#### **Fact of Violation**

The NOV was written "for failure to receive Division approval before modifying an undisturbed diversion." A fact of violation Informal Hearing was held on November 14, 1997. The violation was upheld in a document to the permittee dated November 24, 1997.

#### **Findings**

1. The NOV was terminated on March 4, 1998.
2. The Division's November 24, 1997, letter upholding the fact of the violation contemplated an opportunity for an Assessment Conference after termination of the violation.

3. The Division's May 20, 1998, letter afforded the permittee an opportunity to request an Assessment Conference.

4. The Assessment Conference was requested in a timely manner and was appropriately noticed.

#### Assessment Conference

At the Assessment Conference, the basis for the violation and the reason for the delay in conducting the conference were visited. Senior Reclamation Specialist Bill Malencik represented the Division, and Vicky Bailey represented the permittee.

The discussions substantiated that the permittee had constructed a reclamation channel in Jewkes Creek, whereas the operational phase of the mining and reclamation permit contemplated a different channel configuration. The Division's concerns over ensuring function of a riparian area adjacent to the creek during the operation phase of mining were discussed, as was the permittee's position that the channel configuration that was constructed (and was the subject of the NOV) had been approved by the Division, and by the State Engineer's office.

Vicky Bailey noted that the permittee installed the new channel configuration after storms demonstrated the inability of the "undisturbed" drainage to function within the performance standards of the Coal Regulatory Program, design storm exceedances notwithstanding.

All parties agreed that (in retrospect) the function of the riparian area had not been compromised by the new channel configuration, and that the new configuration was more stable than the "undisturbed" configuration.

Vicky Bailey suggested that facts developed subsequent to issuance of the NOV suggested a review of Seriousness points and Good Faith points was warranted.

#### Finalized Assessment

I.	Total History Points	(Proposed)	5	Final	5
II.	Total Seriousness Points	(Proposed)	28	Final	20
III.	Total Negligence	(Proposed)	7	Final	7
IV.	Total Good Faith Points	(Proposed)	0	Final	-4
	<b>Total Assessed Points</b>	<b>(Proposed)</b>	<b>40</b>	<b>Final</b>	<b>28</b>
	<b>Total Assessed Penalty</b>	<b>(Proposed)</b>	<b>\$600</b>	<b>Final</b>	<b>\$360</b>

In considering modifications to the proposed assessment, the Assessment Conference Officer weighed the need of a permittee to notify the Division prior to undertaking changes in the field against the fact that the field changes implemented by the permittee has been approved by the Division (all be it

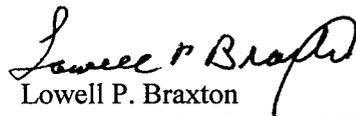
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for a different phase of the mining and reclamation cycle). The Assessment Conference Officer also considered the adverse environmental conditions that were a result of storm impacts to the "undisturbed" drainage configuration. His evaluation of these considerations resulted in modifications to the assessment for Seriousness, and the award of 4 Good Faith points. The permittee is cautioned, however, to obtain Division of Oil, Gas and Mining approval prior to implementation of changes to an approved permit.

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: M. Wright  
P:\GROUPS\MINES\WP\AC972671.WPD

bcc: Vicki Bailey, EARTHFAK

**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 box(es) for additional service(s) requested.

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 2.  Restricted Delivery (Extra charge)

3. Article Addressed to:  
 DENISE A DRAGOO  
 VAN COTT BAGLEY CORNWALL & MC CARTHY  
 50 S MAIN STE 1600  
 P O BOX 45340  
 SALT LAKE CITY UT 84145-0340

4. Article Number  
 P 540 714 055

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6. Signature - Agent  
*[Handwritten Signature]*

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P 540 714 055

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED  
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

U.S.G.P.O. 1985-234-555

PS Form 3800, June 1985

DENISE A DRAGOO	
VANCOTT BAGLEY CORNWALL	
50 S MAIN STE 1600	
P O BOX 45340	
P.O., State and ZIP Code	
SALT LAKE CITY UT 84145-	
Postage	\$ 0340
Certified Fee	
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Return Receipt showing to whom Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

*[Circular Postmark: SALT LAKE CITY, UT, JUN 17 1988]*

DCGM VB ACT/007/020 N97-26-7-1