



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

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Michael O. Leavitt
Governor
Lowell P. Braxton
Division Director

0014

Mine file

August 5, 1998

CERTIFIED RETURN RECEIPT REQUESTED
No. P 540 714 054

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) N97-45-1-1, 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 proposed assessment for state violation N97-45-1-1, 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 19, 1997. The violation was upheld in a document addressed to the permittee dated December 9, 1997. At the time of the November 19, 1997, 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. 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 conduct all mining and reclamation act operations only as described in the approved application. Failure to comply with terms and conditions of the mining and reclamation permit." Technical issues involved failure to have approval of soil sampling and soil placement activities prior to undertaking activities. A fact of violation Informal Hearing was held on November 19, 1997. The violation was upheld in a document addressed to the permittee dated December 9, 1997.

Findings

1. The NOV was terminated on February 26, 1998.
2. The Division's November 19, 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 representatives of the Division reviewed the basis for the violation and discussed why the Assessment Conference was held so much later than the Informal Hearing on the fact of the violation.

In asking for reconsideration of the proposed penalty, Vicky Bailey, the permittee's representative, noted that the operations that were the subject of the NOV, though not approved in the permit at the time they were conducted, had resulted in a net gain in topsoil on the mine site. She further noted that slopes with well placed topsoil achieve greater reclamation success than slopes with little or minimal topsoil, and suggested that the potential for improved reclamation success justified a reappraisal of good faith points that were awarded in the proposed assessment.

In considering the permittee's request to reevaluate good faith points, the Assessment Conference Officer finds that the underlying premise behind issuance of the NOV was that the permittee did not have approval in the mining and reclamation plan prior to undertaking the activity. Few knowledgeable persons would question the presumption that additional topsoil would enhance reclamation, but the NOV was issued because the soil placement activities had not been appropriately reviewed and approved at the time they were conducted. No adjustment in good faith points is awarded.

Finalized Assessment

I.	Total History Points	(Proposed)	6	(Final)	6
II.	Total Seriousness Points	(Proposed)	10	(Final)	10
III.	Total Negligence	(Proposed)	10	(Final)	10
IV.	Total Good Faith Points	(Proposed)	-8	(Final)	-8
	Total Assessed Points	(Proposed)	18	(Final)	18

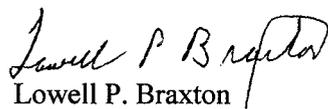
Total Assessed Penalty \$180.00

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.

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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\WPAC974511.WPD

bcc: Vicki Bailey, EARTH+FAK

DCM VB ACT7007/020 N07-15-1-1 Folder #5

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.

- 1. Show to whom delivered, date, and addressee's address. (Extra charge)
- 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 540 714 054

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 Certified COD
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 X

7. Date of Delivery

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