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

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801-538-5340  
801-359-3940 (Fax)  
801-538-7223 (TDD)

Michael O. Leavitt  
Governor  
Lowell P. Braxton  
Division Director

June 18, 1998

CERTIFIED RETURN RECEIPT  
Z 230 747 330

Denise Dragoo, Resident Agent  
Horizon Mining, LLC  
c/o Van Cott, Bagley, Cornwall & McCarthy  
50 South Main Street, Suite 1600  
Salt Lake City, Utah 84114

Re: Proposed Assessment for State Violation No. N98-26-3-1, Horizon Mining, LLC,  
Horizon Mine, ACT/007/020, Folder #5, Carbon County, Utah

Dear Ms. Dragoo:

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 Bill Malencik on May 29, 1998. 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:

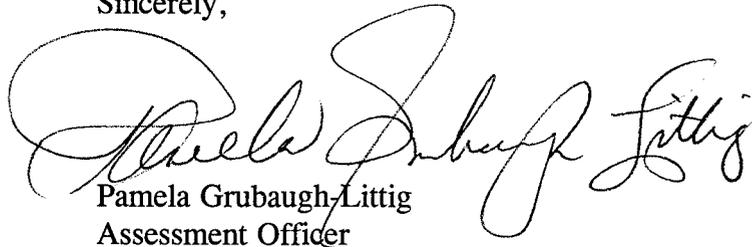
1. If you wish to informally appeal the fact of this violation, you should file a written request for an Informal Conference within 30 days of receipt of this letter. This conference will be conducted by the Division Director. This Informal Conference is distinct from the Assessment Conference regarding 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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ACT/007/020  
June 18, 1998

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-Littig  
Assessment Officer

tam  
Enclosure  
cc: James Fulton, OSM  
Vicki Bailey, DOGM  
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WORKSHEET FOR ASSESSMENT OF PENALTIES  
DIVISION OF OIL, GAS, & MINING

COMPANY/MINE Horizon Mining, LLC/ Horizon Mine NOV# N98-26-3-1  
 PERMIT ACT/007/020 VIOLATION 1 OF 1  
 ASSESSMENT DATE 06/15/98 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>N97-26-5-1</u>	<u>09/16/98</u>	<u>1</u>
<u>N97-45-1-1</u>	<u>02/26/98</u>	<u>1</u>
<u>N98-26-1-1</u>	<u>03/09/98</u>	<u>1</u>
<u>N98-26-2-1</u>	<u>05/21/98</u>	<u>1</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 4**

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? (B) Event

A. EVENT VIOLATION MAX 45 POINTS

1. What is the event which the violated standard was designed to prevent?

**Loss of reclamation potential.**

2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

PROBABILITY                      RANGE

None

0

Unlikely	1-9
Likely	10-19
Occurred	20

**ASSIGN PROBABILITY OF OCCURRENCE POINTS 3**

**PROVIDE AN EXPLANATION OF POINTS:**

The permittee utilized coal mine waste in a manner not approved by the Division, i.e. berms were constructed from development waste. None of the waste had disintegrated, therefore loss of reclamation potential was low.

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

**ASSIGN DAMAGE POINTS 2**

**PROVIDE AN EXPLANATION OF POINTS:**

This event occurred on May 11, 1998 and removal of all coal development waste from the two areas was completed about a month later. Adverse damage off site was not noted, but minimal damage could have occurred.

B. HINDRANCE VIOLATION MAX 25 POINTS

1. Is this a potential or actual hindrance to enforcement?       
RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

**ASSIGN HINDRANCE POINTS**

**PROVIDE AN EXPLANATION OF POINTS:**

**TOTAL SERIOUSNESS POINTS (A OR B) 5**

III. NEGLIGENCE MAX 30 POINTS

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE: or was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, or the failure to abate any violation due to the same? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Negligence

**ASSIGN NEGLIGENCE POINTS 8**

**PROVIDE AN EXPLANATION OF POINTS:**

The MRP was approved to store coal on site temporarily, no more than 30 days. The permittee constructed berms and pad outsoles from coal mine waste, not an approved use of this material.

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 -5

**PROVIDE AN EXPLANATION OF POINTS:**

The permittee complied with the remedial action required within the abatement time required.

V. ASSESSMENT SUMMARY

NOTICE OF VIOLATION	<u>N98-26-3-1</u>
I. TOTAL HISTORY POINTS:	<u>4</u>
II. TOTAL SERIOUSNESS POINTS:	<u>5</u>
III. TOTAL NEGLIGENCE POINTS:	<u>8</u>
IV. TOTAL GOOD FAITH POINTS:	<u>-5</u>
TOTAL ASSESSED POINTS:	<u>12</u>
<b>TOTAL ASSESSED FINE:</b>	<b><u>\$120.00</u></b>

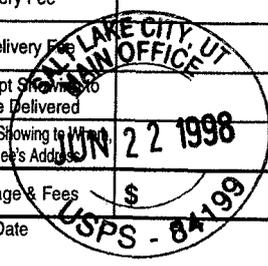
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TT DOGM 6/18/98 ACT/007/020 ASSESSMENT N98-26-3-1  
 PS Form 3800, April 1995

Z 230 747 330 *DNR*

US Postal Service  
**Receipt for Certified Mail**  
 No Insurance Coverage Provided.  
 Do not use for International Mail (See reverse)

Sent to	
DENISE DRAGOO	
Street & Number	
50 S MAIN ST STE 1600	
Post Office, State, & ZIP Code	
SLC UT 84114	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	\$
Postmark or Date	



TM DOGM 6/18/98 ACT/007/020 PROPOSED ASSESSMENT N98-26-3-1  
**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 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 DRAGOO, RESIDENT AGENT HORIZON MINING, LLC C/O VANCOTT, BAGLEY, CORNWALL, & 50 S MAIN ST STE 1600 SLC UT 84114	4. Article Number Z 230 747 330 Type of Service: <input type="checkbox"/> Registered <input type="checkbox"/> Insured <input checked="" type="checkbox"/> Certified <input checked="" type="checkbox"/> COD <input type="checkbox"/> Express Mail <input checked="" type="checkbox"/> Return Receipt for Merchandise Always obtain signature of addressee or agent and DATE DELIVERED.
5. Signature - Address X	Addressee's Address (ONLY if requested and fee paid)
6. Signature - Agent X	

PS Form 3811, Mar. 1988 U.S.G.P.O. 1988-212-865 DOMESTIC RETURN RECEIPT