



# State of Utah

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

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March 20, 1998

CERTIFIED RETURN RECEIPT  
Z 230 747 310

Denise Dragoo, Resident Agent  
VanCott, Bagley, Cornwall, & McCarthy  
50 South Main Street, Suite 1600  
Salt Lake City, Utah 84111-1495

Re: Proposed Assessment for State Violation No. N98-26-2-1, 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 (previously cessation order C98-26-1-1, was changed to a violation at an informal conference, see Order dated February 25, 1998.) This violation was issued by Division Inspector, William J. Malencik on February 23, 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 this violation, has been considered in determining the facts surrounding this violation and the amount of this 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 1, the assessment conference will be scheduled immediately following that review.

Page 2  
ACT/007/020  
N98-26-2-1  
March 18, 1998

**If a timely request for review is not made, the fact of the 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

tat  
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 Coal Co. NOV# N98-26-2-1

PERMIT ACT/007/020

VIOLATION 1 OF 1

ASSESSMENT DATE 02/19/98 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>N96-35-1-2</u>	<u>03/25/1997</u>	<u>2</u>
<u>N97-26-5-1</u>	<u>12/26/1997</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** 3

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? A- Event

A. EVENT VIOLATION MAX 45 POINTS

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

The event is conducting activities without prior approval. These activities may cause environmental damage.

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

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

**ASSIGN PROBABILITY OF OCCURRENCE POINTS 20**

**PROVIDE AN EXPLANATION OF POINTS:**

The permittee installed two culverts, enlarged the mine pad, and removed and stored topsoil without Division approval.

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 3**

**PROVIDE AN EXPLANATION OF POINTS:**

The mine site was covered with two feet of snow on the date of the violation and no proof of damage was visible. There is a potential for damage, because the activities were not conducted according to an approved plan.

**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 0**

**PROVIDE AN EXPLANATION OF POINTS:**

**TOTAL SERIOUSNESS POINTS (A OR B) 23**

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 15

PROVIDE AN EXPLANATION OF POINTS:

The permittee representative at a hearing for violation NOV N97-26-7-1, was cautioned by the Division inspector and Hearing Officer to refrain from installing or making changes without prior approval. The decision issued by the Assessment Conference Officer on November 24, 1997 to Horizon Mining, LLC emphasized these points.

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 0

**PROVIDE AN EXPLANATION OF POINTS:**

The permittee is pursuing the appropriate approvals for this unauthorized activity. This violation has not been terminated to date.

V. ASSESSMENT SUMMARY

NOTICE OF VIOLATION N98-26-2-1

I. TOTAL HISTORY POINTS: 3

II. TOTAL SERIOUSNESS POINTS: 23

III. TOTAL NEGLIGENCE POINTS: 15

IV. TOTAL GOOD FAITH POINTS: 0

TOTAL ASSESSED POINTS: 41

**TOTAL ASSESSED FINE: \$640.00**

● **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)

<p>3. Article Addressed to:</p> <p>DENISE DRAGOO, RESIDENT AGENT          VAN COTT, BAGLEY, CORNWALL, &amp;          MCCARTHY          50 S MAIN ST, STE 1600          SLC, UT 84111-1495</p>	<p>4. Article Number</p> <p>Z 230 747 310</p>
<p>5. Signature — Address</p> <p>X</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>6. Signature — Agent</p> <p>X</p>	<p>Always obtain signature of addressee or agent and DATE DELIVERED.</p>
<p>7. Date of Delivery</p> <p><i>[Handwritten Signature]</i></p>	<p>Address (ONLY if requested and fee paid)</p> <p><i>[Circular Postmark: SALT LAKE CITY STATION MAR 27 1998]</i></p>