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

Michael O. Leavitt
Governor
Kathleen Clarke
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May 20, 1999

HAND DELIVERED

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

Re: Proposed Assessment for State Cessation Order No. C99-26-1-1, 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 CO (cessation order). This CO was issued by Division Inspector William J. Malencik on April 8, 1999. 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 CO, had been considered in determining the facts surrounding this CO and the amount of this penalty.

Under R645-401-700, there are two informal appeal options available to you:

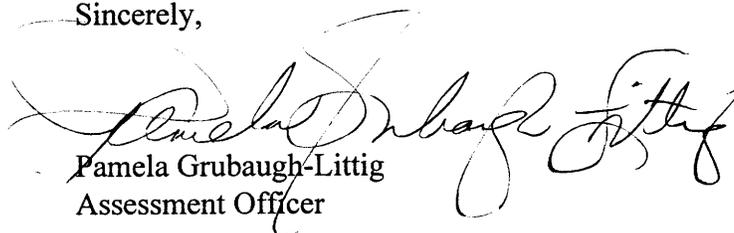
1. If you wish to informally appeal the fact of this CO, you should file a written request for an Informal Conference within 30 days of receipt of this letter. This conference will be conducted by the Division Director. This Informal Conference is distinct from the Assessment Conference regarding the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

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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.

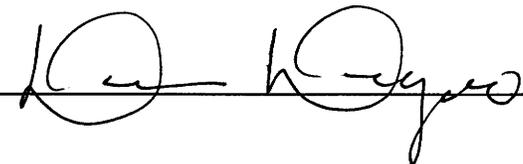
If a timely request for review is not made, the fact of the CO will stand. The proposed penalty(ies) will become final, and the penalty(ies) will be due and payable within thirty (30) days of the proposed assessment. Please remit payment to the Division, mail c/o Tiffini Moss.

Sincerely,



Pamela Grubaugh-Littig
Assessment Officer

Received by:



Date:

5/20/99

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Enclosure

cc: James Fulton, OSM

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WORKSHEET FOR ASSESSMENT OF PENALTIES
DIVISION OF OIL, GAS, & MINING

COMPANY/MINE Horizon Mining, LLC/ Horizon Mine

CO# C99-26-1-1

PERMIT ACT/007/020

VIOLATION 1 OF 1

ASSESSMENT DATE 05/06/99

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>N98-26-2-1</u>	<u>05/21/98</u>	<u>1</u>
<u>N98-26-3-1</u>	<u>06/10/98</u>	<u>1</u>
<u>N98-26-4-1</u>	<u>11/03/98</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 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

A. EVENT VIOLATION MAX 45 POINTS

1. What is the event which the violated standard was designed to prevent?
Conducting coal mining activities outside the permit area without appropriate approvals.
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 20

PROVIDE AN EXPLANATION OF POINTS:

The permittee conducted coal mining activities outside the permit area without the proper approvals.

- 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 10

PROVIDE AN EXPLANATION OF POINTS:

Although this area was assessed during the leasing Environmental Assessment there may be "potential" damage because mining proceeded into areas without an analyses of the effects of mining on the resources.

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) 30

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

PROVIDE AN EXPLANATION OF POINTS:

Due to the fact that this area was mined from January 1999 to April 8, 1999, it seems clear to the assessment officer that the permittee knew and willfully intended to mine outside the permit area. Division correspondence indicates that the permittee submitted an application for an incidental boundary change on March 25, 1999.

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? EasyASSIGN GOOD FAITH POINTS 0**PROVIDE AN EXPLANATION OF POINTS:**

Not terminated to date.

V. ASSESSMENT SUMMARY

NOTICE OF VIOLATION	<u>C99-26-1-1</u>
I. TOTAL HISTORY POINTS:	<u>3</u>
II. TOTAL SERIOUSNESS POINTS:	<u>30</u>
III. TOTAL NEGLIGENCE POINTS:	<u>25</u>
IV. TOTAL GOOD FAITH POINTS:	<u>0</u>
TOTAL ASSESSED POINTS:	<u>58</u>
TOTAL ASSESSED FINE:	<u>\$1,320.00</u>

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