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# State of Utah

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

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Salt Lake City, Utah 84180-1203  
801-538-5340

December 7, 1992

CERTIFIED RETURN RECEIPT  
P 074 979 312

Mr. Rick Olsen, President  
Soldier Creek Coal Company  
P.O. Box I  
Price, Utah 84501

Dear Mr. Olsen:

Re: Proposed Assessment for State Violation No. N92-15-1-1, Soldier Creek Coal Company, Banning Loadout, ACT/007/034, Folder #5, Carbon County, Utah

The undersigned has been appointed by the Board 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, Rick P. Summers on November 5, 1992. Rule R645-401-600 et. sec. 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.

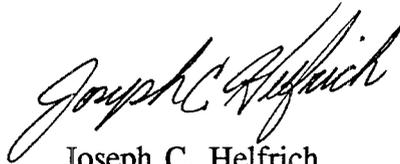
Under R645-401-700, there are two informal appeal options available to you:

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 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,



Joseph C. Helfrich  
Assessment Officer

jbe  
Enclosure  
cc: Bernie Freeman, OSM

**WORKSHEET FOR ASSESSMENT OF PENALTIES  
UTAH DIVISION OF OIL, GAS AND MINING**

COMPANY/MINE Soldier Creek Coal Company/Banning Loadout NOV # N92-15-1-1

PERMIT # ACT/007/034

VIOLATION 1 OF 1

ASSESSMENT DATE 12/07/92

ASSESSMENT OFFICER Joseph C. Helfrich

**I. HISTORY MAX 25 PTS**

A. Are there previous violations which are not pending or vacated, which fall within 1 year of today's date?

ASSESSMENT DATE 12/07/92

EFFECTIVE ONE YEAR TO DATE 12/07/91

PREVIOUS VIOLATIONS

EFFECTIVE DATE

POINTS

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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 0

**II. SERIOUSNESS (either A or B)**

NOTE: For assignment of points in Parts II and III, the following applies. Based on the facts supplied by the inspector, the Assessment Officer will determine within which category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an Event (A) or Hindrance (B) violation? Hindrance

A. Event Violations Max 45 PTS

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

\_\_\_\_\_

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** \_\_\_\_\_

PROVIDE AN EXPLANATION OF POINTS

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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** \_\_\_\_\_

PROVIDE AN EXPLANATION OF POINTS

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**B. Hindrance Violations MAX 25 PTS**

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

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

**ASSIGN HINDRANCE POINTS** 8

PROVIDE AN EXPLANATION OF POINTS

See attached inspector's statement.

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**TOTAL SERIOUSNESS POINTS (A or B)** 8

**III. NEGLIGENCE MAX 30 PTS**

- 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 - NEGLIGENCE;**  
 OR Was this violation the result of reckless, knowing, or intentional conduct? **IF SO - GREATER DEGREE OF FAULT THAN NEGLIGENCE.**

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

STATE DEGREE OF NEGLIGENCE Ordinary

ASSIGN NEGLIGENCE POINTS 8

PROVIDE AN EXPLANATION OF POINTS

Although the NOV was a result of the permittee's not complying with a specific permit condition (Division Order 92B), the operator had responded to the order within the required time frame but had not completely addressed Part 1 of the order (sediment control). Also, see attached inspector's statement, Part B, explanation of degree of fault.

**IV. GOOD FAITH MAX 20 PTS. (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 in 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?

... IF 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, or the plan submitted for abatement was incomplete)

(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? \_\_\_\_\_ ASSIGN GOOD FAITH POINTS -0

PROVIDE AN EXPLANATION OF POINTS

To be evaluated upon termination of the violation.

V. ASSESSMENT SUMMARY FOR N92-15-1-1

I.	TOTAL HISTORY POINTS	<u>0</u>
II.	TOTAL SERIOUSNESS POINTS	<u>8</u>
III.	TOTAL NEGLIGENCE POINTS	<u>8</u>
IV.	TOTAL GOOD FAITH POINTS	<u>-0</u>
	TOTAL ASSESSED POINTS	<u>16</u>
	TOTAL ASSESSED FINE	<u>\$ 0.00 *</u>

\* Total fine is \$0.00 - Assessed points less than 50 is discretionary.

HINDRANCE TO ENFORCEMENT VIOLATIONS  
INSPECTOR STATEMENT

COMPANY/MINE Soldier Crk. Coal/Banning NOV/CO # N92-15-1-1  
PERMIT # ACT/007/034 VIOLATION # 1 of 1

- A. HINDRANCE TO ENFORCEMENT (Answer for hindrance violations only such as violations concerning record keeping, monitoring, plans and certification).

Describe how violation of this regulation actually \_\_\_ OR potentially X (check one) hindered enforcement by DOGM and/or the public and explain the circumstances.

Without designs for the access road and sediment control, an inspector could not determine compliance with the rules. However, the road was built to BLM road standards and approved by the agency indicating the road is probably adequately designed. The sediment control issue is further described in following sections.

- B. DEGREE OF FAULT (Check the statements which apply to the violation and discuss).

- ( ) Was the violation not the fault of the operator (due to vandalism or an act of God), explain. Remember that the permittee is considered responsible for the actions of all persons working on the mine site.
- (X) Was the violation the result of not knowing about DOGM regulations, indifference to DOGM regulations or the result of lack of reasonable care, explain.
- ( ) If the actual or potential environmental harm or harm to the public should have been evident to a careful operator, describe the situation and what, if anything, the operator did to correct it prior to being cited.
- (X) Was the operator in violation of any conditions or stipulations of the approved MRP?

The NOV was issued for failure to completely address Division Order ACT/007/034-92B, specifically Part 1 regarding alternative sediment controls for an undisturbed area with accumulated air-borne coal fines.

- ( ) Did the operator receive prior warning of noncompliance by State or Federal inspectors concerning this violation?
- ( ) Has DOGM or OSM cited a same or similar violation of this regulation in the past? If so, give the dates and the type of enforcement action taken.

Explanation

The original Division Order was issued to SC3 to correct permit defects regarding: 1) as-built road designs for the access road and 2) providing alternative sediment controls for an undisturbed area with accumulated air-borne coal fines. The Division had previously approved the operator's plan for this area without sediment control. That DOGM approved plan clearly and distinctly stated that no sediment controls would be used in this area. The operator responded to the Division Order within the required timeframe, but did not address completely Part 1 of the Order (sediment control). The response to Part 2 of the Order was considered to be largely complete with only a minor diversion design found to be deficient.

C. GOOD FAITH

- 1. In order to receive good faith for compliance with an NOV or CO, the violation must have been abated before the abatement deadline. If you think this applies, describe how rapid compliance was achieved (give dates) and describe the measures the operator took to comply as rapidly as possible.

As of 12/4/92, the NOV has not been abated/terminated.

- 2. Explain whether or not the operator had the necessary resources onsite to achieve compliance.

Personnel at the mine indicated that staff needed to complete the Division Order's engineering design work were scheduled to be out of the office in the abatement period. The mine has been operating intermittently with a reduced staff during the past year.

- 3. Was the submission of plans prior to physical activity required by this NOV? Yes x No     If Yes, explain.

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Inspector Statement  
Hindrance to Violations

NOVICO # 92-15-1-1  
VIOLATION # 1 of 1

Part 2 of the Division order required as-built designs for an existing road. No physical activity at the site was required for Part 2. Part 1 of the Order required rudimentary designs for sediment control measure to be approved prior to installation (silt fencing).

12/4/92  
DATE

  
Rick P. Summers #15  
AUTHORIZED REPRESENTATIVE