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TO: The Board of Oil, Gas & Mining

FROM: Joseph C. Helfrich, Reclamation Soils Specialist

SUBJECT: Assessment Comparison and Justification, Trail Mountain Mining
Company, Trail Mountain Mine, ACT/015/009

DATE: September 26, 1980

The following State-Federal assessment comparison has been prepared for your review. Points and subsequent fines were derived from the same assessment criteria.

Enclosure

JCH/btm/btm

Violation No.	History		Seriousness		Negligence		Good Faith		Total		Civil Penalty		
	S-OSM	S-OSM	S-OSM	S-OSM	S-OSM	S-OSM	S-OSM	S-OSM	S-OSM	S-OSM	S-OSM	S-OSM	
30 CFR 717.14C MC 717.14(e)	0	3	24	2	15	0	0	0	39	5	1900	--	
30 CFR 717.17 MC 717.17	1	3	22	22	22	25	12	12	0	0	48	37	2800-1700
30 CFR 717.17(a) MC 717-17(a)	2	3	27	22	22	25	24	24	0	0	54	49	3400-2900
30 CFR 717.17(j)(2)(i) MC 717.17(j)(i)	0	3	27	22	20	12	0	0	47	37	2700	1700	
30 CFR 717.17(j)(1) MC 717.17(j)	2	3	25	24	24	25	12	12	0	0	52	39	3200-1900
Total													14000-8200
Difference													5800

The justification for differences in assessment based on similar criteria:

Violation #1

Federal inspectors report indicated waste material was comprised of trash and junk, with the potential or actual damage in terms of area and impact on the public or environment contained within the permit area. State inspector assessed the violation under the auspices that raw coal or coal refuse was disposed of in an unapproved manner in addition to the trash and junk described in the Federal inspector's report, and that potential or actual damage in terms of area and impact on the public or environment was not in fact contained within the permit area. In this case where inspectors statements differ immensely, it is felt that the Board should disregard the points and civil penalty assessed for this violation.

Violations #2, 3 and 5

Exemplify noticeable point differences contained in the negligence category. This is due to the fact that the Federal inspector was not cognizant of the fact that the operator had been previously informed on several occasions that the areas described in the violations were in need of compliance.

Violation #4

Also showed a noticeable difference in the negligence category. The State Regulatory Authority felt that ignorance of the law did not constitute a no negligence situation and the violation was committed under knowing and willful conditions as the permittee was continuously fording Cottonwood Creek so as to obtain water necessary for dust suppression.

By omitting Violation #1 due to extreme differences contained in the State and Federal inspectors reports, and comparing assessments given for Violations 2 through 5, a difference in civil penalties of \$3,900 is clearly demonstrated due to the fact that:

- (a) The Federal assessment officer based his decision solely on the Federal inspectors report.
- (b) The Federal inspector's report did not indicate previous warnings or citations issued to the operator.
- (c) The State assessment officer made determinations based upon actual on-site inspections of the areas in violation and repeated mitigation with the operator.

The civil penalties assessed for similar State-Federal failure to abate situations were the same. At \$750 each for each day the violation was unabated. Two additional state cessation orders were also issued for failure to abate with civil penalties assessed at \$16,500. This further explains the differences between State and Federal assessments.

In summary, the State Regulatory Authority issued a total of eight (8) violations and four (4) cessation orders with civil penalties assessed at \$38,200. The Office of Surface Mining assessed four (4) violations and two (2) cessation orders for failure to abate at \$9,700.

Therefore, it is felt that in similar situations comparable assessment of civil penalties was demonstrated by State and Federal agencies.

Should the Board feel civil penalties be assessed for violations issued solely by the State Regulatory Authority, the following assessment is proposed. Civil penalties should be assessed on Violations #6, 7 and 8 at \$6,200, and \$16,500 for cessation orders issued for failure to abate violations. This brings the State Regulatory assessment to \$22,700. Please note that under Section 40-10-20(8) of Chapter 10, Title 40, Utah Code Annotated, 1953, the Board shall assess a mandatory fine of no less than \$750 per day for each day the violation is unabated.