

0010

cc: Klein

Mine file



United States Department of the Interior  
OFFICE OF SURFACE MINING  
Reclamation and Enforcement  
WASHINGTON, D.C. 20240

1984 NOV -2 PM 3:40

1 NOV 1984

ACI/015/009  
#2

Mr. Dennis C. Stickley  
Clyde, Pratt, Gibbs and Cahoon  
Attorneys at Law  
200 American Savings Plaza  
77 West Second South  
Salt Lake City, Utah 84101

Dear Mr. Stickley:

In your letter of August 29, 1984, to Mr. Lou Hamm of our Denver office, you requested information on the ownership of Trail Mountain Coal Company and referred to an Office of Surface Mining (OSM) review of the Diamond Shamrock Coal Company and its related subsidiaries, including the Diamond Shamrock Coal Company and the Trail Mountain Company. It is my understanding that you have already received information from the administrative files in our Denver office.

Our review involved a search of OSM records for the existence of any violations, cessation orders, unpaid fees, or unpaid penalties issued to companies possibly related to Diamond Shamrock Coal Company. In our review, Hawkeye-Elkhorn Coal Company was found to have an unpaid penalty. As a result of this finding, a letter was sent to Diamond Shamrock Coal Company asking about their relationship to Hawkeye-Elkhorn Coal Company. Enclosed is a copy of the OSM letter and Diamond Shamrock's reply.

This, and any other correspondence relating to the above-mentioned companies may be found in our public administrative record files in our Denver office.

If you have any further questions, please let us know.

**RECEIVED**  
NOV 21 1984

Sincerely,

DIVISION OF  
OIL, GAS & MINING

Brent Wahlquist  
Assistant Director  
Technical Services and Research

Enclosures

bcc: Administrator, Western Technical Center ✓



**Diamond Shamrock**  
Coal Company

George S. Brooks II  
Counsel

October 18, 1984

Mr. Brent Wahlquist  
Assistant Director  
Technical Standards and Research  
Office of Surface Mining  
1951 Constitution Avenue, NW  
Washington, DC 20240

RE: Alleged Outstanding Penalties Owing from Hawkeye-Elkhorn  
Coal Company to OSM; Our File Nos. CLM 0084 HAW OSM HEC and  
PRM 0033 TMC OSM NAT

Dear Mr. Wahlquist:

On October 4, 1984, I received a letter from Joel Yudson, OSM Assistant Solicitor, inviting me to respond to you concerning the above-referenced penalties. The basis for Mr. Yudson's invitation was that these penalties, allegedly owed by Hawkeye-Elkhorn Coal Company, must be resolved before OSM can make a decision on the permit application of Trail Mountain Coal Company or Montco.

Diamond Shamrock Coal Company will answer Mr. Yudson's inquiry. However, in doing so, it in no way admits that the permit applications of Trail Mountain Coal Company or Montco should be connected to Diamond Shamrock Coal Company or the alleged penalties of Hawkeye-Elkhorn Coal Company. These latter two companies, for the purposes of the Surface Mining Act and its attendant regulations, are unrelated to Trail Mountain Coal Company or Montco and should have no bearing on their permit applications. Nevertheless, to assist you in your inquiry, Diamond Shamrock Coal Company can state as follows:

Notices of Violation 78-2-1-2 and 78-2-1-3

While the civil penalties for Notices of Violation 78-2-1-2 and 78-2-1-3 were originally in issue, Mr. Yudson's letter stated that "no civil penalties are due as to those NOV's because the points assigned for each proposed assessment were 30 points or less." Therefore, these civil penalties are no longer an issue.

Notice of Violation 80-2-75-60 and Cessation Order 80-2-75-46

Notice of Violation 80-2-75-60 and Cessation Order 80-2-75-46 (collectively referred to as the "citations") were issued to a Hawkeye-Elkhorn Coal Company at its Marion County, Tennessee, mine during 1980. Neither Diamond Shamrock Coal Company nor

Mr. Brent Wahlquist

2

October 18, 1984

Hawkeye Coal Company has ever owned or operated any mines in Tennessee. Hawkeye Coal Company did purchase a company by the name of Hawkeye-Elkhorn Coal Company in 1977. However, this purchase did not involve any Tennessee mines; and this particular Hawkeye-Elkhorn Coal Company was later dissolved in 1978. Because the citations were issued in 1980 at a Tennessee mine, there is no relationship between these citations and either Diamond Shamrock Coal Company or Hawkeye Coal Company.

In order to track down the owners of the Hawkeye-Elkhorn Coal Company which was operating in Tennessee during 1980, I recommend that you contact the Tennessee Secretary of State to see if that company was incorporated or registered to do business in Tennessee. If I can be of any further assistance in this matter, please feel free to contact me.

Sincerely,



George S. Brooks II

bgc

cc: W. V. Alford, Jr.



# United States Department of the Interior

OFFICE OF THE SOLICITOR  
WASHINGTON, D.C. 20240

George Brooks, Esquire  
Diamond Shamrock Coal Company  
1201 First Security Plaza  
Lexington, Kentucky 40507

Dear Mr. Brooks:

This letter follows up the conversations you have had with Mark Caudill and Barbara Verschler of this office. As you know, the Office of Surface Mining expects shortly to make permitting decisions regarding the Trail Mountain Coal Company mine in Utah and the proposed Montco mine in Montana, both of which are related to the Diamond Shamrock Coal Company. In connection with these decisions, OSM needs certain information that relates to the permit findings to be made under Section 510(c) of the Surface Mining Act. Enclosed please find the materials listed below from the assessment files of the Office of Surface Mining relative to the Hawkeye Elkhorn Coal Company for notice of violation 80-2-75-46 and cessation order 80-2-75-46(1). It would expedite OSM's consideration if you could submit a letter setting forth the relationship which may exist between the company cited in the NOV and CO and Diamond Shamrock Coal Company. Please address the letter to Brent Wahlquist, Assistant Director, Technical Standards and Research, Office of Surface Mining, 1951 Constitution Ave., N.W., Washington, D.C. 20240.

NOV 80-2-75-46:

- 1) Notice of Violation
- 2) Notice of Proposed Assessment with Demand Letter
- 3) Request for Conference
- 4) Termination of NOV
- 5) Final Conference Report

CO 80-2-75-46(1):

- 1) Cessation Order
- 2) Individual Civil Penalty Statement
- 3) Notice of Proposed Assessment with Demand Letter
- 4) Final Order - Civil Penalty Assessment Letter
- 5) Final Demand Letter

With respect to notices of violation numbered 78-2-1-2 and 78-2-1-3, we have reviewed the files and found that OSM concluded earlier that no civil penalties are due as to those MOWs because the points assigned for each proposed assessment were 30 points or less. On July 25, 1978, the Chief of the Division of Enforcement, OSM, sent two letters addressed to Hawkeye Elkhorn Coal Company in care of Mr. Lawrence Frayley informing the company that the notices of proposed assessment had been sent in error and should be disregarded. Copies of the letters are enclosed for your records.

Thank you for your assistance. If you have any questions, I can be reached at 202-343-6347.

Sincerely,

Joel Yudson, Assistant Solicitor  
Division of Surface Mining  
Department of the Interior  
Office of the Solicitor

Enclosures

cc: William Schmidt, Assistant Director, OSM  
David Halsey, Acting Chief, Div. of Regulation and Inspection

bcc: Docket  
DSM Chron  
Subject: Hawkeye Elkhorn  
Berschler:RF:dat:9/21/84  
George Stone, OSM  
Anna Mae Orellana, OSM ✓

Do=Ltr/GBrooks, Esq.



United States Department of the Interior  
OFFICE OF SURFACE MINING  
Reclamation and Enforcement  
WASHINGTON, D.C. 20240

July 25, 1978

Hawkeye Elkhorn Coal Co., Inc.  
C/O Marvin Bartley, Engineer  
P.O. Box 2763  
Pikeville, Kentucky 41501

Re: NOV # 78-II-1-2 Violation(s) # 1

Dear Mr. Bartley:

On June 30, 1978 we mailed you a proposed assessment in the amount of \$460.00 for the violation(s) listed above. Under the point system we use to set penalties (30 CFR Section 723), we are not required to assess a penalty for a violation assigned 30 points or less. In deciding whether to assess a penalty, we consider the permittee's history of violations, the seriousness of the violation, whether it was negligent or willful, and how rapidly the permittee complied.

Through error, we sent out some proposed assessments for violations assigned 30 points or less. We have reviewed these assessments and have decided that no penalty should have been assessed for the violation(s) listed above. Accordingly, you may disregard the proposed assessment for such violation(s). The proposed assessment continues in force for the violation(s) if any, not listed above.

The violation(s) listed above will remain on your record unless vacated as a result of administrative or judicial review. If you should receive another Notice of Violation or a Cessation Order, all violation(s) on your record will be taken into account in determining whether a penalty should be assessed and the amount of the penalty.

Sincerely yours,

*Harriet B. Marple*

Harriet B. Marple  
Chief, Division of Enforcement



United States Department of the Interior  
OFFICE OF SURFACE MINING  
Reclamation and Enforcement  
WASHINGTON, D.C. 20240

July 25, 1978

Hawkeye Elkhorn Coal Co.  
C/O Mr. Lawrence Frayley  
P.O. Box 2763  
Pikeville, Kentucky 41501

Re: NOV # 78-II-1-3 Violation(s) # 1

Dear Mr. Frayley:

On June 30, 1978 we mailed you a proposed assessment in the amount of \$ 460.00 for the violation(s) listed above. Under the point system we use to set penalties (30 CFR Section 723), we are not required to assess a penalty for a violation assigned 30 points or less. In deciding whether to assess a penalty, we consider the permittee's history of violations, the seriousness of the violation, whether it was negligent or willful, and how rapidly the permittee complied.

Through error, we sent out some proposed assessments for violations assigned 30 points or less. We have reviewed these assessments and have decided that no penalty should have been assessed for the violation(s) listed above. Accordingly, you may disregard the proposed assessment for such violation(s). The proposed assessment continues in force for the violation(s) if any, not listed above.

The violation(s) listed above will remain on your record unless vacated as a result of administrative or judicial review. If you should receive another Notice of Violation or a Cessation Order, all violation(s) on your record will be taken into account in determining whether a penalty should be assessed and the amount of the penalty.

Sincerely yours,

Harriet B. Marple  
Chief, Division of Enforcement

UNITED STATES DEPARTMENT OF THE INTERIOR  
OFFICE SURFACE MINING RECLAMATION AND ENFORCEMENT  
REGION II - KNOXVILLE, TENNESSEE

ORIGINATING FIELD OFFICE

CROSSVILLE, TN FIELD OFFICE  
401 DIVISION ST.  
CROSSVILLE, TN. 38555  
484-6183

CESSATION ORDER NO. 80-2-75-46  TV

To the Following Permittee/Operator:

Name HAUKEYE - ELKHORN COAL Co.

Mine ORPHE MINE No. 1  Surface  Underground  Other

County and State Marion Co, TN. Telephone 615-837-6365

Mailing Address P.O. Box 2875, Pikeville, Ky. 41501

OSM Mine No. N/A State Permit No. N/A MSHA I.D. No. 40-91029

Date of Inspection November 18 19 80 N.P.D.E.S. No. NONE

Time of Inspection: from 2:15  a.m.  p.m. to 3:15  a.m.  p.m.

Name of Operator (if other than permittee) N/A

Mailing Address \_\_\_\_\_

UNDER THE AUTHORITY OF THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 (P.L. 95-87; 30, U.S.C. 1201), THE UNDERSIGNED AUTHORIZED REPRESENTATIVE OF THE SECRETARY OF THE INTERIOR has conducted an inspection of the above mine on the above date and has found that a Cessation Order must be issued for each violation(s) of the Act, the regulations, or required permit conditions listed in the attachment(s). This Order constitutes a separate Cessation Order for each condition, or violation listed.

In accordance with Section 521(a) of the Surface Mining Control and Reclamation Act of 1977, YOU ARE ORDERED TO CEASE IMMEDIATELY the operations described in the attachment(s) and to perform the corrective actions described in the attachment(s) within the designated abatement time. Reclamation operations not directly the subject of this Order shall continue while this Order is in effect.

You are responsible for doing all work in a safe and workmanlike manner.

THE UNDERSIGNED AUTHORIZED REPRESENTATIVE HEREBY FINDS THAT THIS ORDER  DOES NOT  REQUIRE CESSATION OF MINING EXPRESSLY OR IN PRACTICAL EFFECT. For this purpose "mining" means extracting coal from the earth or a waste pile and transporting it within or from the minesite.

This Order shall remain in effect until it expires as provided on the reverse or is modified, terminated, or vacated by written notice of an authorized representative of the Secretary. The time for correction may be extended by an authorized representative for good cause. If you need additional time to correct the violation(s), please contact the field office named above.

Date of Service NOV. 20, 1980 SENT CERTIFIED MAIL Douglas T. Godesky  
Signature of Authorized Representative

Time of Service \_\_\_\_\_  a.m.  p.m. DOUGLAS T. GODESKY (75)  
Name and I.D. Number

Person Served with Order SENT CERTIFIED MAIL  
Print Name and Title

Signature \_\_\_\_\_

Cessation Order No. 80-2-75-46

Violation No. 1 of 1

Nature of Condition, Practice, or Violation

FAILURE TO ABATE VIOLATION No. 2 OF 2  
OF NOTICE OF VIOLATION No. 80-2-75-60

Provision(s) of the Regulations, Act, or Permit Violated

SECT. 521(a) - ACT

Check Appropriate Box:

- The condition, practice, or violation is creating an imminent danger to the health or safety of the public.
- The condition, practice, or violation is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.
- The permittee or operator has failed to abate Violation(s) No. 80-2-75-60 included in Notice of Violation No. 2 OF 2 within the time for abatement originally fixed or subsequently extended.

Operation(s) to be Ceased Immediately

Entire surface coal mining operation,  
except those measures necessary to  
abate the violation.

Corrective Action and Time for Abatement (if applicable) n/a

REMAIN AS STATED IN VIOLATION 2 OF 2 OF  
NOTICE OF VIOLATION No. 80-2-75-60

Company HAWKEYE ELKINS COAL CO  
NOV/CO# 80-2175-14

Violation(s) # 1 of 1

MARION, CO, TN

ORIG #1 MINE

Individual Civil Penalty Statement

Before completing this form read the Policy Directive, chapter 52, section 02, transmittal number 44, issued April 29, 1980.

In addition, read the instructions in the memorandum issued May 8, 1980.

I.

A. Site Criteria (Both criteria must apply)

(a) Is there a corporate permittee?

YES - WAS A KY. CORP, MERGED TO A DELAWARE CORP, HAWKEYE COAL CO, IN 1979.

(b) Are the violation(s) serious?

NO - NOT AT THIS TIME

B. Individual Criteria (Only one criterion applies; first decide which applies)

(a) Did an agent of the corporation state he or she did not intend to comply?

(b) Was there personal service of an NOV and of a CO on an agent of the corporation?

(c) Is the site permitted but inactive?

Douglas H. [Signature] 11/20/80  
Authorized Representative # \_\_\_\_\_ Date

\_\_\_\_\_  
Supervisor Date

Company \_\_\_\_\_  
NOV/CO# \_\_\_\_\_

Violation(s)# \_\_\_\_\_ of \_\_\_\_\_

Individual Civil Penalty Statement

II. Narrative Report for Assessment of an Individual Civil Penalty

\_\_\_\_\_  
Assistant Regional Director or  
his designee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Regional Attorney

\_\_\_\_\_  
Date



United States Department of the Interior  
OFFICE OF SURFACE MINING  
Reclamation and Enforcement  
WASHINGTON, D.C. 20240

Hawkeye - Elkhorn Coal Co.  
Box 2875  
Pikeville, KY 41501

JAN 9 1981

Failure to abate violation 2 of 2 in  
NOV# 80-2-75-60.

Re: CO No. 80-2-75-46 Violation(s) No. 1 of 1.

Dear Sirs:

Under 30 Code of Federal Regulations section 723.15, a daily penalty must be assessed for each day a violation continues beyond the period set for abatement. The daily penalty is \$750 per violation.

You have been issued a cessation order for failure to abate violation(s) within the time set for abatement in a notice of violation. A daily penalty of \$ 750.00 with respect to the above violation(s) will accrue from the date the cessation order was issued until the violation(s) are abated or 30 days, whichever occurs first. When you believe abatement is complete you should contact the OSM officer who issued the cessation order and request a re-inspection.

A letter describing your rights is enclosed.

Sincerely yours,

Mary Jane Markley  
Chief, Branch of Assessment  
Inspection and Enforcement

Enclosure

ASSESSMENT OFFICE  
OFFICE OF SURFACE MINING  
Reclamation and Enforcement  
U.S. DEPARTMENT OF THE INTERIOR  
WASHINGTON, D.C. 20240

NOTICE OF PROPOSED ASSESSMENT

Notice of Violation # \_\_\_\_\_

Cessation Order # 80-2-75-46

The Assessment Office has reviewed the notice of violation or cessation order mentioned above, information furnished by the authorized representative of the Secretary, and any information submitted by the permittee or operator pursuant to 30 CFR §723.16. Based on this review, the Assessment Office has determined that the violations cited appear to have occurred and proposes the following penalties:

<u>Violation No.</u>	<u>Amount of Proposed Assessment</u>
<u>1</u> of <u>1</u>	\$ <u>22,500.00</u>
_____ of _____	_____

Total Proposed Assessment \$ 22,500.00

Note: If the attached assessment worksheet shows that good faith was not considered in making this assessment (due to the length of the abatement period), you may request a modification based on consideration of good faith. To obtain a reduction of the penalty on the basis of good faith in attempting to achieve compliance, you must show that you took extraordinary measures to abate the violation in the shortest possible time and that abatement was achieved before the date set for abatement. Your request for a modification should be made in writing, after the violation has been abated, and should be addressed to the Assessment Office at the above address.



United States Department of the Interior

OFFICE OF SURFACE MINING

Reclamation and Enforcement

WASHINGTON, D.C. 20240

August 27, 1981

Hawkeye-Elkhorn Coal Co.  
P.O. Box 2875  
Pikeville, Kentucky 41501

FINAL DEMAND LETTER--CIVIL PENALTY ASSESSMENT

Re: NOV No. \_\_\_\_\_ Violation(s) \_\_\_\_\_  
CO No. 80-2-75-46 Violation(s) 1 of 1

Dear Sirs:

On August 12, 1981, we mailed you a Final Order of the Secretary of the Interior with respect to the civil penalty assessment for the above violation(s). A copy is attached. The Final Order stated that the civil penalty in the amount of \$ 22,500.00 was due and payable. The civil penalty is overdue, and we have not yet received payment from you.

This letter constitutes our final demand of the penalty. Unless we receive payment within 15 days of the date of this letter, we will immediately refer this matter to the United States Department of Justice for collection in the appropriate district court of the United States.

Payment of the penalty should be made by check or money order payable to "Assessment Office--OSM" and mailed to:

Assessment Office  
Office of Surface Mining  
U. S. Department of the Interior  
Washington, D.C. - 20240

To assure proper credit of your payment, please note on your check or money order the violation(s) for which payment is being made.

If due cause can be shown, the Office of Surface Mining will accept partial payments in equal monthly installments over a period not to exceed twelve months. Evidence of inability to pay in full at this time must be provided in writing to the Collection Specialist.

If you have any questions, you may call the Collection Specialist at (202)343-5082, (202)343-8741 or (202)343-8742.

Sincerely yours,

Mary Jane Markley, Chief  
Branch of Assessment



United States Department of the Interior  
 OFFICE OF SURFACE MINING  
 Reclamation and Enforcement  
 WASHINGTON, D.C. 20240

August 12, 1981

Hawkeye-Elkhorn Coal Co.  
 P.O. Box 2875  
 Pikeville, Ky. 41501

FINAL ORDER--CIVIL PENALTY ASSESSMENT

Re: NOV No. \_\_\_\_\_ Violation(s) No.(s) \_\_\_\_\_  
 CO No. 80-2-75-46 Violation(s) No.(s) 1 of 1

Dear Sirs:

On January 9, 1981, we mailed you a notice of proposed assessment of civil penalty with respect to the above violation(s). A copy of this notice is enclosed. Under Section 518 of the Surface Mining Control and Reclamation Act of 1977, the Office of Surface Mining has now determined that the above violation(s) did occur and that the amount of the penalty is warranted. This letter is a Final Order of the Secretary of the Interior with regard to this matter, and the penalty in the amount of \$ 22,500.00 is due and payable.

Unless we receive payment within 30 days of the date of this Final Order, we will refer this matter to the United States Department of Justice for collection in an appropriate district court of the United States.

Payment of the penalty should be made by check or money order payable to "Assessment Office--OSM" and mailed to:

Assessment Office  
 Office of Surface Mining  
 U. S. Department of the Interior  
 Washington, D.C. 20240

To assure proper credit of your payment, please note on your check or money order the violation(s) for which payment is being made.

If you have any questions, you may call the Collection Specialist at (202)343-8741.

Sincerely,

Mary Jane Markley, Chief  
 Branch of Assessment

ORIGINATING FIELD OFFICE

CROSSVILLE TN. FIELD OFFICE

401 DIVISION ST, CROSSVILLE, TN. 38535

484-6183 NOTICE OF VIOLATION NO. 80-2-75-60

TV

To the Following Permittee/Operator:

21 JUL 1980

Name HAWKEYE ELKHORN COAL COMPANY

Mine ORME MINE NO. 1  Surface  Underground  Other

County and State MARION Co, TN. Telephone 615-837-6365

Mailing Address P.O. BOX 2875, PIKEVILLE, KY. 41501

DSM Mine No. N/A State Permit No. NONE MSHA I.D. No. 42-91029

Date of Inspection AUGUST 13, 1980 N.P.D.E.S. No. NONE

Time of Inspection: from 1:00  a.m. to 1:15  a.m.  p.m. (HELICOPTER)

Name of Operator (if other than permittee) N/A

Mailing Address \_\_\_\_\_

UNDER THE AUTHORITY OF THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 (P.L. 95-87; 30 U.S.C. 1201), THE UNDERSIGNED AUTHORIZED REPRESENTATIVE OF THE SECRETARY OF THE INTERIOR has conducted an inspection of the above mine on the above date and has found that a Notice of Violation must be issued for violation(s) of the Act, the regulations or required permit condition(s) listed in the attachment(s). This Notice constitutes a separate Notice of Violation for each condition, practice, or violation listed.

You must correct each of these violations within the designated abatement time. You are responsible for doing all work in a safe and workmanlike manner.

THE UNDERSIGNED AUTHORIZED REPRESENTATIVE HEREBY FIND THAT THIS NOTICE <sup>DOES NOT</sup>  REQUIRE CESSATION OF MINING EXPRESSLY OR IN PRACTICAL EFFECT. For this purpose "mining" means extracting coal from the earth or a waste pile and transporting it within or from the minesite.

This Notice shall remain in effect until it expires as provided on the reverse or is modified, terminated, or vacated by written notice of an authorized representative of the Secretary. The time for correction may be extended by an authorized representative for good cause. If you need additional time to correct the violation(s), please contact the field office named above.

SENT CERTIFIED MAIL  
Date of Service AUGUST 15, 1980

Douglas J. Godesky  
Signature of Authorized Representative

Time of Service \_\_\_\_\_  a.m.  p.m. DOUGLAS J. GODESKY (75)  
Name and I.D. Number

Person Served with Notice SENT CERTIFIED MAIL  
Print Name and Title

Signature \_\_\_\_\_

1. Formal Review and Temporary Relief. You may apply for review of this Notice by submitting an application for review, within 30 days of receipt of this Notice by you or your agent to:

Hearings Division  
Office of Hearings and Appeals  
U.S. Department of the Interior  
4015 Wilson Boulevard  
Arlington, Virginia 22203

If you apply for a formal public hearing, you may request temporary relief from this Notice. Your request must be filed with the Hearings Division at the above address prior to a decision in the hearing. The procedures for obtaining a formal public hearing or temporary relief are contained in Title 43 Code of Federal Regulations Section 4.

2. Informal Review. An informal public hearing will be held at or near the minesite if this Notice requires cessation of mining, expressly or in practical effect. On the reverse of this page, the authorized representative has made a finding as to whether or not this Notice requires cessation of mining. Please review this finding, and inform the authorized representative if you disagree with it.

If this Notice requires cessation of mining, it will expire within 30 days from the date you have actual notice of this Notice, unless an informal public hearing is held or waived, or the violation is abated, within the 30-day period. You will be notified of the date, time and location of the hearing.

3. Penalties. You may submit information in writing pertaining to the violation(s) covered by this Notice within 10 days of the date that it is served on you or your agent. This information will be considered in determining the facts surrounding the violation and the amount of penalty. You may also submit a request that the Director waive the use of the formula contained in 30 CFR Part 723 in determining the civil penalty for the violations cited in this Notice. Your request must include your reasons for requesting the waiver. A waiver will be granted only if the Director determines that a waiver will further abatement of violations of the Act. If you wish to submit this information, you should send it to U.S. Department of the Interior, Office of Surface Mining, Assessment Office, Washington, D.C. 20240.

For each violation covered by this Notice, a penalty of up to \$5000 may be assessed for each day during which that violation continues.

If you fail to abate any of the violations within the time set for abatement or for meeting any interim step, you must be assessed a minimum penalty of \$750 or more for each day during which the violation continues beyond the time set for abatement, and you must be issued a cessation order requiring you to cease surface coal mining operations or the portion relevant to the violations.

4. Effect on Permit. In addition, if it is determined that a pattern of violations of any requirement(s) of the Act, the regulations, or permit conditions exists, and that the violations were caused by unwarranted failure to comply or were willful, the permit may be suspended or revoked.

FOR FURTHER INFORMATION, PLEASE CONSULT Title 43 Code of Federal Regulations Section 4, Title 30 Code of Federal Regulations Chapter VII,

Notice of Violation No. 80-2-75-60

Violation No. 1 of 2

Nature of the Violation

FAILURE TO REGRADE SURFACE WORK  
AREAS TO THE APPROXIMATE ORIGINAL CONTOUR  
UPON COMPLETION OF UNDERGROUND MINING.

Provision(s) of the Regulations, Act, or Permit Violated

SECT. 717.14(c) - REGULATIONS  
= PORTION OF THE OPERATION TO WHICH THE VIOLATION  
APPLIES: ENTIRE MINE SITE, INCLUDING  
ALL ACCESS AND HAUL ROADS

Corrective Action Required (including interim steps, if any)

REGRADE ALL SURFACE WORK AREAS, INCLUDING  
ACCESS AND HAUL ROADS, TO THE APPROXIMATE  
ORIGINAL CONTOUR.

Time for Abatement (including time for interim steps, if any)

BY 8 A.M. SEPTEMBER 23, 1980

Notice of Violation No. 80-2-75-60Violation No. 2 of 2Nature of the Violation

FAILURE TO ESTABLISH ON ALL LAND THAT  
HAS BEEN DISTURBED BY MINING OPERATIONS,  
A DIVERSE, EFFECTIVE, AND PERMANENT  
VEGETATIVE COVER.

Provision(s) of the Regulations, Act, or Permit Violated

SECT. 717.20(b) - Regulations  
= PORTION OF THE OPERATION TO WHICH THIS VIOLATION  
APPLIES: ENTIRE MINE SITE, INCLUDING ACCESS  
AND HAUL ROADS.

Corrective Action Required (including interim steps, if any)

SEED, FERTILIZE, AND MULCH ALL DISTURBED  
AREAS IN ORDER TO ESTABLISH A DIVERSE,  
EFFECTIVE, AND PERMANENT VEGETATIVE COVER.

Time for Abatement (including time for interim steps, if any)

By 8 A.M. SEPTEMBER 23, 1980



# United States Department of the Interior

OFFICE OF SURFACE MINING

Reclamation and Enforcement

WASHINGTON, D.C. 20240

Hawkeye Elkhorn Coal Company

Box 2875

Pikeville, KY 41501

**JAN 9 1981**

Re: Penalties for Violation of the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87

Attached is a notice of proposed assessment of penalty with respect to certain violations for which a notice of violation or a cessation order was issued to you.

THE PROPOSED PENALTY(IES) WILL BECOME FINAL AND PAYABLE WITHIN 30 DAYS from the date you receive this letter UNLESS YOU REQUEST A CONFERENCE OR HEARING in accordance with the following instructions:

1. If you wish only a conference with the Assessment Office to review this proposed assessment, you must submit a written request within 15 days after you receive this letter. If you wish, you may use the enclosed form to request a conference. Do not include any check or money order with your conference request. Send your request to:

Assessment Office  
 Office of Surface Mining  
 U.S. Department of the Interior  
 Washington, D.C. 20240

2. If you wish only a hearing, you must submit a petition for review within 30 days after the date you receive this letter to:

Office of Hearings and Appeals  
 Hearings Division  
 U.S. Department of the Interior  
 4015 Wilson Boulevard  
 Arlington, Virginia 22203

Your petition must be accompanied by a check or money order payable to "Assessment Office--OSM" in an amount equal to the total proposed assessment. If you fail to submit the check or money order with your petition, or if the check is returned for nonpayment, or if the check or money order is written for an amount less than the total proposed assessment, you may forfeit your right to a hearing. To assure proper credit for your payment, you must note on your check or money order the violations for which payment is being made.

The proceeds of your check or money order will be held in escrow and if, after administrative or judicial review, it is found that there was no violation or that the proposed penalty was too high, the balance will be refunded to you with interest at the rate of 6 percent or at the prevailing Department of the Treasury rate, whichever is greater.

3. If you wish a hearing as to some, but not all, of the violations for which a penalty has been assessed, you must indicate on your petition the specific violations for which you wish a hearing, and you must pay into escrow the proposed penalty for those violations, as described in paragraph (2) above. You must also pay the penalty with respect to the remaining as provided in paragraph (5) below.
4. If you wish both a conference and a hearing, you should request a conference as described above. After the conference is complete or the Director of the Office of Surface Mining has approved the conference officer's recommendation (if required under 30 C.F.R. § 723.17(e)), whichever is later, you will have 15 days to request a hearing. The method for requesting a hearing is described in paragraph (2).
5. If you do not make a timely request for a conference or a hearing with respect to a violation, the proposed penalty for that violation will become due and payable within 30 days from the receipt of this letter. Payment should be made by check or money order payable to "Assessment Office--OSM" and sent to:

Assessment Office  
Office of Surface Mining  
U.S. Department of the Interior  
Washington, D.C. 20240

To assure proper credit of your payment, you must note on the check or money order the violations for which payment is being made.

Please read this letter carefully. If you have a question which is not answered by this letter, you may call the Assessment Office at (202) 343-4401.

Sincerely yours,



Mary Jane Markley, Chief  
Branch of Assessment

ASSESSMENT OFFICE  
OFFICE OF SURFACE MINING  
Reclamation and Enforcement  
U.S. DEPARTMENT OF THE INTERIOR  
WASHINGTON, D.C. 20240

NOTICE OF PROPOSED ASSESSMENT

Notice of Violation # 86-2-75-60

Cessation Order # \_\_\_\_\_

The Assessment Office has reviewed the notice of violation or cessation order mentioned above, information furnished by the authorized representative of the Secretary, and any information submitted by the permittee or operator pursuant to 30 CFR §723.16. Based on this review, the Assessment Office has determined that the violations cited appear to have occurred and proposes the following penalties:

<u>Violation No.</u>	<u>Amount of Proposed Assessment</u>
<u>1</u> of <u>2</u>	\$ <u>1,700.00</u>
<u>2</u> of <u>2</u>	<u>1,700.00</u>
_____ of _____	_____

Total Proposed Assessment \$ 3,400.00

Note: If the attached assessment worksheet shows that good faith was not considered in making this assessment (due to the length of the abatement period), you may request a modification based on consideration of good faith. To obtain a reduction of the penalty on the basis of good faith in attempting to achieve compliance, you must show that you took extraordinary measures to abate the violation in the shortest possible time and that abatement was achieved before the date set for abatement. Your request for a modification should be made in writing, after the violation has been abated, and should be addressed to the Assessment Office at the above address.

1-22-81

(Date)

Department Office  
Office of Surface Mining  
Reclamation and Enforcement  
U.S. Department of the Interior  
Washington, D.C. 20240

Dear Sirs:

Pursuant to 30 CFR § 723.17, I request a conference to review the  
[redacted] (Name of Violation(s))

\* 80-2-75-60 and/or Cessation Order(s) \*

My telephone number is (606) 437-6212

Marvin Bartley  
(Signature)

MARVIN BARTLEY, ENGINEER  
(Name and Title)

CHARLES SCHWAR  
(Name of Permittee or Operator)

P.O. Box 2875, PIKEVILLE, KY 41501  
(Address of Permittee or Operator)

Provided your request is received within 15 days as provided in  
30 CFR 723.17, you will be contacted by a conference officer in order  
to arrange the type of conference you wish.

Pursuant to 30 CFR 723.17(a), at least 5 days prior to the conference,  
notice of the time and place of the conference must be posted at the  
OSM field office that has jurisdiction over the mine. Any person has  
the right to participate in the conference.

**U.S. DEPARTMENT OF THE INTERIOR**  
**Office of Surface Mining Reclamation and Enforcement**  
**VACATION OR TERMINATION OF NOTICE OF VIOLATION OR CESSATION ORDER**

1. Name <i>Hawkins - Elkton Coal Co</i>		<input type="checkbox"/> Permittee <input checked="" type="checkbox"/> No Permit	Originating Office Address <i>OSM 401 Division St. Crossville, TN</i>	
2. Mailing Address <i>P.O. Box 2875, Pikeville Ky 41501</i>				
3. Name of Mine <i>Orme Mine #1</i>		<input type="checkbox"/> Surface <input checked="" type="checkbox"/> Underground	Telephone Number <i>615 484-6183</i>	
4. Telephone Number <i>615 837 1345</i>	5. County <i>Marion</i>	State <i>TN</i>		8. Date of Inspection <i>3-9-82</i>
6. Operator's Name <i>-</i>		9. Time of Inspection From <i>10:00</i> <sup>a.m.</sup> p.m. To <i>10:45</i> <sup>a.m.</sup> p.m.		
7. Mailing Address <i>-</i>				
10. State Permit Number <i>None</i>	11. NPDES Number <i>None</i>	12. MSHA ID Number <i>40-91029</i>	13. OSM Mine Number <i>-</i>	

**ACTIONS TAKEN**

Authority: Under the authority of the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87; 30 U.S.C. 1201) the following action is taken:

14. Notice of Violation Number <i>EO-2-75-60</i>	Dated <i>8-13-80</i>	15. Cessation Order Number <i>EO-2-75-46</i>	Dated <i>11-20-80</i>
---	-------------------------	---	--------------------------

16. VIOLATION 2 OF 2 IS  Terminated <sup>and 1 of 1 on CO.</sup>  Vacated for the Following Reasons:  
*A diverse, effective, and permanent vegetative cover has been established.*

17. VIOLATION \_\_\_\_\_ OF \_\_\_\_\_ IS  Terminated  Vacated for the Following Reasons:

18. VIOLATION \_\_\_\_\_ OF \_\_\_\_\_ IS  Terminated  Vacated for the Following Reasons:

19. Print Name of Authorized Representative <i>Charles G. Wofford</i>	Identification Number <i>6</i>
20. Signature of Authorized Representative <i>Charles G. Wofford</i>	Effective Date <i>3-11-82</i>

UNITED STATES DEPARTMENT OF THE INTERIOR  
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT  
REGION II - KNOXVILLE, TENNESSEE

VACATION OR TERMINATION OF NOTICE OR ORDER

ORIGINATING FIELD OFFICE

CROSSVILLE FIELD OFFICE  
401 DIVISION ST.  
CROSSVILLE, TN. 38555  
484-6183

Surface Mine

Underground Mine

Other \_\_\_\_\_

PERMITTEE/OPERATOR

Name HAWKEYE-ELKHORN COAL CO.  
Mine CRIME MINE No. 1  
County and State MARION Co, TN.  
Mailing Address P.O. Box 2375  
PIKEVILLE, KY. 41501  
MSHA I.D. No. 40-091029  
State Permit No. NONE

Under the authority of the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87; 30 U.S.C. 1201),

Notice of Violation No. 80-2-75-60 dated AUGUST 15, 1980

Cessation Order No. N/A, dated \_\_\_\_\_, 19\_\_\_\_

Violation No. 10F2 is hereby  terminated because:  
 vacated

OPERATOR HAS COMPLETED ALL GRADING TO APPROXIMATE ORIGINAL CONTOUR REQUIRED.

- Violation No. \_\_\_\_\_ is hereby  terminated because:  
 vacated

N/A.

Effective Date 11/13, 1980

Douglas J. Godesky  
Signature of Authorized Representative

DOUGLAS J. GODESKY  
Name and I.D. Number  
(75)



# United States Department of the Interior

OFFICE OF SURFACE MINING  
Reclamation and Enforcement  
KNOXVILLE, TN. 37902

NOV 5 1981

## CONCLUSION OF CONFERENCE

Mr. Marvin Bartley  
Engineer  
Hawkeye Elkhorn Coal Company  
Post Office Box 2875  
Pikeville, KY 41501

11-2-81  
Date

RE: Assessment Conference for: Hawkeye Elkhorn Coal Company

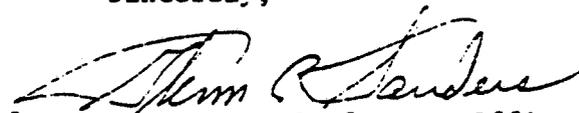
Violation Nos. 1 & 2 of Notice of Violation(s) 80-2-75-60

Violation Nos. \_\_\_\_\_ of Cessation Order No. (s) \_\_\_\_\_  
\_\_\_\_\_

This letter formally concludes the conference relating to the above violations.

After reviewing all of the information supplied to me at the conference and all other information available to me concerning the above violations, pursuant to 30 CFR Part 723, as shown on the attached Assessment Conference Report, there is no assessment for the violation(s).

Sincerely,

  
for Assessment Conference Officer  
Steve Cassel, Pikeville Field Office

Attachments : Assessment Conference Report  
Assessment Worksheet

*Cutback #741483*

**Assessment Worksheet**  
(See Part 723)

NOV # 80-2-75-60

CO # \_\_\_\_\_

Name of Company Hawkeye Elkhorn Coal Company

Violation # 1 of 2 POINTS

History of previous violations -0-

Seriousness (either A or B)

A. (1) Probability of occurrence 5

(2) Extent of potential or actual damage 8

B. Obstruction of enforcement \_\_\_\_\_

Total Seriousness 13

Negligence 12

Good Faith --

TOTAL POINTS 25

ASSESSMENT \$ None (CO)

Violation # 2 of 2 POINTS

History of previous violations -0-

Seriousness (either A or B)

A. (1) Probability of occurrence 5

(2) Extent of potential or actual damage 9

B. Obstruction to enforcement \_\_\_\_\_

Total Seriousness 14

Negligence 12

Good Faith --

TOTAL POINTS 26

ASSESSMENT None (CO)

2/3/81

ASSESSMENT CONFERENCE REPORT

REGION II

DISTRICT/FIELD OFFICE Pikeville, KY

NOV/COX # 80-2-75-60

Type of Conference (check one)  in person  telephone  letter

Date of Conference April 28, 1981

Company Name Hawkeye Elkhorn Coal Company

<u>Persons in Attendance</u>	<u>Title</u>
NO ONE FROM COMPANY ATTENDED.	

<u>Violation No.</u>	<u>Amount of Assessment As Revised</u>
<u>1 of 2</u>	<u>\$ None (CO)</u>
<u>2 of 2</u>	<u>None (CO)</u>

Approved: *Thom C Sanders*  
(Signature of Conference Ofcr.)

Date: 11-2-81

If the assessment for the violation is revised by \$500 or more and 25 percent of the proposed assessment or more, it must be approved by the Assessment Office (202/343-4401), prior to concluding the conference.

B.T. 4-28-81  
(Where approval of Assessment Branch is necessary, identify assessor's number and date approved).

ASSESSMENT CONFERENCE REPORT

Page \_\_\_ of \_\_\_

REGION 2

DISTRICT/FIELD OFFICE PIKEVILLE

NOV/CO # 80-2-75-60

Type of conference (check one)  in person  telephone  letter

Date of Conference 4-28-81 @ 8:30

Company Name HAWKEYE ELKHORN # COAL Co.

Persons in Attendance

Title

NO ONE FROM COMPANY ATTENDED.

Violation No.

Amount of Assessment As Revised

1 of 2

~~\$0.00~~ Not

2 of 2

\$0.00

1 of 2

NOT ASSESSED BY CONFERENCE OFFICER

2 of 2

NOT ASSESSED BY CONFERENCE OFFICER

\$ 0.00

Approved: [Signature]  
(Signature of Conference Ofcr.)

Date: 4-28-81

If the assessment for the violation is revised by \$500 or more and 25 percent of the proposed assessment or more, it must be approved by the Assessment Office (202/343-4401), prior to concluding the conference.

BARBARA A. TAI AT 12:30 PM BY PHONE  
(Where and approval of Assessment Branch is necessary, identify assessor's number and date approved).

violations (go to (8.) if this is an obstruction to enforcement violation; what harmful event was this regulation designed to prevent? (insert the event listed reference list and remember that the event is not the same as the violation.)

# Failure of land Use

2. If the event has happened, describe it. If it has not happened, what would cause it to happen and how likely is that? (for example, if there is an area for which no sediment control is provided, has runoff from that area reached a stream? If it hasn't reached a stream, what would cause it to get there and how likely is that to happen?)

Not occurred - operator has abated the violation which negates the failure of land use

3. How much damage has already occurred as a result of the violation? Also, is the damage on the permit area or does it extend off the permit area?

No off site damage - area reclaimed - overall improvement because site was in an abandoned condition

Prior to this operator developing the site, excellent reclamation considering earlier abuse.

~~Obstruction to Enforcement Violations (answer for obstruction violations only)~~  
~~Describe how violation of this regulation directly affected enforcement by OSM and/or the public.~~

No potential harm; See Report - roads & face of correctly graded. ~~See report~~

1. Degree of Fault (only one question applies) ~~Explain the degree of fault which question to answer (for example), explain. Remember that the permittee is considered responsible for the actions of all persons working on the mine site.~~

All harm has been negated.

7. If you think the violation was the result of ~~indifference to OSM regulations, or the result of lack of reasonable care, explain.~~

8. If the actual or potential environmental harm or loss 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.

9. Was the operator in violation of a specific permit condition? Did the operator receive prior warning of violation by the State or by OSM concerning this violation? If so, give the dates and the type of warning.

11. Good Faith

10. In order to receive good faith for compliance with an act or CO, an operator must have taken extraordinary measures to comply as rapidly as possible. The violation must have been abated before the time set for abatement. If you think this applies, describe how rapid the compliance was and what extraordinary measures the operator took.

11/20/80

None  
90 DAYS  
USED

Douglas P. [Signature]

IN RE: HAWKEYE ELKHORN COAL CO.

1. Notice of Violation/CO # 80-2-75-60 Violation 1 of 2  
 Nature of the violation FAILURE TO RETURN HIGHWALL TO AOC AND RE-  
 GRADE THE DISTURBED AREA.

Conference Proposal	Assess/Office	Assess/Conf.	Proposed Assessment Assess/Conf.
History/Prev. Violation	<u>0</u>	<u>0</u>	
Seriousness:			
(1) Probability of Occurrence	<u>15</u>	<u>5</u>	
Extent of Damage	<u>10</u>	<u>8</u>	
(2) Obstruction to Enforcement	<u>-</u>	<u>-</u>	
Negligence	<u>12</u>	<u>12</u>	
Good Faith	<u>-</u>	<u>0</u>	
TOTAL POINTS	<u>37</u>	<u>25</u>	
TOTAL AMOUNT ASSESSMENT	<u>\$1700.00</u>	<u>NOT ASSESSED \$0 NO ASSES.</u>	<u>NOT ASSESSED \$0</u>

2. Narrative:

(Brief justification of changes in penalty points and assessment. This report is to be prepared for each violation of the NOV and/or CO.)

At 8:10 AM on 4-28-81 I CONTACTED INSPECTOR DONG GODESKY.  
HE STATED THAT HE HAD CHANGED HIS ORIGINAL INSPECTOR STATEMENT TO  
REFLECT A MORE ACCURATE ASSESSMENT OF THE SITUATION PRECIPITATING  
THE VIOLATION AFTER HE HAD CONTACTED THE MINING COMPANY. A COPY  
OF THE REVISED INSPECTOR STATEMENT IS ATTACHED. THE ABOVE CHANGES  
IN THE ASSESSMENT REFLECT THE CHANGES IN THE INSPECTOR'S STATE-  
MENT ONLY.

THE COMPANY ENGINEER MR. MARVIN BARTLEY HAD WISHED  
TO POSTPONE THE CONFERENCE DUE TO MINERS STRIKE CONDITIONS,  
BUT THIS WAS NOT NECESSARY DUE TO THE INSPECTOR'S NEW INFORMAT-

1. Notice of Violation/CO # 80-2-75-60 Violation 2 of 2  
Nature of the violation FAILURE TO ESTABLISH A VEGETATIVE COVER AND  
MULCH THE DISTURBED AREA.

Conference Proposal	<u>Assess/Office</u>	<u>Assess/Conf.</u>	<u>Proposed Assessment Assess/Conf.</u>
History/Prev. Violation	<u>0</u>	<u>0</u>	
Seriousness:			
(1) Probability of Occurrence	<u>15</u>	<u>5</u>	
Extent of Damage	<u>10</u>	<u>9</u>	
(2) Obstruction to Enforcement	<u>-</u>	<u>-</u>	
Negligence	<u>12</u>	<u>12</u>	
Good Faith	<u>-</u>	<u>-</u>	
<b>TOTAL POINTS</b>	<u>37</u>	<u>26</u>	
<b>TOTAL AMOUNT ASSESSMENT</b>	<u>\$1700.00</u>	<u>NOT ASSESSED</u> <u><del>\$0</del> NO ASSES.</u>	<u>NOT ASSESSED</u> <u><del>\$0</del></u>

2. Narrative:

(Brief justification of changes in penalty points and assessment. This report is to be prepared for each violation of the NOV and/or CO.)

AT 8:10 AM ON 4-28-81 I CONTACTED INSPECTOR DOUG GODESKY.  
HE STATED THAT HE HAD CHANGED HIS ORIGINAL INSPECTOR STATEMENT TO  
REFLECT A MORE ACCURATE ASSESSMENT OF THE SITUATION PRECIPIT-  
ATING THE VIOLATION AFTER HE HAD CONTACTED THE MINING COMPANY.  
A COPY OF THE REVISED INSPECTOR STATEMENT IS ATTACHED. THE  
ABOVE CHANGES IN THE ASSESSMENT REFLECT THE CHANGES IN THE  
INSPECTORS STATEMENT ONLY.

THE COMPANY ENGINEER MR. MARVIN BARTLEY HAD WISHED TO  
POSTPONE THE CONFERENCE DUE TO MINERS STRIKE CONDITIONS, BUT THIS  
IS NOT NECESSARY DUE TO THE INSPECTORS NEW INFORMATION.