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

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OK

October 10, 2002

CERTIFIED MAIL

7099 3400 0016 8895 6443

Tim Kirschbaum  
Consolidation Coal Company  
P.O. Box 566  
Sesser, IL 62884

Re: Proposed Assessment for State Cessation Order No. C02-39-1-1, Consolidation Coal Company, Emery Deep Mine, C/015/015, ~~Compliance File~~ Outgoing

Dear Mr. Kirschbaum:

The undersigned has been appointed by the Division of Oil, Gas & Mining as the Assessment Officer for assessing penalties under R645-401.

Enclosed is the proposed civil penalty assessment for the above referenced cessation order. The cessation order was issued by Division Inspector, Stephen J. Demczak, on September 17, 2002. 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 Cessation Order has been considered in determining the facts surrounding the cessation order and the amount of this penalty.

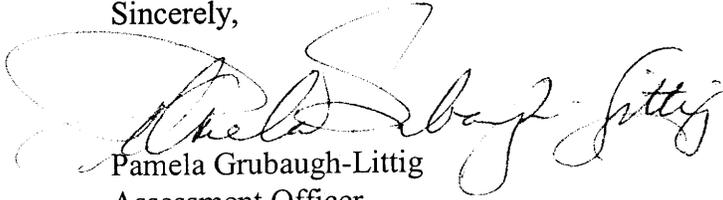
Under R645-401-700, there are two informal appeal options available to you:

1. If you wish to informally appeal the fact of this Cessation Order, you should file a written request for an Informal Conference within thirty (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 thirty (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.

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**If a timely request for review is not made, the fact of the cessation order 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 Vickie Southwick.**

Sincerely,



Pamela Grubaugh-Littig  
Assessment Officer

Enclosure

cc: OSM Compliance Report ✓  
Vickie Southwick, DOGM

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

COMPANY / MINE Consolidation Coal Company

PERMIT C/015/015

NOV / CO # CO# C02-39-1-1 Cessation Order 1 of 1

ASSESSMENT DATE October 7, 2002

ASSESSMENT OFFICER Pamela Grubaugh-Littig

**I. HISTORY (Max. 25 pts.)**

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

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS
_____	_____	_____
_____	_____	_____

1 point for each past violation, up to one (1) year  
5 points for each past violation in a CO, up to one (1) 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 apply:

1. Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
2. Beginning at the mid-point of the 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? Event (A)

A. EVENT VIOLATION (Max 45 pts.)

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

**PROVIDE AN EXPLANATION OF POINTS:**

*The event that this cessation order was designed to prevent was "mining activities outside the permit area."*

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:**

*An underground mine scoop was traveling with mine supplies outside the permit area of the 4<sup>th</sup> East Portal on the "public road" on September 17, 2002.*

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:**

*There could have been harm (damage) to the public due to the poor visibility of the driver inherent with driving the underground scoop.*

B. HINDRANCE VIOLATION (Max 25 pts.)

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 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--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

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

STATE DEGREE OF NEGLIGENCE Greater Degree of Fault

ASSIGN NEGLIGENCE POINTS 20

**PROVIDE AN EXPLANATION OF POINTS:**

*The permittee was fully aware of the "public road" issue and the consequences of unlicensed vehicles traveling on the public roads.*

**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 condition and/or terms of approved Mining and Reclamation Plan)

\*Assign in upper of 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?

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 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 -10

PROVIDE AN EXPLANATION OF POINTS:

*The environmental coordinator for the Emery Deep Mine on September 17, 2002 (the date of the cessation order) committed to the inspector "NOT" to have mining equipment leave the permit area. By verbal communication to the inspector from the environmental coordinator, this same commitment was reiterated to all supervisors by the Mine Manager on September 18, 2002.*

*The underground scoop immediately returned to the permit area upon notification.*

V. ASSESSMENT SUMMARY

	NOTICE OF CESSATION ORDER #	<u>C02-30-1-1</u>
I.	TOTAL HISTORY POINTS	<u>0</u>
II.	TOTAL SERIOUSNESS POINTS	<u>30</u>
III.	TOTAL NEGLIGENCE POINTS	<u>20</u>
IV.	TOTAL GOOD FAITH POINTS	<u>-10</u>
	TOTAL ASSESSED POINTS	<u>40</u>
	<b>TOTAL ASSESSED FINE</b>	<b><u>\$ 600</u></b>