

0022



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

1594 West North Temple, Suite 1210  
PO Box 145801  
Salt Lake City, Utah 84114-5801  
(801) 538-5340 telephone  
(801) 359-3940 fax  
(801) 538-7223 TTY  
www.nr.utah.gov

Michael O. Leavitt  
Governor  
Robert L. Morgan  
Executive Director  
Lowell P. Braxton  
Division Director

October 31, 2002

CERTIFIED MAIL

7099 3400 0016 8895 6436

Tim Kirschbaum, Environmental Engineer  
Consolidation Coal Company  
P.O. Box 566  
Sesser, Illinois 62884

Re: Proposed Assessment for State Violation No. N02-39-2-1, Consolidation Coal Company, Emery Deep Mine, C/015/015, Compliance File

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 violation. The violation was issued by Division Inspector, Stephen J. Demczak, on October 25, 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 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 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.

7099 3400 0016 6695 6436

**U.S. Postal Service**  
**CERTIFIED MAIL RECEIPT**  
*(Domestic Mail Only; No Insurance Coverage Provided)*

10/31/02; C/015/015-N02-39-2-1

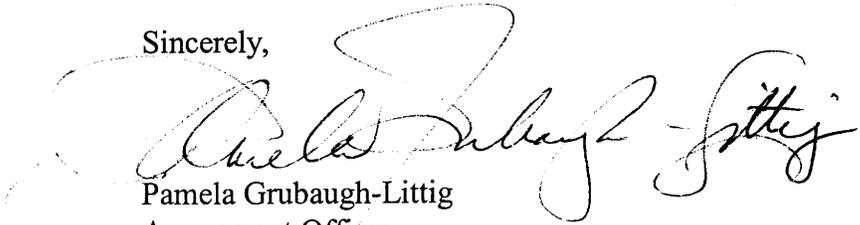
Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
<b>Total Postage &amp; Fees</b>	\$	

*Recipient's Name (Please Print Clearly) (to be completed by mailer)*  
**TIM KIRSCHBAUM**  
*Street, Apt. No., or PO Box No.*  
**P O BOX 566**  
*City, State, ZIP+4*  
**SESSER IL 62884**

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**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 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 # N02-39-2-1

VIOLATION 1 of 1

ASSESSMENT DATE October 29, 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:**

***Environmental Harm.***

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 15**

**PROVIDE AN EXPLANATION OF POINTS:**

***Vehicles (one car and one truck) were parked on top of the undisturbed vegetation and topsoil that could inhibit future reclamation caused by a disturbance to soil compaction and vegetation.***

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 13**

**PROVIDE AN EXPLANATION OF POINTS:**

***This action caused additional disturbance to soil compaction and vegetation.***

**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 ) 28**

**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

ASSIGN NEGLIGENCE POINTS 29

**PROVIDE AN EXPLANATION OF POINTS:**

*Violation #N02-39-1-2 (1 of 2) was issued on September 12, 2002 to remove the trailer from the undisturbed area where topsoil and vegetation had not been removed (same location). The trailer was removed and the violation was terminated. On October 25, 2002, this violation was issued because vehicles were found on the same area which was supposed to be an undisturbed area where topsoil and vegetation had not been removed.*

**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 0

PROVIDE AN EXPLANATION OF POINTS:

*The violation has not been terminated to date.*

V. ASSESSMENT SUMMARY

NOTICE OF VIOLATION # N02-39-2-1

I.	TOTAL HISTORY POINTS	<u>0</u>
II.	TOTAL SERIOUSNESS POINTS	<u>28</u>
III.	TOTAL NEGLIGENCE POINTS	<u>29</u>
IV.	TOTAL GOOD FAITH POINTS	<u>0</u>
	TOTAL ASSESSED POINTS	<u>57</u>

**TOTAL ASSESSED FINE** **\$ 1280**