

October 27, 2003

CERTIFIED RETURN RECEIPT
7099 3400 0016 8895 5941

John Gefferth, Environmental Engineer
Consolidation Coal Company
P.O. Box 566
Sesser, Illinois 62884

Re: Proposed Assessment for State Violation No. N03-38-1-1, Consolidation Coal Company, Emery Deep Mine, C/015/015, Outgoing File

Dear Mr. Gefferth:

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, Priscilla Burton, on August 5, 2003. 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.

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
Price Field Office

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

COMPANY / MINE Consolidation Coal Company
NOV / CO # N03-38-1-1

PERMIT C/015/015
VIOLATION 1 of 1

ASSESSMENT DATE October 24, 2003

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
<u>N02-39-1-2</u>	<u>09/13/2002</u>	<u>2</u>
<u>C02-39-1-1</u>	<u>09/17/2002</u>	<u>5</u>
<u>N02-39-2-1</u>	<u>10/25/2002</u>	<u>1</u>

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 8

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? **(A) Event**

A. EVENT VIOLATION (Max 45 pts.)

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

*****Activity outside the approved permit area; conducting activities without prior approvals, environmental harm and loss of reclamation/revegetation potential.**

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:

******Activity occurred outside the permit area, between the permit area fence line and the county road. There was no prior approval for driving construction equipment over the undisturbed area to install the wind-fence support poles. The environmental harm came from the effects of the vehicle travel (vacuum truck and pole setting rig) over the undisturbed area: destruction of existing vegetation and soil structure and aggregation, creating a powdery surface of soil. The loss of reclamation potential comes from the loss of soil organic matter to the vacuum hose and the loss of topsoil resource to wind erosion.***

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 8

PROVIDE AN EXPLANATION OF POINTS:

******The vegetation and soil were pulverized along the route where the heavy equipment traversed the course to install the power poles and vacuum the coal fines.***

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 Negligence

ASSIGN NEGLIGENCE POINTS 12

PROVIDE AN EXPLANATION OF POINTS:

****The permittee was aware of the DOGM regulation to protect the topsoil resource (two violations were written in 2002 for failure to protect the topsoil resource.)*

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

C	Immediate Compliance	-11 to -20*
	(Immediately following the issuance of the NOV)	
C	Rapid Compliance	-1 to -10
	(Permittee used diligence to abate the violation)	
C	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

C	Rapid Compliance	-11 to -20*
	(Permittee used diligence to abate the violation)	
C	Normal Compliance	-1 to -10*
	(Operator complied within the abatement period required)	
C	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 5

PROVIDE AN EXPLANATION OF POINTS:

****The site was raked, broadcast-seeded and hydro-mulched on August 19, 2003. The permittee also seeded an additional area within the permit boundary that was affected by installation of power lines as well.*

V. ASSESSMENT SUMMARY

NOTICE OF VIOLATION # N03-38-1-1

I.	TOTAL HISTORY POINTS	<u>8</u>
II.	TOTAL SERIOUSNESS POINTS	<u>28</u>
III.	TOTAL NEGLIGENCE POINTS	<u>12</u>
IV.	TOTAL GOOD FAITH POINTS	<u>-5</u>
	TOTAL ASSESSED POINTS	<u>43</u>

TOTAL ASSESSED FINE \$ 720.00