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# State of Utah

## DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER  
Executive Director

### Division of Oil Gas and Mining

JOHN R. BAZA  
Division Director

July 6, 2007

CERTIFIED RETURN RECEIPT  
7004 2510 0004 1824 4592

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

Subject: Proposed Assessment for Notice of Violation #10005, Consolidation Coal Company, Emery Deep Mine, C/015/0015, 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, Karl Houskeeper, on June 14, 2007. 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, Associate Director or assigned conference officer. 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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John Gefferth  
July 5, 2007

**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,

A handwritten signature in black ink that reads "Daron R. Haddock". The signature is fluid and cursive, with the first name "Daron" being the most prominent.

Daron R. Haddock  
Assessment Officer

sb

Enclosure

cc: OSM Compliance Report  
Vickie Southwick, DOGM  
Price Field Office

O:\015015.EME\FINAL\PROASSESSMENT\_N10005.DOC

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

COMPANY / MINE Consolidation Coal Company  
 PERMIT C/015/015 NOV / CO # 10005  
 ASSESSMENT DATE July 5, 2007

ASSESSMENT OFFICER Daron R. Haddock

**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>None</u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></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**         

**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? **Hindrance**

A. EVENT VIOLATION (Max 45 pts.)

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

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\*

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 \_\_\_\_\_

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\*

B. HINDRANCE VIOLATION (Max 25 pts.)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? Actual  
RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS 15

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\* *By regulation an operator is required to provide plans for permanent disposal of refuse and coal mine waste. Waste is currently being stored at the site in a temporary location, which was planned to be used for only a short time period. Plans for the permanent disposal site are inadequate with respect to having diversions sized for a 100 year 6 hour event. Not having an adequate disposal site is considered to be an administrative violation. The inspector is actually hindered from being able to evaluate compliance with the disposal of coal mine waste. Points are assigned in the upper mid part of the range.*

TOTAL SERIOUSNESS POINTS ( A or B ) 15

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:**

**\*\*\* This violation was the result of indifference to the DOGM regulations or the lack of reasonable care. A prudent operator would understand the need to plan and design facilities for permanent disposal of coal mine waste materials. Refuse material that was slated to be moved within 2 years has remained in a temporary location for over 18 years. The inspector indicates that the operator had been advised on several occasions to correct this problem, but the Operator failed to do so. This shows negligence and points are assigned in the upper part of the negligence range.**

**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

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

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

ASSIGN GOOD FAITH POINTS n/a

**PROVIDE AN EXPLANATION OF POINTS:**

**\*\*\* No good faith points are assigned at this point because the violation has not yet been terminated. In order to receive good faith, the violation must be abated before the abatement deadline. This category will be reviewed again after the violation has been terminated.**

**V. ASSESSMENT SUMMARY**

NOTICE OF VIOLATION # <u>N 10005</u>	
I. TOTAL HISTORY POINTS	_____
II. TOTAL SERIOUSNESS POINTS	<u>15</u>
III. TOTAL NEGLIGENCE POINTS	<u>12</u>
IV. TOTAL GOOD FAITH POINTS	<u>0</u>
TOTAL ASSESSED POINTS	<u>27</u>
TOTAL ASSESSED FINE	<u>\$ 770</u>

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Sent To **JOHN GEFPERTH COAL COMPANY**

Street, Apt. No.,  
or PO Box No. P. O. BOX 566

City, State, ZIP+4 SESSER IL 62884

PS Form 3800, June 2002 See Reverse for Instructions