

0025

OK



State of Utah

Department of
Natural Resources

ROBERT L. MORGAN
Executive Director

Division of
Oil, Gas & Mining

LOWELL P. BRAXTON
Division Director

OLENE S. WALKER
Governor

GAYLE F. McKEACHNIE
Lieutenant Governor

July 27, 2004

CERTIFIED RETURN RECEIPT
7099 3400 0016 8895 5668

Wendell Owen, Mine Manager
Co-Op Mining Company
P.O. Box 1245
Huntington, Utah 84528

RE: Proposed Assessment for State Violation No. N04-46-2-2, Co-Op Mining Company, Bear Canyon Mine, C/015/0025, Outgoing File

Dear Mr. Owen:

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, Peter H. Hess, on June 29, 2004. 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.

N047-46-2-2

C/015/025

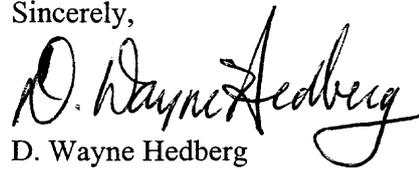
July 27, 2004

Page 2

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,



D. Wayne Hedberg
Assessment Officer

Enclosure

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

O:\015025.BCN\Compliance\Assessment\N04-46-2-2proltr.doc

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

COMPANY / MINE C. W. Mining Company, (d.b.a., Co-Op Mining Company)
PERMIT C/015/0025 CO/NOV # N04-46-2-2 VIOLATION 1 of 2

ASSESSMENT DATE July 15, 2004

ASSESSMENT OFFICER D. Wayne Hedberg

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>N04-46-1-1</u>	<u>March 23, 2004</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 1

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 that the violated standard was designed to prevent?
*****Water Pollution.**

2. What is the probability of the occurrence of the event that 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 13

PROVIDE AN EXPLANATION OF POINTS:

******The event that the regulation was intended to prevent is water pollution. Although water pollution was not observed, it is very likely that it could happen because the coal mine waste blocked ditches D-30U and D-37U. These ditches were not properly maintained that could lead to uncontrolled drainage causing erosion and concurrent water pollution problems.***

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 5

PROVIDE AN EXPLANATION OF POINTS:

******The inspector indicated that no damage had occurred as a result of the violation; however there was a reasonable likelihood that damage could occur because of the blocked drainage ditches. Because there is only the potential for damage, points are assessed in the lower end of the range.***

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 0

PROVIDE AN EXPLANATION OF POINTS:

TOTAL SERIOUSNESS POINTS (A or B) 18

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 _____

ASSIGN NEGLIGENCE POINTS 10

PROVIDE AN EXPLANATION OF POINTS:

******Proper maintenance of drainage ditches and diversions is expected. A prudent operator would assure that this maintenance is performed routinely. By allowing the coal mine waste to accumulate to the point where the ditches were blocked shows a lack of diligence and reasonable care. The fact that the operator has been cited 3 months earlier for a similar neglect of ditch/diversion maintenance at the mine indicates a general lack of concern. Accordingly, an assessment in the higher end of the negligence range has been levied.***

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 Abatement

ASSIGN GOOD FAITH POINTS -5

PROVIDE AN EXPLANATION OF POINTS:

****The operator utilized company resources to perform the required work so this is considered an easy abatement. The operator reported to the inspector that abatement of the violation was started on June 30, 2004. The required abatement work was completed on July 17, 2004.*

V. ASSESSMENT SUMMARY

NOTICE OF VIOLATION # N 04-46-2-2 (1 of 2)

I.	TOTAL HISTORY POINTS	<u>1</u>
II.	TOTAL SERIOUSNESS POINTS	<u>18</u>
III.	TOTAL NEGLIGENCE POINTS	<u>10</u>
IV.	TOTAL GOOD FAITH POINTS	<u>-5</u>
	TOTAL ASSESSED POINTS	<u>24</u>

TOTAL ASSESSED FINE \$528.00

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

COMPANY / MINE C. W. Mining Company, (d.b.a., Co-Op Mining Company)
PERMIT C/015/0025 CO/NOV # N04-46-2-2 VIOLATION 2 of 2

ASSESSMENT DATE July 15, 2004

ASSESSMENT OFFICER D. Wayne Hedberg

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>N04-46-1-1</u>	<u>March 23, 2004</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 1

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 that the violated standard was designed to prevent?
*****Water pollution.**

2. What is the probability of the occurrence of the event that 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 10

PROVIDE AN EXPLANATION OF POINTS:

*****The event that the regulation was intended to prevent is water pollution. Although water pollution was not observed, it is very likely that it could happen because the coal mine waste placed in and around basin #3 on the #4 portal pad rendered it incapable of providing proper treatment of precipitation and runoff from the affected area. This treatment basin was not properly maintained. Consequently, this could lead to uncontrolled drainage and improperly treated runoff that could cause erosion and water pollution problems.**

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 6

PROVIDE AN EXPLANATION OF POINTS:

*****The inspector indicated that no damage had occurred as a result of the violation; however there was a reasonable likelihood that damage could occur because of the blocked drainage ditches. Because there is only the potential for damage, points are assessed in the lower end of the range.**

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 0

PROVIDE AN EXPLANATION OF POINTS:

TOTAL SERIOUSNESS POINTS (A or B) 16

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 _____

ASSIGN NEGLIGENCE POINTS 8

PROVIDE AN EXPLANATION OF POINTS:

******Proper maintenance of the drainage basin is expected. A prudent operator would assure that this maintenance is performed routinely. By allowing the coal waste debris to accumulate to the point where the basin would not function as designed, shows a lack of diligence and reasonable care. The fact that the operator had placed a new foreman in charge of the area that was reportedly not familiar with SMCRA or R645 regulations has been taken into account. Accordingly, the point assessment is in the mid-range for negligence.***

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 Abatement

ASSIGN GOOD FAITH POINTS -5

PROVIDE AN EXPLANATION OF POINTS:

****The operator utilized company resources to perform the required work so this is considered an easy abatement. The required abatement work was completed on July 17, 2004.*

V. ASSESSMENT SUMMARY

NOTICE OF VIOLATION # N 04-46-2-2 (2 of 2)

I.	TOTAL HISTORY POINTS	<u>1</u>
II.	TOTAL SERIOUSNESS POINTS	<u>16</u>
III.	TOTAL NEGLIGENCE POINTS	<u>8</u>
IV.	TOTAL GOOD FAITH POINTS	<u>-5</u>
	TOTAL ASSESSED POINTS	<u>20</u>

TOTAL ASSESSED FINE \$ 440.00